

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2018

PRONOUNCED ON : 31.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1277 of 2003

1.V.Kanniappan
S/o. Vardha Gounder

2.A.Kanniappan
S/o.Appu Gounder

...Appellants/Defendant

Vs.

Vishalachhi Ammal ...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree of the learned Subordinate Judge of Ranipet, Vellore District dated 22.12.1998 in A.S.No.19 of 1997 confirming the judgment and decree of the learned District Munsif of Ranipet, North Arcot District dated 28.01.1997 in O.S.No.621 of 1988.

For Appellants :Mr.J.Hariharan
for M/s.V.Nicholas

For Respondent :No Appearance - Set ex-parte

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 22.12.1998 passed in A.S.No.19 of 1997 on the file of the Subordinate Court, Ranipet confirming the judgment and decree dated 28.01.1997 passed in O.S.No.621 of 1988 on the file of the District Munsif Court, Ranipet.

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

3. Suit for permanent injunction and mandatory injunction.

4.The case of the plaintiff in brief is that she is a widow and employed in "Mid-day Meals" Department and unable to maintain herself and accordingly made a requisition to the Revenue authorities for the grant of porambok land for cultivation, thereby eked out her livelihood by cultivation and accordingly, the second defendant had granted patta in her favour, in respect of the suit property by an order dated 06.11.1986 and based on the same, the plaintiff took possession of the suit property, improved the same and made it fit for

cultivation by spending considerable amount by borrowing from other parties, while so, due to jealousy and ulterior motives, some villagers had approached the revenue authorities to cancel the patta granted in favour of the plaintiff in respect of the suit property and also attempted to interfere with the possession and enjoyment of the suit property and hence, according to the plaintiff, she has been necessitated to lay the suit for relief of permanent injunction. Further, according to the plaintiff, pending suit, taking advantage of her unenviable position, the defendants 4 and 5 trespassed into a portion of the suit property and put up thatched sheds unlawfully and hence according to the plaintiff, she had been necessitated to seek the relief of mandatory injunction for the removal of unauthorized constructions put up by the defendants 4 and 5.

5.The case of the defendants 1 to 3 in brief is that the suit is not maintainable either in law or on facts. It is true that the patta for the suit property was granted in favour of the plaintiff. However, inasmuch as the plaintiff had failed to cultivate the suit property pursuant to the grant of patta, it is stated that on account of the breach of condition of the grant of patta, it is stated that one Kanniappan, S/o Vardha Gounder presented an application for the assignment in his favour by canceling the patta granted in favour of the plaintiff and that the suit property was not at all cultivated by the plaintiff, at any point of time and inasmuch as the plaintiff is having other source of income and owns other lands and as the plaintiff has not cultivated the suit property till date, the plaintiff cannot claim to be in possession and enjoyment of the suit property as such and hence the reliefs sought for by her cannot be granted and suit is liable to be dismissed.

6.The case of the defendants 4 and 5 in brief is that the suit is not maintainable either in law or on facts and the plaintiff was never in possession of the suit property and also not entitled for any patta in respect of the same and the defendants and their ancestors are in possession and enjoyment of the suit property for several decades by constructing thatched houses to the knowledge of the plaintiff and even if the Government had granted the patta in favour of the plaintiff, the same is invalid and on that basis, the plaintiff is not entitled to claim any title over the suit property and the Government has also no right to grant the patta to the plaintiff ignoring the defendants 4 and 5, who are in possession and enjoyment of the suit property from the days of their ancestors and hence without any cause of action, the suit is liable to be dismissed.

7.In support of the plaintiff's case, P.Ws.1and 2 were examined. Exs.A1 to A8 were marked. On the side of the

defendants' D.Ws.1 to 3 were examined. Exs.B1 to B5 were marked. Exs.C1 and C2 also were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly granted the reliefs sought for by the plaintiff. Challenging the same, the present second appeal has been laid.

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

1.When the burden is on the plaintiff to prove her possession in the suit for permanent injunction whether the Courts below are correct in placing the burden on the defendants 4 and 5 to establish their possession?

2.When the suit property is not a cultivable land but the patta was granted to the plaintiff treating the said land as cultivable land and as such the grant of patta itself is invalid and void whether the Courts below are correct in granting the relief on the basis of the said invalid and void patta?

3.When it is for the plaintiff to establish a case independently and without taking advantage of the weakness in the case of the defendants whether the Courts below are correct in decreeing the suit on the ground that the defendants are not established that they are in possession of the suit property for more than 40 years?

10.From the materials placed on record, it is found that the suit property has been classified as poramboke land and as per the case of the plaintiff, she had been granted patta in respect of the suit property on 06.11.1986 and the said patta document has come to be marked as Ex.A1. Therefore, it is found that on a perusal of Ex.A1, it is only the plaintiff, who had been granted the patta by the revenue authorities in respect of the suit property even in the year 1986. Now, according to the plaintiff, pursuant to the grant of patta under Ex.A1 on 06.11.1986, she had made the improvements in the suit property and made it fit for cultivation and accordingly cultivating the same and the plaintiff has also produced the Kist receipts

marked as Exs.A2 to A6 and Ex.A8. Some of the Kist receipts are found to have been issued even prior to the institution of the suit and pursuant to the grant of patta, it is found that the plaintiff has taken possession of the suit property and enjoying the same by cultivating the property and accordingly paying necessary Kists in respect of the suit property. Recognizing the grant of patta issued to the plaintiff by way of Ex.A1, it is found that the Government had also granted the patta book in favour of the plaintiff, which has been marked as Ex.A7 and Ex.A7 has amply establish that the plaintiff is in possession and enjoyment of the suit property. As above seen, the plaintiff has also clearly established that she has been in possession and enjoyment of the suit property by marking necessary Kist receipts as above pointed out. Though the defendants 4 and 5 would contend that the Government is not entitled to grant patta in respect of the suit property in favour of the plaintiff, during the course of evidence, admitted that the suit property was once classified as porambok land. Accordingly, it is contended on their behalf that the patta granted in favour of the plaintiff is invalid. However, it is found that till date, the patta issued in favour of the plaintiff, in respect of the suit property under Ex.A1 has not been canceled and more than that, it is also noted that the Government had recognized her possession and enjoyment of the suit property by issuing the patta book marked as Ex.A7 on 11.01.1996. If really as per the case of the defendants 4 and 5, the plaintiff is not entitled to the grant of patta in respect of the suit property or the plaintiff is not entitled for the retention of the patta issued in her favour by way of Ex.A1, on account of her failure to cultivate the suit property as such and if really the defendants are entitled to the grant of patta in respect of the suit property, as rightly argued, the defendants would have made appropriate requisitions to the Government for the issuance of the patta in their favour after canceling the patta granted in favour of the plaintiff. However, there is no material placed on record to hold that such requisitions had been made by the defendants 4 and 5 to the Government for the grant of patta in their favour in respect of the suit property after canceling the patta issued in favour of the plaintiff.

11.In this matter, though the defendants 1 to 3 have filed the written statement contending that the plaintiff, pursuant to the grant of patta, by way Ex.A1, on account of her failure to cultivate the suit property and thereby breached the conditions for the grant of patta and though it is stated by them that requisitions had been presented by others for the grant of the patta in their favour after canceling the patta issued in favour of the plaintiff, it is found that, with reference to the above case of the defendants 1 to 3, there is

no material as such placed on record. On the other hand, it is found that, the suit laid by the plaintiff as against the defendants 1 to 3 had subsequently, come to be dismissed as not pressed by the plaintiff and therefore, it is seen that the defendants 1 to 3 are no more in the picture.

12.Be that as it may, still the defendants 4 and 5 have not placed any material as such to hold that the plaintiff has violated the conditions of the grant of patta made under Ex.A1 and thereby rendered the grant of patta under Ex.A1 invalid and that they had made representations to the revenue authorities to issue patta in their favour. With respect to their above said case, there is no material placed. On the other hand, as above discussed, inasmuch as, it is only the plaintiff who had taken possession of the suit property pursuant to the grant of patta under Ex.A1, and enjoying the same by paying Kists etc., recognizing her title, possession and enjoyment, it is seen that the revenue authorities are also issued the patta book in her favour marked as Ex.A7. It is thus found that till date, the patta issued in favour of the plaintiff in respect of the suit property under Ex.A1 remains intact and not canceled in any manner. Therefore, the case of the defendants 4 and 5 that the plaintiff is not entitled to the grant of patta in respect of the suit property as such does not merit acceptance.

13.The defendants 4 and 5 have pleaded that they had been in possession and enjoyment of the suit property for several decades from the days of their ancestors by putting up thatched houses and therefore it is their contention that the suit property has been in their possession and enjoyment for a long period of time and that the plaintiff had never been in the possession and enjoyment of the suit property at any point of time. The above case of the defendants 4 and 5 has been stoutly repudiated by the plaintiff. Though the defendants 4 and 5 have claimed that they had been in possession and enjoyment of the suit property for several decades, with reference to the same, nil material is placed on their side. They had chosen to file Exs.B1 to B5 which ranges for the period from 1985-86 to 1988-89. According to the defendants 4 and 5, Exs.B1 to B5 are the house tax receipts in respect of the thatched houses put up in the suit property. As rightly found by the Courts below, Exs.A2 and A3 have come into existence after institution of the suit. Exs.A4 and A5 do not bear any date. Ex.A1 is found to have come into existence after the issuance of the patta in favour of the plaintiff under Ex.A1. Further, is not been established by the defendants 4 and 5 that the Kist receipts marked by them relate to the thatched houses put up in the suit property as such. When according to the defendants, they are in possession and enjoyment of the suit property for several decades and when it is found that the suit property was a

porambok land belonging to the Government if really the defendants and their predecessors in interest had been in possession and enjoyment of the suit property for a long period of time as projected by them, as rightly found by the Courts below, necessary document like 'B' memos, voters card, ration card etc., would have been placed by the defendants 4 and 5. However, other than Exs.B1 to B5 no other valid document has been placed by the defendants. When Exs.B1 to B5 are found to be not reliable, unacceptable as above discussed and as also rightly determined by the Courts below, it is found that on the basis of Ex.B1 to B5, we cannot conclude safely that the defendants are in lawful possession and enjoyment as put forth by them. When it is noted that the suit property had been assigned to the plaintiff by way of Ex.A1 by the Government and the same has also been recognized by the Government by the issuance of patta book marked as Ex.A7 and when it is seen that it is only the plaintiff who had been in possession and enjoyment of the suit property pursuant to the assignment, which has been further established by the Patta book and the necessary Kist receipts as above pointed out, as rightly determined by the Courts below, the plaintiff has established without any iota of doubt that it is only she who is entitled to the suit property and that the suit property is in her possession and enjoyment on the date of the institution of the suit.

14. It is found that now according to the plaintiff, pending suit, the defendants 4 and 5 had illegally trespassed into the suit property and put up unauthorized constructions and hence she had sought the relief of mandatory injunction with reference to the same. When, as above discussed, the defendants have failed to establish that they have a valid title, possession and enjoyment of the suit property as projected by them and when the documents marked as Exs.B1 to B5, do not in any manner advance their case as above discussed, it is found that as rightly put forth by the plaintiff and also as rightly determined by the Courts below, the defendants had unlawfully encroached into the suit property pending the litigation and put up unauthorized constructions and in such view of the matter, it is found that the defendants are liable to remove the unauthorized constructions put up by them as prayed for by the plaintiff. The defendants' counsel contended that the Commissioner's report and plan marked in the case point out that no cultivation has been carried on in this suit property and this would go to demonstrate that the plaintiff has not been in possession and enjoyment of the suit property by cultivating the same. However, when it is found that the Advocate Commissioner as such, is not competent to speak about the possession of the property by any particular party and when it is found that pending litigation, the defendants had encroached into the suit property and put up the unauthorized

construction, naturally it is seen that the Commissioner has also not noted any features of cultivation available in the suit property and on account of the same, in isolation, we cannot conclude that the plaintiff has never been in possession and enjoyment of the property. The above aspect of the defence projected by the defendants has been rightly discussed and determined by the Courts below and hence the same do not warrant any interference as such.

15. In the light of the discussions made above, it is found that the defendants have failed to establish that the patta issued in favour of the plaintiff in respect of the suit property is invalid and void and it is further found that the plaintiff has established that it is only she who had been in possession and enjoyment of the suit property pursuant to the assignment made in her under Ex.A1 and it is further found that pending litigation, the defendants had unlawfully encroached in the suit property and put up the illegal constructions on the same and accordingly it is found that the defendants are unable to establish their claim of long possession and enjoyment of the suit property for several decades as projected by them and accordingly the Courts below had also disbelieved the case of defendants particularly, the documents marked as Exs.B1 to B5 in the right perceptive and finding that it is only the plaintiff who had been in possession and enjoyment of the suit property and the same having been established by the plaintiff as above discussed, it is only the defendants who had illegally trespassed in the suit property pending the suit without any authority. Accordingly, it is held by the Courts below that the defendants have failed to establish their valid possession and enjoyment of the suit property as such. In such view of the matter, it cannot be held that the Courts below had shifted the the burden on the defendants in the approach of the matter and thereby wrongly decreed the suit in favour of the plaintiff. On the other hand, it is seen that the Courts below have analyzed the materials placed on record in the proper perceptive both on factual as well as legal aspects and rightly determined that it is only the plaintiff who had been in possession and enjoyment of the suit property pursuant to the grant of patta in her favour and that the defendants had unlawfully and illegally trespassed into the suit property pending the lis and put up the unauthorized constructions and hence, it is seen that the Courts below had rightly accepted the plaintiffs' case and no interference at all is called for in the above said reasonings and conclusions of the Courts below for upholding the plaintiffs' case. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

14.In the light of the above discussions, the decisions relied upon by the defendants' counsel reported in AIR 2008 Supreme Court 2033 [Anathula Sudhakar Vs P.Buchi Reddy (Dead) by L.R's and Others], 2015(2)CTC 365 [Sellayi (deceased) 1.Chinnammal and others Vs. Valliammal @ Pappu and others], 2007 (4)CTC 70[Chinna Nachiappan and another Vs PL.Lakshmanan] do not have any applicability, as such, to the facts and circumstances of the present case and considering the pleadings raised both by the plaintiff and the defendants in this matter, it is seen that the plaintiff is not necessitated to seek the relief of declaration as such in this matter, when it is found that the plaintiff has been granted a valid patta by the Government and accordingly the defendants are unable to establish that the patta issued in favour of the plaintiff is invalid and void as projected by them. In addition to that the defendants have not traced as to how they seek source of title to the suit property and their plea of long possession and enjoyment of the suit property having not been established as above discussed and when it is found that the defendants had only encroached into the suit property pending the lis unlawfully, it is found that the defendants cannot be allowed to thwart the plaintiffs' case on the footing that the plaintiffs' suit should fail for her failure to seek the relief of declaration in respect of the suit property. The facts and circumstances projected do not necessitate the plaintiff to seek the relief of declaration as such in respect of the suit property, particularly, when the defendants have not thrown any claim of valid title to the suit property as such in respect of the suit property.

17.In the light of the above reasons, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

mfa

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

To

- 1.The Subordinate Judge of Ranipet, Vellore District.
 - 2.The District Munsif of Ranipet, North Arcot District.
 - 3.The Record Keeper, VR Section,
High Court, Madras(2 copies)
- +lcc to Mr.V.Nicholas, Advocate Sr.No.7209/18

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