

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2018

PRONOUNCED ON : 26.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.322 of 2015

V.R.Krishnaveni ... Appellant

Vs.

- 1.Essac
 - 2.Venkatraman
 - 3.Lurdu Mary
 - 4.Jesudass
 - 5.The Government of Tamil Nadu
Represented by its District Collector,
Dharmapuri.
 - 6.The Sub-Collector, Hosur.
 - 7.The Tahsildar, Taluk Office, Hosur.
 - 8.The Sub Inspector of Police, (L & O)
City Police Station,
Hosur.
- Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 09.12.2014 passed in A.S.No.1 of 2011 on the file of the Subordinate Court, Hosur, confirming the Judgment and Decree dated 22.09.2010 passed in O.S.No.74 of 2004 on the file of the District Munsif Court, Hosur.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.N.A.Nissar Ahamed
Nos.1, 2 & 4

For Respondent : Mrs.A.Madhumathi
Nos. 5 to 8

For Respondent No.3 : No appearance
set exparte vide order
dated 22.10.2018

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 09.12.2014 passed in A.S.No.1 of 2011 on the file of the Subordinate Court, Hosur, confirming the Judgment and Decree dated 22.09.2010 passed in O.S.No.74 of 2004 on the file of the District Munsif Court, Hosur.

2.The second appeal has been admitted on the following substantial questions of law:

"(a).Whether the courts below are right in failing to appreciate that in grant of natham patta in modality adopted is entirely different from grant of patta in patta lands?

(b).Whether the courts below are right not in even identifying the property before embarking on an adjudication of the dispute and the facts and circumstances of the present case, are the courts below justified in placing the burden of proof on the plaintiff?

(c).Whether the Lower Appellate Court is justified in rejecting the application for receipt of additional evidence when the relevancy of the documents was explained to enable the court to pronounce a satisfactory judgment?"

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.The plaintiff/appellant has laid the suit against the defendants/respondents seeking the relief of declaration of her title in respect of item 1 of the B schedule property and also consequently, the relief of permanent injunction restraining the defendants 1 to 4 from interfering with her peaceful possession and enjoyment of the abovesaid item of the B schedule property. She has also sought for a compensation of a sum of Rs.35,000/- from the defendants and according to her, the defendants had caused destruction to the residential house put up by her in the abovesaid property and thereby, damaged the articles belonging to her as detailed in the plaint and also sought for the relief of permanent injunction against the defendants from disturbing her peaceful possession and enjoyment of the suit property as a whole, until she is evicted therefrom by due process of law.

5.The defendants, in toto, disputed the entitlement of the plaintiff to the first item of the B schedule property and also the second item of the B schedule property and according to the defendants, the plaintiff has never been in the possession and enjoyment of the suit property lawfully and hence, not entitled to obtain the reliefs prayed for.

6.In the light of the above factors, the plaintiff having laid the suit for the reliefs of declaration and permanent injunction, should establish that as claimed by her, she has been having title to the first item of the B schedule property and that the second item of the B schedule property is in her possession and enjoyment as claimed by her. Though in the plaint, the plaintiff would claim that the two items of the B schedule property have been in her possession and enjoyment since 1976 onwards and accordingly, she had put up the superstructure thereon and residing and enjoying the same by paying necessary charges etc., and that she had been granted assignment in respect of the item 1 of the B schedule property during October 2001 and the defendants are unnecessarily interfering with her possession and enjoyment of the suit property, as rightly found and determined by the Courts below, with reference to the plaintiff's claim of title to the first item of the B schedule property absolutely there is no material forthcoming on the part of the plaintiff. The first item of the B schedule property is described as located in Chennathur Revenue Village of Hosur Taluk in Meenakshi Nagar, consisting of a Triangular house site measuring 45 feet North-south on the east, 60 feet east-west on the North and 40 feet east - west on the south comprising in survey No.938/5 situated within four boundaries as detailed in the plaint and according to the plaintiff, she has been residing in the abovesaid thatched house bearing door No.1D and also raised coconut saplings, drum stick tree, flowering plants etc., which, further according to the plaintiff, had been destroyed by the defendants and their men. However, though the plaintiff would claim that she had been granted the assignment in respect of the abovesaid item of the suit properties during October 2001 in recognition of her continuous and long possession of the same since 1976 onwards, the so called assignment/patta said to have been granted in her favour in respect of the abovesaid item of the property has not been projected and no reason has been adduced with reference to the same. In this connection, the plaintiff has produced only two documents as Exs.A1 & A2, which are found to be two penal receipts and as rightly determined by the Courts below, when Exs.A1 & A2 are found to be penal receipts for the enjoyment of the porombokku property belonging to the Government and furthermore, when there is nothing found in Exs.A1 & A2 to link that the abovesaid receipts pertain to the first item of the B schedule property as detailed in the plaint and there is no

reference at all whatsoever found in the abovesaid documents to co-relate the same with the first item of the B schedule property, the Courts below rightly did not place reliance upon the abovesaid documents for upholding the plaintiff's case. Other than Exs.A1 & A2, there is no other acceptable and reliable material placed by the plaintiff to sustain her claim of title to the first item of the B schedule property and her possession and enjoyment of the two items of the B schedule property as projected in the plaint. The other documents projected by the plaintiff marked as Exs.A3 to 10 are found to be the notices and the telegrams sent by the plaintiff to the defendants, to the chief minister cell, to the Superintendent of Police etc., and by way of the abovesaid documents, the plaintiff claim of title, possession and enjoyment of the two items of the B schedule property cannot be upheld. In toto, it is seen that none of the documents projected by the plaintiff, in particular Exs.A1 & A2, are not shown to be relating to the suit property or useful for upholding the plaintiff's claim of title, possession and enjoyment of the two items of the B schedule property and in such view of the matter, the Courts below had rightly non-suited the plaintiff as the plaintiff has failed to establish her title, alleged possession and enjoyment of the two items of the B schedule property.

7.The other documents, relied upon by the plaintiff for sustaining her claim of title to the first item of the B schedule property, are Exs.X1 & X2. Ex.X1 is found to be the extract of the revenue department prepared during the course of Natham proceeding and Ex.X2 is the plan, and the abovesaid documents have come to be marked through PW3, however, when PW3 is unable to throw light on the abovesaid documents and unaware of as to under what circumstances and under what authority, the abovesaid documents had come to be executed and produced, in such view of the matter, Ex.X1, in particular, being only the extract of the revenue department, based on the same, it cannot be held that the plaintiff has a valid claim of title to the first item of the B schedule property as putforth in the plaint. On a reading of Ex.X1, it is seen that there is an entry contained therein as if the plaintiff is in the possession of an extent of 0.82 square meters in survey No.938/9. However, as to how the abovesaid entry had come to be recorded in the name of the plaintiff with reference to the abovesaid survey number in Ex.X1, there is no proper explanation on the part of the plaintiff as well as PW3 through whom the abovesaid document had come to be marked. In such view of the matter, the extract marked as Ex.X1 being a revenue document based on the same, as revenue document would not be adequate or sufficient to sustain the claim of title of the property in dispute by the plaintiff and furthermore, when other than Ex.X1, there is no other document placed by the plaintiff to evidence her possession and

enjoyment of the abovesaid B schedule property, the Courts below had correctly not placed reliance upon Exs.X1 as well as Ex.X2 for accepting the plaintiff's case.

8.As regards the second item of the plaint B schedule property, absolutely there is no material placed on the part of the plaintiff to evidence her claim of possession and enjoyment with reference to the same and therefore, it is seen that the plaintiff has failed to establish her claim of possession and enjoyment in respect of the second item of the B schedule property.

9.Materials placed on record go to show that as per Exs.B1 and B34, it is only the defendants 1 & 2, who have been granted patta in respect of the property described therein and furthermore, it is also seen that only in respect of the property, in respect of which, the second defendant had been granted patta in Ex.B34, the plaintiff is seeking her claim of title, possession and enjoyment. However, when from the materials placed on record, the second defendant is found to have been granted patta in respect of the abovesaid property and following the same, when it is noted that the second defendant had obtained necessary permission from the authority concerned for putting up the superstructure therein and also found to be enjoying the same right from 1992, as could be seen from the evidence marked as Ex.B37 and when there is no material at all placed on the part of the plaintiff to evidence that the patta granted in favour of the second defendant had been cancelled by the authority concerned, as rightly found and determined by the Courts below, the plaintiff is found to have unlawfully encroached into a portion of the property and had come forward with the suit seeking the relief as if she had been in the possession and enjoyment of the B schedule property right 1976 onwards. However, as above discussed and found by the Courts below, when with reference to the abovesaid case of the plaintiff, there is absolutely no material placed other than Exs.A1 & A2 and Ex.X1 and when the abovesaid documents are found to be not advancing the case of the plaintiff in any manner both as regards her claim of title as well as possession and enjoyment of the property in dispute, in such view of the matter, it is seen that no interference is called for in the judgment and decree of the Courts below, rejecting the plaintiff's case.

10.As regards the claim of the plaintiff that the defendants had unlawfully destroyed her house put up by her in the suit property and the articles belong to her and therefore, she is entitled to compensation etc., with reference to the said case, there is absolutely no material placed by the plaintiff worth acceptance and accordingly, the Courts below had rightly

disallowed the abovesaid case of the plaintiff.

11. Though, in this second appeal, the counsel for the appellant would argue that the Courts below had not properly appreciated the classification of the suit property, whether the same being Grama Natham and confused themselves as patta lands, however, on a perusal of the judgment and decree of the Courts below, it is seen that the Courts below had properly appreciated the classification of the property in dispute and finding that the plaintiff has failed to establish her claim of title, possession and enjoyment of the said property as pleaded by her and when the documents projected by the plaintiff marked as Exs.A1 & A2 and X1 are found to be not helpful to sustain her claim of title, possession and enjoyment of the suit property, in such view of the matter, the plaintiff having laid the suit seeking the reliefs of declaration, permanent injunction and other reliefs, the burden is heavy upon the plaintiff to establish her case and the plaintiff having failed to establish her case in any manner and on the other hand, when the materials placed on record go to show that in respect of the property in dispute, patta had been granted only in favour of the contesting defendants, in the light of the above position, it is seen that the Courts below had properly appreciated the materials placed on record both factually as well as legally and accordingly, finding that the plaintiff has failed to establish her case totally and rightly held that the plaintiff has not established her version to discharge the burden resting on her shoulders for seeking the reliefs claimed in the plaint and accordingly are found to have rejected the plaintiff's case.

12. The argument has also been put forth by the plaintiff's counsel that the first appellate Court has failed to appreciate the additional evidence produced by her in support of her case. However, as rightly put forth, when the plaintiff has failed to establish as to why she had not endeavoured to place the additional evidence before the trial Court and when no proper reason has been given by the plaintiff for not producing the additional evidence at the earliest point of time and when her endeavour to produce the additional evidence before the first appellate Court are not found to be governing the parameters of Order 21 Rule 47 CPC and when the plaintiff has also failed to establish the relationship of the additional evidence to sustain her case, in such view of the matter, no interference is called for in the rejection of the additional evidence projected by the plaintiff by the first appellate Court.

13. For the reasons aforestated, the Courts below are found to have appreciated the oral and documentary evidence adduced in the matter, in the right perspective, both factually as well as legally and also on furnishing the proper reasons and

conclusions are found to have non-suited the plaintiff. In such view of the matter, no interference is called for with reference to the same, and the substantial questions of law formulated in this second appeal are accordingly, answered against the plaintiff and in favour of the defendants.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms/krk

To

1.The Subordinate Court, Hosur.

2.The District Munsif Court, Hosur.

+1 cc to Mr.V.Raghavachari, Advocate Sr.No.80208

+1 cc to Mr.N.A.Nissar Ahmed, Advocate Sr.No.80520

+1 cc to The Government Pleader, Sr.No.80969

Judgment made
in S.A.No.322 of 2015

KS (CO)
CSL/23.01.2019

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