

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1483 of 2000

Nachimuthu

... Appellant/Plaintiff
in Trial Court

Vs.

1.Palaniappa Gounder
2.Velusamy
3.Arumuga Gounder

... Respondents/Defendants
in Trial Court

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 16.02.1999 made in A.S.No.143/1998 on the file of the Principal District Judge, Erode, confirming the Judgment and Decree dated 10.07.1998 made in O.S.No.189/1996 on the file of the Principal District Munsif, Erode.

For Appellant : Ms. S. Varsha
For Respondents : M/s.N. Manokaran

J U D G M E N T

The unsuccessful appellant/plaintiff, who lost the case before the courts below filed the second appeal before this court.

2. The ranking of the parties hereinafter referred to as 'plaintiff' for appellant and 'defendant' for the respondent.

3. The averments contained in the plaint, in brief, are as follows:

The appellant/plaintiff is the absolute owner of the suit property. The Government has recognised his possession and had issued patta in favour of him under patta No.286. The total extent of suit property is 1.76 hectares nearly 0.01.70 hectares. Thereafter, the plaintiff had put up a Calicut tiled house and had been staying in the said house. The defendants are owning lands on the east of the suit property. The defendants wanted the plaintiff to sell the suit property to them at a lower price. The plaintiff did not heed to the demands made by the defendants. The defendants, out of grudge, on 14.02.1996, came with a band of rowdies and attempted to trespass into the suit property. Thereafter, the

plaintiff filed a suit for permanent injunction restraining the respondents to interfere with the peaceful possession and enjoyment of the suit property.

4. The averments contained in the written statement, in brief, are as follows:

The defendants admitted that they are having lands adjacent to the suit property. The defendants are reaching their lands through the cart track which is branching from Kolathupalayam main road which is the only cart track to reach their lands in SR.Nos.164 and 153. They are using it from time immemorial. There was a misunderstanding between the plaintiff and the defendants due to cattle stray. Therefore, the plaintiff has come forward with this false case by creating the bogus documents. The plaintiff attempted to encroach upon the cart track which was questioned by the defendants and the defendants have not allowed the plaintiff to encroach upon the cart track. Therefore, the plaintiff has filed a vexatious suit before the lower court.

5. After perusal of the documents and framing of the issues, the trial court dismissed the suit. Aggrieved by the same, the plaintiff has filed a suit before the lower court, which was dismissed by it and the lower appellate court has also confirmed the dismissal order passed by the lower court. As against the concurrent findings, the second appeal is filed.

6. At the time of entertaining the appeal, this court has framed the following substantial question of law:

"Is not the appellant/plaintiff entitled to permanent injunction regarding the suit property as proof of trespass by the respondent, especially when eastern boundary was amended including north south cart track?"

7. Learned counsel for the appellant would submit that the appellant has obtained a patta from the appropriate Government. In the absence of any title deed, the patta has to be considered as a titled deed and the appellant has a right over the property based on the patta granted by the Government. Thereby the appellant is entitled to enjoy the property and his enjoyment was interfered by the defendants, aggrieved against which, the plaintiff has filed a suit.

8. Admittedly, there is no description available in the suit schedule property. However, in the appellate stage, the appellant has filed a petition for amendment of pleadings Under Order VI Rule 17. On perusal, the lower appellate court has allowed the petition. However, it denied the relief stating that for the purpose of suit, the said cart track was annexed in the description of the property. The said finding is perverse and is

an unsustainable one. Accordingly, without verifying the description of the property and the possession of patta, the lower court as well as the lower appellate court, have concurrently held against the appellant which appears to be an unsustainable one. Therefore, the appellant is entitled to succeed in the second appeal.

9. Learned counsel for the respondents would submit that a well settled law states that a patta is not a title and it does not have any description of the property. The plaintiff has filed a suit with an incomplete description of property in order to grab the cart track. Thereby the lower court as well as the lower appellate court have concurrently held in favour of the defendants and dismissed the suit and hence, the same need not be interfered with the second appeal. Accordingly, he prayed for the dismissal of the suit.

10. Learned counsel for the respondents further submitted that the appellant intentionally suppressed the existing cart track in the suit property. Thereafter, he suppressed it before the lower court in the appellate stage by way of an amendment application. The said cart track came into light as description of the property. Accordingly, the lower appellate court has also dismissed the suit.

11. On perusal of the entire materials, records and the depositions, it is seen that the plaintiff's property is situated in the west of the defendants' land and there was a suit cart track. At the time of filing of the suit, the plaintiff did not make any description in the suit schedule property and only based on the patta, he has filed the present suit. Aggrieved by the revenue authorities, the plaintiff, in the appellate stage, by way of an amendment application, included the cart track as description of the property.

12. The contention of the plaintiff as well as the defendants is the suit cart track belonged to each of them. However, in the initial stage, the appellant did not disclose the suit cart track in the suit schedule property and suppressed that there was a suit cart track in the particular R.S.No.434/2, the defendants claiming that the suit cart track has been in use from time immemorial and this is the only suit cart track available for reaching their lands from Kulathupalayam main road. However, in order to prove the title, the appellant has filed only patta and other revenue receipts establishing their title in the suit property.

13. On perusal of Ex.A2, it is seen that in the patta, no actual measurements of the property is available and it is a settled law that patta will not confer any right over the

property and it is only a possessory rights. Since the appellant did not mark any document to establish his title over the suit property, in the absence of any material and enjoyment over the property claiming injunction against the defendants, is unsustainable. Therefore, I do not find any error or infirmity in the orders of the lower court as well as the lower appellate court. Accordingly, substantial question of law is answered against the appellant.

In the result, the second appeal is dismissed and the Judgment and Decree dated 16.02.1999 made in A.S.No.143/1998 on the file of the Principal District Judge, Erode, confirming the Judgment and Decree dated 10.07.1998 made in O.S.No.189/1996 on the file of the Principal District Munsif, Erode, is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

gv

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Erode.
2. The Principal District Munsif,
Erode.

Copy to: The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Naveen Kumar, Advocate Sr.No.14312
+1cc to Mr.N.Manokaran, Advocate Sr.No.13854

KS(CO)
sm:28.3.2018

S.A.No.1483 of 2000