

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Second Appeal No.134 of 2002

Mathialagan

... Appellant/Plaintiff

Vs.

1. Kuppammal

2. Amirtham

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment made in A.S.No.3 of 2001 on the file of Principal Sub Judge, Virudhachalam dated 31.10.2001 by reversing the decree and judgment made in O.S.No.817 of 1992 on the file of the Principal District Munsif Court, Virudhachalam dated 19.10.2000.

For Appellant : Mr.D.Shivakumaran and V.Sekar

For Respondents : Mr.R.Sunilkumar

JUDGMENT

The appellant is the plaintiff in O.S.No.817 of 1992 on the file of the Principal District Munsif, Virudachalam and he has filed the suit for a declaration of his right over the suit property situate in Survey No.230/1C, 230/1C2 of Veppur Village, Virudachalam Taluk and also for a permanent injunction restraining the defendants 1 to 5 from interfering with his peaceful possession and enjoyment over the suit property.

2. The main contention of the plaintiff in O.S.No.817 of 1992 is that the suit property originally belonged to one Muthusamy and after his death, his son Nallan was in possession of the suit property. It is also his contention that the said Nallan along with other legal heirs of Muthusamy, executed a sale deed dated 02.05.1962 in favour of one Poovaal, the grand mother of the plaintiff. According to the plaintiff, since the

property is with their possession right from 02.05.1962, he is entitled to the suit property by adverse possession and prescription. It is his further contention that the defendants 1 & 2 attempted to trespass into the suit property on 21.07.1992 and also attempted to cancel the patta, that was issued by the defendants 3 to 5.

3. The defendants 1 & 2 filed a written statement contending that the suit property was originally allotted by the government of Tamil Nadu under Adidravidar Scheme on 25.02.1933 in favour of one Muthan and the same was subsequently cancelled by the Revenue Divisional Officer on 11.08.1992. Therefore, the defendants would contend that the plaintiff cannot maintain the suit in O.S.No.817 of 1992, as the patta through which the plaintiff claims right over the suit property itself is cancelled by the Revenue Divisional Officer.

4. The defendants 3 to 5 remained absent and were set exparte.

5. In the trial court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A10. On the side of the defendants, three witnesses were examined and Ex.B1 to Ex.B15 were also marked. After full contest, the learned Principal District Munsif, Virudachalam decreed the suit, holding that the plaintiff is entitled to a possessory right over the suit property and also permanently injunctioned the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

6. The appeal filed by the defendants in A.S.No.3 of 2001 before the Principal Sub Judge, Virudachalam was allowed and the suit in O.S.No.817 of 1992 on the file of the Principal District Munsif, Virudachalam was dismissed. Aggrieved over the same, the plaintiff has filed the present second appeal on the following grounds.

[i]. The judgment and decree of the lower appellate court in reversing the judgment of the trial court is erroneous.

[ii] The lower appellate court failed to note that though a conditional patta was granted in favour of the appellant's predecessor in title on 25.02.1933 and the suit property was sold to appellant's forefathers on 02.05.1992, the appellant has got right and title over the suit property by adverse possession and prescription.

[iii] The lower appellate court failed to appreciate the evidentiary value of Ex.A1 to Ex.A10, the Adangal extract and kist receipts and also failed to note Ex.B1 to Ex.B15 marked by the

defendants would not prove the case of the defendants 1 and 2.

7. Now, in the present appeal, the following substantial questions of law are framed for consideration at the time of admitting this appeal.

a. Whether the lower appellate court erred in law in dismissing the suit by reversing the decree and judgment of the trial court by relying on Ex.B16 proceedings dated 11.08.1992, which is inadmissible in evidence as the same had come into existence after filing of the suit?

b. Whether the lower appellate court erred in not holding that the plaintiff/appellant had perfected title by adverse possession since the cancellation of patta under Ex.B16 dated 11.08.1992 was admittedly after the statutory period of 30 years from the date of the sale under Ex.A1 dated 25.05.1962 in favour of the appellant's predecessor in title?

c. Whether the lower appellate court erred in law in admitting Ex.B16 at the appellate stage when the defendants 1 & 2 did not satisfy the mandatory requirements under order 41 Rule 27 of the C.P.C.?

8. At the out set, it may be observed that the plaintiff claims right over the suit property through the patta dated 25.02.1933 issued to one Muthan. It is admitted by both the parties that it is a conditional patta issued by the Tamil Nadu under Adi-dravidar Scheme in favour of Thiru Muthan, which prohibits the beneficiary from alienating the said property in favour of third parties. It is also admitted that the Revenue Divisional Officer, Virudachalam, cancelled the said patta on 11.08.1992. Even though it is subsequent to the filing of the suit, the plaintiff cannot claim any right over the suit property, as he is claiming right only through the said patta.

9. Mr.R.Sunilkumar, learned counsel appearing for the respondents in all his fairness would contend that since the patta itself is cancelled, the plaintiff cannot claim any title over the suit property. It is also pertinent to point out that the civil court does not have any right to question the validity of cancellation of conditional patta dated 11.08.1992 made by the Revenue Divisional Officer, Virudachalam. Since the property was sold in contravention of the terms and conditions laid down in the patta, the said alienation is not valid in the eye of law and therefore, the plaintiff cannot maintain the suit for declaration and injunction. It is evident from the records that the suit property belongs to the Government

(defendants 3 to 5) and the conditional patta issued in favour of one Muthan got also cancelled. The plaintiff also cannot claim any adverse possession and prescription over the suit property. Hence, I do not find any reason to allow this appeal and the same is liable to be dismissed.

10. Mr.D.Shivakumaran, learned counsel appearing for the appellant/plaintiff would contend that since the plaintiff is still in possession of the suit property, the defendants 3 to 5 may be directed to follow due procedure of law, before evicting the plaintiff from the suit property. Considering the request made by the learned counsel appearing for the appellant, the defendants 3 to 5 are directed to follow due procedure of law, before evicting the plaintiff from the suit property.

11. With the above observation, this second appeal is dismissed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

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To

1. The District Collector, Cuddalore District.
 2. The Divisional Officer, Virudachalam Division.
 3. The District Collector, Cuddalore District.
 4. The Revenue Divisional Officer, Virudachalam
 5. The Tahsildar, Virudachalam.
 6. The Section officer, VR Section, High Court, Chennai-104
- +1cc to Mr.D.Shivakumaran, Advocate SR.No.57395

S.A.No.134 of 2002

GMV (25/09/2018)