

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2018
PRONOUNCED ON : 08.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1295 of 2003

Subbammal

..Appellant/Plaintiff

Vs.

1. Maruthamuthu,

2. Pachamuthu,

3. The District Collector,
Trichy,
Now at Perambalur.

4. The Tahsildar
Kunnam Taluk,
Perambalur District.

...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge Perambalur in A.S.No.89/2001 dated 11.10.2002 reversing the judgment and decree of the learned District Munsif of Perambalur in O.S. No. 384/1992 dated 07.12.1999.

For Appellant : Mr.A.K.Kumarasamy, Senior counsel
for M/s.S.Kaithamalai kumaran.

For Respondents: No appearance,
Set ex-parte.

JUDGMENT

This second appeal is directed against the judgment and decree dated 11.10.2002 passed in A.S.No.89/2001 on the file of the Principal District Court, Perambalur, reversing the judgment and decree dated 07.12.1999 passed in O.S. No. 384/1992 on the file of the District Munsif Court, Perambalur.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property was purchased by Arumuhathudayar, by way of a registered sale deed dated 25.8.1948 and since then he had been in exclusive possession and enjoyment of the same and after his death, his three sons namely Periasamy Udayar, Thangavel Udayar and Murugan @ Murugesha Udayar, orally partitioned the properties about 25 years back and in the said partition, the suit property was allotted to Periasamy Udayar and subsequently, Periasamy Udayar died intestate leaving the plaintiff as his only legal heir and accordingly, the plaintiff succeeded to the suit property and enjoying the same by paying kist etc., and it appears that the first defendant presented an application to the third defendant stating that the suit property is Adi dravidar Tharisu land and hence, the sale in favour of the plaintiff's grandfather Arumuhathudayar is null and void and accordingly, the third defendant declared that the sale in favour of Arumuhathudayar is against law and ordered to bring the suit property again under Adi dravidar Tharisu classification, so as to make the assignment to the Schedule caste and Schedule tribe people on 20.04.1992. Now, the defendants 1 and 4 are claiming that the suit property had been assigned in their favour and thereby attempted to interfere with the plaintiff's possession and enjoyment of the suit property. The plaintiff and her predecessors in interest had been in possession and enjoyment of the suit property for more than 30 years openly, peacefully, continuously and to the knowledge of one and all and thereby prescribed title to the suit property by way of adverse possession and hence, the defendants are not entitled to interfere with the plaintiff's possession and enjoyment of the suit property and hence, the suit for appropriate reliefs.

5. The case of the defendants 1 and 4, in brief, is that it is false to state that the suit property was purchased by Arumuhathudayar by way of registered sale deed dated 25.08.1948 and that his sons subsequently divided the properties and that the suit property fell to the share of Periasamy Udayar and that the plaintiff had succeeded to the suit property as the legal heir of Periasamy Udayar. It is false to state that the plaintiff had been enjoying the suit property by paying kist etc., The suit property is classified as Adi dravidar Tharisu land and Arumuhathudayar has no right to purchase the suit property and the alleged sale, even if it is true, is void ab initio and accordingly, the sale in his favour has been declared to be against law by the third defendant and as against the order passed by the third defendant, the plaintiff has not preferred any appeal and hence, the plaintiff is estopped from challenging the order of the third defendant and it is false to state that the first defendant presented an application to pass

necessary orders as against the sale effected in favour of Arumuhathudayar. On the other hand, it is only the plaintiff who had petitioned the third defendant with reference to the matter and accordingly, the order had come to be passed by the third defendant. It is false to state that the plaintiff has prescribed her title to the suit property by adverse possession and the plaintiff and her predecessors in interest had never been in possession and enjoyment of the suit property as claimed by her, to seek right over the same by way of adverse possession and the suit property had been duly assigned in favour of the defendants and since then, it is the defendants who are in possession and enjoyment of the suit property and the suit is bad for non joinder of necessary parties and the suit is liable to be dismissed.

6. The case of the defendants 2 and 3 in brief is the suit is not maintainable either in law or on facts. The suit property had been classified as Adi-dravidar Tharisu and accordingly assigned conditionally in favour of one Moopandi on 27.06.1932 and Moopandi had violated the said condition by alienating the suit property to Arumuhathudayar, who is not a member of Schedule caste or Schedule tribe community. Therefore people belonging to other communities cannot lay any claim over the suit property and therefore, the plaintiff is not entitled to lay any claim in respect of the suit property and accordingly the third defendant had passed the cancellation of the assignment and the suit property had been again re-classified as Adi dravidar Tharisu land and subsequently the suit property had been assigned in favour of the defendants 1 and 4 and hence the suit laid by the plaintiff without any cause of action is liable to be dismissed.

7. In support of the plaintiff's case PW1 was examined and Exs.A1 to A21 were marked. On the side of the defendants DWs 1 and 2 were examined and Exs.B1 to B17 were marked.

8. 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. On appeal preferred by the defendants 1 and 4, the first appellate Court set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by them, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been laid.

9. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

Whether the lower appellate Court is justified in holding the land as assigned to Adi-Dravidar community when there is no evidence adduced before the Court to prove to that effect?

10. From the materials placed, it is found that the suit property had been originally classified as Adi dravidar Tharisu land. It is further seen that as per the proceedings of the third defendant marked as Ex.A11, the suit property had been originally assigned conditionally in favour of Moopandi on 27.06.1932 and it is further found that inasmuch as Moopandi had violated the condition by alienating the suit property in favour of Arumuhathudayar, who belongs to other community and not entitled to acquire the suit property, accordingly, the third defendant by way of his proceedings marked as Ex.A11 held that the sale effected in respect of the suit property in favour of Arumuhathudayar is against law and accordingly, ordered the re-classification of the suit property as Adi dravidar Tharisu land and it is found that the plaintiff had been put on notice about the said order of the third defendant and thus, it is seen that the plaintiff is aware of the above said order passed by the third defendant re-classifying the suit property as Adi dravidar Tharisu land.

11. The plaintiff who has been examined as PW1, during the course of cross examination, has admitted that she has claimed right to the suit property on the basis of her possession and does not lay any claim of right in respect of the suit property by way of any title deed. Further, she has also admitted that she has been made aware of the position that the suit property cannot be alienated or assigned in favour of the persons belonging to other communities and it could be assigned or alienated only in favour of the person belonging to harijan community. Accordingly, it is found that when the plaintiff herself has admitted that she is aware of the suit property being classified as Adi dravidar Tharisu land and accordingly, put on notice about the same, following the order passed by the third defendant, marked as Ex.A11, the contention put forth by the plaintiff's counsel that there is no material placed on record to show that the suit property had been assigned to Adi dravidar community originally i.e., in favour of Moopandi as such cannot be accepted in any manner. On the other hand, by way of Ex.A11, it has been made clear that the suit property, being Adi dravidar Tharisu land, has been originally conditionally assigned in favour of Moopandi. Therefore, it is found that Moopandi would not be entitle to alienate the said land in favour of the persons belonging to other communities and inasmuch as he has violated the conditional assignment granted in his favour, accordingly on coming to know the same, the third defendant issued an order declaring the sale in favour of Arumuhathudayar as against law and again ordered the classification of the suit property as Adi dravidar Tharisu land. It is thus found that adequate and convincing materials are placed on record to show that the suit property is only classified as Adi dravidar land and though it had been conditionally assigned in favour of Moopandi, on account of the breach of conditions by him, by selling the suit property in favour of Arumuhathudayar, who is a member of the other

community, it is found that the third defendant had accordingly passed the order marked as Ex.A11 re-classifying the suit property as Adi dravidar Tharisu land by holding that the sale effected in favour of Arumuhathudayar is against law.

12. However, the plaintiff's counsel contended that even otherwise, the plaintiff is entitled to seek the reliefs sought for in the suit on the footing that she has acquired title to the suit property by adverse possession. No doubt, that the plaintiff has pleaded that she and her predecessors in interest had been in possession and enjoyment of the suit property for more than 30 years, openly, continuously and uninterruptedly to the knowledge of one and all and prescribed title by way of adverse possession. That such a right could be claimed by the plaintiff can be seen from the decision of the Apex Court relied upon by the plaintiff's counsel reported in (1994) 3 SCC 536 (K.T.Huchegowda Vs. Deputy Commissioner and others). Further, only conditional assignment had been granted in favour of Moopandi and Moopandi had breached the said conditions by alienating the suit property in favour of Arumuhathudayar and when the third defendant has passed the order holding that the sale effected in favour of Arumuhathudayar is against law and re-classified the suit property as Adi dravidar Tharisu land by his proceedings dated 14.04.92, accordingly, it is seen that for the plaintiff to claim title to the suit property by way of adverse possession, she has to establish that for the past 30 years prior to Ex.A11 proceedings, she and her predecessors in interest had been in possession and enjoyment of the suit property openly, continuously and uninterruptedly enjoying the same, exhibiting hostile ownership to the defendants as full owners thereof and thereby prescribed title to the same by adverse possession. Accordingly, it is seen that the plaintiff has also pleaded in the plaint that for the past 30 years, it is only she who is in possession and enjoyment of the suit property from the days of her predecessors in interest for claiming the relief on the basis of adverse title.

13. However, the plea of adverse possession projected by the plaintiff as such cannot be accepted. In this connection, it is found that some kist receipts has come to be marked on the side of the plaintiff. As seen from the documents placed by the plaintiff, the kist receipts marked by the plaintiff as Exs.A2 to A10 and Exs.A14 to A20 are found to be dated 23.01.1960, 03.05.1961, 06.03.1962, 12.03.1966, 04.04.1979, 18.05.1980, 06.02.1982, 22.02.1986, 10.03.1992, 18.03.1959, 16.01.1961, 08.02.1962, 23.01.1963, 22.01.1964, 19.02.1965 and 01.03.1966 respectively. Barring the above said kist receipts, there is no other valid document placed on behalf of the plaintiff to show that she and her predecessors in interest had been in possession and enjoyment of the suit property, openly, continuously and uninterruptedly exhibiting hostile attitude to one and all, particularly, against the Government. The kist receipts are found to be in piece meal and not to have been paid continuously

for more than 30 years period as putforth by the plaintiff. Further, it is found that admittedly the kist receipts are not in the name of the plaintiff, but they are in the name of her father Periasamy Udayar, and husband. Be that as it may, when the above said kist receipts are found to be not continuously paid for more than 30 years period and when by way of the said kist receipts alone we cannot infer that the plaintiff and her predecessors in interest exercised hostile attitude in respect of the suit property against the true owner, namely, the Government and when the patta document produced by the plaintiff standing in the name of Kullan, the vendor of Arumuhathudayar, would not in any manner advance her case and when as per the decision of the Apex Court relied upon by the plaintiff that the object and the scheme of the Government, while ordering the assignment in respect of the Adi dravidar Tharisu land is to protect the interest of the Schedule castes and Schedule tribes, who shall be deemed to be a weaker section of the community and if any transfer had been effected in favour of the plaintiff's predecessors in interest in contravention of the terms of the grant in favour of the original grantee, it is found that the onus is upon the plaintiff to show to the Court that by her continuous and adverse possession, the right, title and interest of the true owner had been extinguished and when it is noted that such onus is heavy on the part of the plaintiff, merely from the intermittent kist receipts produced by the plaintiff, as above noted and when it is seen that kist receipt are only intended for the collection of revenue to the Government and when they cannot be made equivalent to the documents of title as such and when the kist receipts placed by the plaintiff are not covering requisite period of time i.e., 30 years for upholding the plaintiff's claim of adverse possession against the Government, in my considered opinion, as also rightly determined by the first appellate Court, the plaintiff has miserably failed to establish that she has prescribed title to the suit property by way of adverse possession on the footing that she and her predecessors in interest had been in possession and enjoyment of the suit property openly, continuously and uninterruptedly, exhibiting hostile attitude to the knowledge of one and all beyond the statutory period. Therefore, it is found that no infirmity could be attached to the determination of the first appellate Court that the plaintiff has failed to establish that she has prescribed title to the suit property by way of adverse possession.

14. In the light of the above discussions, it is found that there is ample evidence placed on record to show that the suit property has been assigned only to Adi dravidar community person conditionally and when the conditions of the said grant had been breached by the grantee, it is found that the third defendant had rightly cancelled the assignment and re-classified the suit property as Adi dravidar Tharisu land by holding that the alienation in favour of Arumuhathudayar is against law.

15. The substantial question of law formulated in this second appeal is accordingly answered against the plaintiff.

16. In conclusion, the second appeal fails and is accordingly dismissed. No Costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

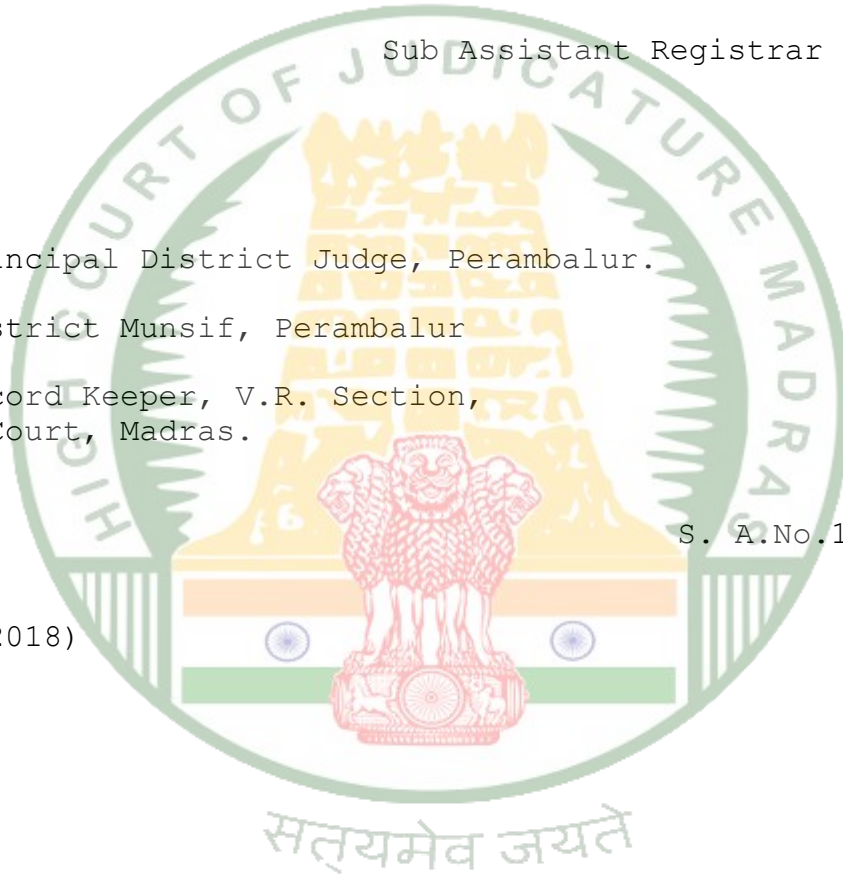
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To

1. The Principal District Judge, Perambalur.
2. The District Munsif, Perambalur
3. The Record Keeper, V.R. Section,
High Court, Madras.

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EU(27/02/2018)



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