

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.06.2018

PRONOUNCED ON:11.07.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1145 of 2004

1.Govindan (Deceased)

2.Kalvi

3.Prema

4.G.Gnanasekaran

[Appellants 2 to 4 brought on record as LR's of the deceased sole appellant vide order of court dated 03.04.2018 made in CMP.No.12981 of 2017 in S.A.No.1145 of 2004]

... Appellants/Defendant

Vs.

1.Nallamuthu (Deceased)

2.Kamakshi

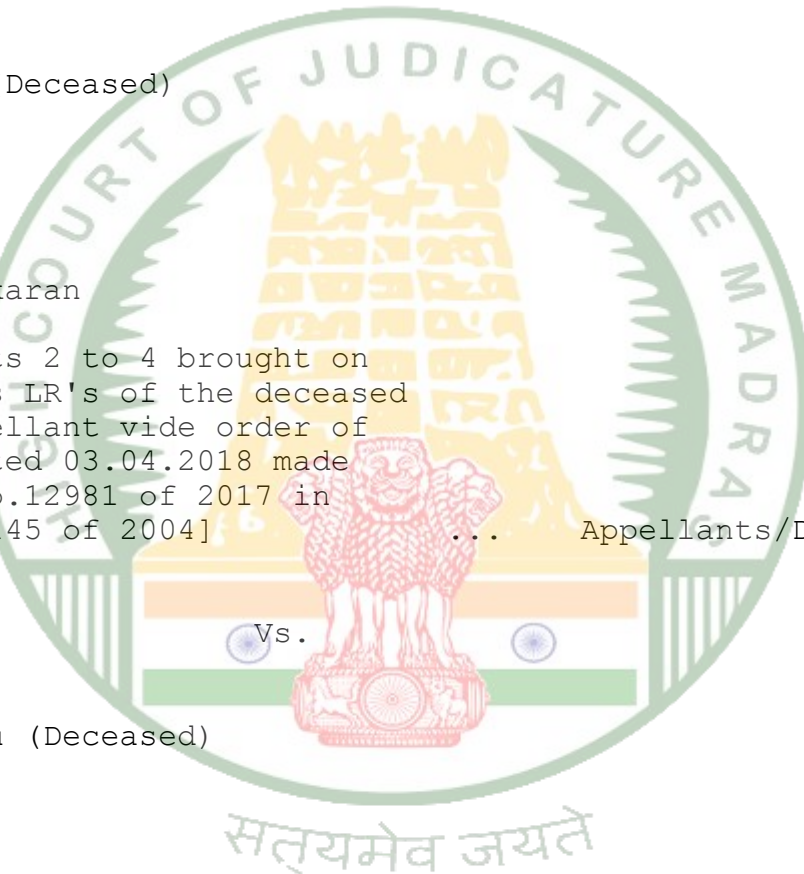
3.N.Kesavan

4.N.Gugan

5.N.Revathy

[RR2 to R5 brought on record as LR's of the deceased sole respondent vide order of Court dated 28.08.2014 made in CMP.No.415 of 2012 in S.A.No.1145 of 2004]

... Respondents/Plaintiff



WEB COPY

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 28.02.2002 passed in A.S.No.31 of 2001 on the file of Sub Court, Madurantakam confirming the judgement and decree dated 29.09.2000 passed in O.S.No.271 of 1995 on the file of the District Munsif Court, Madurantakam.

For Appellants : Mr.M.S.Subramanian

For Respondents : Mr.K.Govi Ganesan

J U D G M E N T

Challenge in this second appeal is made to the judgment and Decree dated 28.02.2002 passed in A.S.No.31 of 2001 on the file of Subordinate Court, Madurantakam confirming the judgment and decree dated 29.09.2000 passed in O.S.No.271 of 1995 on the file of the District Munsif Court, Madurantakam.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that he had acquired title to the suit property by way of a registered sale deed dated 27.01.1987 from his vendor Thanikachalam for a valid consideration, and since then, it is only the plaintiff, who has been in possession and enjoyment of the suit property and the plaintiff, on account of long and continuous possession and enjoyment from the days of his vendors prescribed title to the suit property by way of adverse possession and also recognizing his title, possession and enjoyment, the plaintiff and his vendors had been granted patta in respect of the suit property and the defendant has no right whatsoever, in respect of the suit property and on the other hand, he attempted to trespass into the suit property and thereby interfered with his possession and enjoyment and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and the case of the plaintiff is that he has purchased the suit property from Thanikachalam by way of a registered sale deed dated 27.01.1987 and enjoying the same by obtaining patta, paying Kists etc., are all false and according to the defendant, he had purchased 0.08 cents in the suit Survey No.64/10 within

the specific boundaries by way of a registered sale deed dated 27.09.1994 from Janaki, W/o, Thangavelu for a valuable consideration and his vendor Janaki's husband purchased the said property by way of a registered sale deed dated 16.01.1974 from Rajarathinam for a valuable consideration and the said property is situated to the north of Mariamman Temple and the defendant is in possession and enjoyment of the said property and on account of the long and continuous possession and enjoyment, prescribed title to the said property by way prescription and hence the plaintiff cannot lay any claim of title, possession and enjoyment in respect of the suit property and therefore, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A13 were marked. On the side of the defendant, D.Ws.1 to 5 examined. Exs.B1 to B8 were marked. Exs.X1 to X6 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. During the course of the first appeal, in support of the plaintiff's case, additional documents have come to be marked as Ex.A14 to A21. The first appellate court, on an appreciation of the materials placed on record, was pleased to confirm the judgment and decree of the trial court and thereby dismissed the Appeal preferred by the defendant. Impugning the same, the present Second Appeal has been laid.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(i) Whether the courts below could rely on revenue patta to decide title in a suit for declaration and injunction?

(ii) Having found title in defendant's vendor are not judgments of the Courts below vitiated in decreeing the suit?

9. The plaintiff claims title to the suit property by way of purchase of the same from one Thanikachalam under a sale deed dated 27.01.1997 marked as Ex.A1 and according to the plaintiff, he and his vendors had been granted patta in respect of the suit property and the patta documents had come to be marked as Exs.A2 and A3 respectively and further according to the plaintiff he has been in possession and enjoyment of the suit property by paying Kists and the Kists receipts have been projected by the plaintiff as Exs.A3 to A11 and to show his possession and enjoyment, adangal extract has also come to be marked as Ex.A12 and in the first appellate court also, the plaintiff has marked the Kists receipts paid by him in respect of the suit property and accordingly, it is found that on the basis of the documents projected by the plaintiff, holding that the plaintiff has

established his title, possession and enjoyment of the suit property as well as the possession and enjoyment of his vendor by placing the title deed, patta document as well as the Kist receipts, accordingly, the Courts below had upheld the plaintiff's case.

10. However, the defendant would raise a plea that he had purchased 8 cents of land from one Janaki, by way of a sale deed dated 27.09.1994, marked as Ex.B2 and further according to the defendant, Janaki's husband Thangavelu had acquired the said property from one Rajarathinam, by way of a sale deed dated 16.01.1974 marked as Ex.B1. As rightly determined by the Courts below, on a perusal of Ex.B1, it is found that the property comprised therein is stated to be only measuring 6 cents of land. When it is found that Janaki's husband acquired only 6 cents of land under Ex.B1, it does not stand reason as to how Janaki by way of Ex.B2 would be entitled to sell 8 cents of land in the suit survey number to the defendant as putforth in the written statement. As rightly found by the Courts below, there is no valid document placed by the defendant to hold that his predecessors in interest namely Rajarathinam, Thangavelu and Janaki as such had been in the possession and enjoyment of the property comprised in Exs.B1 and B2 as projected by him. The documents marked as Ex.B3 is only the plan and therefore it would not in any manner either establish the claim of title or possession of the defendant in respect of the suit property or the property he seeks entitlement. Ex.B4 is the patta and as found by the Courts below, it is found to be in the name of the defendant and two others and when from the same, the defendant is unable to correlate the property to which he seeks entitlement by way of Exs.B1 and B2, it is found that merely from Ex.B4, we cannot uphold the defendant's claim of title to the property which he alleges to own. As above seen, considering the extent of the property comprised in Exs.B1 and B2, it does not stand reason as to how the defendant is seeking his claim in respect of 8 cents in suit survey number. Equally when the documents projected and marked as Exs.B6 to B8 are found to be not relating to the suit property as such and are found to be referring to various survey numbers, and the said document are all chitta extracts and adangal extracts in respect of other suit survey numbers, on the basis of the abovesaid documents, we cannot conclude that same pertains to the suit property as such.

11.The main contention projected by the defendant's counsel is that the suit property is situated to the north of Mariamman temple as could be seen from Exs.X1 to X6 read together and the evidence of VAO examined as D.W.2 and therefore it is his contention that the plaintiff could not be the title holder or in possession and enjoyment of the suit property as such and

accordingly contended that the plaintiff's suit should have been rejected by the Courts below. However, the above said contention projected by the defendant cannot be accepted straight away. The VAO has been examined as D.W.2 and D.W2 in his evidence, during the course of cross examination has admitted that the Adangal extract in respect of the suit survey number 64/2 stands only in the name of Nallamuthu from 1987 onwards and prior to the same, it was in the name of Thanikachalam and further, according to him, he is not aware as to the owners of the properties surrounding of the suit property and he has also admitted that the defendant had not given any requisition for change of patta in his name and also admitted that he is not aware of the boundaries in respect of the suit property on the date of the suit and also admitted that in respect of the Patta No.145 relating to the suit property, it is only the plaintiff, who has been paying the Kists and however would claim that to the south of suit survey No.64/10, Mariamman temple is located and also would go to show that as per the records, the suit survey No.64/10 stands in the name of Nallamuthu. On a cumulative analysis of the evidence of D.W.2, the V.A.O, it is found that the adangal extract in respect of the suit property stands only in the name of the plaintiff and his vendor and accordingly, it is seen that it is only the plaintiff who has been paying Kists in respect of the suit property. Such being the position, when there is no material on record to show that the defendant or his vendors had enjoyed the suit property as described in the plaint by obtaining patta, paying Kists etc., the defence of the defendant, as such, cannot be countenanced.

12. It is found that merely on the footing that some revenue records in respect of the suit property stand in the name of the defendant, it cannot be considered that the suit property as such belongs to the defendant. It has not been established that the suit property as described in the plaint or as projected in the written statement is reflected in the revenue records in the name of the defendant and his vendors. Therefore, as rightly determined by the first appellate court, when it is found that in the nature of the preponderance of probabilities, the plaintiff is able to establish his claim of title, possession and enjoyment of the suit property by placing his title deed as well as the patta documents and other revenue records and Kists receipts and when the defendant is unable to correlate the suit property with that of the property described in Exs.B1 and B2 and also unable to place any material to hold that he and his vendors had been in possession and enjoyment of the suit property as described in the plaint, merely on the footing that the property in survey No.64/10 is located to the north of Mariamman temple, we cannot conclude that it is only the defendant, who has a valid title to the suit property and

that the same is in his possession and enjoyment.

13. In so far as this matter is concerned there is no clear cut evidence as to the actual extent available in suit survey No.64/10 and the location or lie of the said suit survey number on the date of the suit and even the VAO unable to throw a clear picture on the abovesaid aspects of the matter as above noted and as per the evidence of VAO and the documents projected by the defendant it is found that the adangal extract in respect of the suit property stands only in the name of the plaintiff and his vendor and it is only the plaintiff, who is found to have been paying Kists in respect of the suit property, it is found that the Courts below are justified in upholding that plaintiff's claim of title to the suit property.

14. In the light of the above discussions, the Courts below are found to not have accepted the plaintiff's case based on the revenue documents alone and on the other hand, on a cumulative analysis of the title deed plus the revenue documents projected by the plaintiff, they are found to have accepted the plaintiff's case. That apart, the defendant also is found to be contesting the plaintiff's case, by showing his claim of title to the property purchased by him, only on the strength of the revenue documents as marked on his side and in such view of the matter, considering the set of documents placed in the matter and when it is seen that the plaintiff has not only established his title to the suit property by way of his title deed, patta documents and Kists receipts and when the defendant is unable to place any material worth acceptance to show the actual extent of the property which he had acquired and when there is no material to show his possession and enjoyment of the suit property as well as the property which seems to have acquired title by way of Exs.B1 and B2, it is found that the judgments and decrees of the Courts below upholding the plaintiff's of title, do not call for any interference. The substantial questions of law formulated in the second appeal are accordingly answered.

15. The Counsel for the appellant in support of his contentions placed reliance upon the decisions reported in

1. 2018 (4) SCC 659 [Akhilesh Singh Alias Akhileshwar Singh Vs. Lal Babu Singh and Others]
2. 2017 (2) LW 128 [Krishnammal Vs. Sivaniammal and others]
3. 2017 (1) CTC 67 [M.Karuppiyah Thevar and others Vs. John Victor]
4. 2017 (1) MLJ 367 [Bhavani Vs. Sivakozhundu and Others]
5. 2017 (2) MLJ 99 [A.K.S.Ravichandar Vs.

Venkateswara Hospitals, rep. By its
Partners, 1.Dr.Su.Thillai Vallal, 2.Leela
Vallal]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

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

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Sub Court,
Madurantakam.

2.The District Munsif,
District Munsif Court,
Madurantakam.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.(2 COPIES)

+1cc to Mr.M.S.SUBRAMANIAN, Advocate, S.R.No.45040

+1cc to Mr.K.GОВI GANESAN, Advocate, S.R.No. 45564

Judgment made in
S.A.No. 1145 of 2004

MP(CO)
TR(20/08/2018)

WEB COPY