

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2018
PRONOUNCED ON : 12.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1729 of 2004

1. Kuppan
2. Kanthan
3. Kaliaperumal
4. Muthan
5. Pichamuthu

...Appellants/Defendants

Vs.

Rajendran

...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.10/97 dated 28.08.2003, on the file of the Sub Judge, Attur, confirming the judgment and decree in O.S.No.131/90 dated 28.04.1995 on the file of the District Munsif, Attur.

For Appellant : Mr.S.Kamadevan

For Respondent : Mr.S.Kaithamalai kumaran

JUDGMENT

In this second appeal challenge is made to the judgment and decree dated 28.08.2003, passed in A.S.No.10/97, on the file of the Subordinate Court, Attur, confirming the judgment and decree dated 28.04.1995, passed in O.S.No.131/90, on the file of the District Munsif Court, Attur.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff and the same had been assigned in favour of the plaintiff vide D card No.87/AM/1399, dated 05.10.89 and since then, it is only the plaintiff, who has been in possession and enjoyment of the suit property by paying kist and other taxes to the Government and the defendants are strangers to the suit property and are conspiring together to grab the suit property from the plaintiff illegally and in fact, the defendants approached the plaintiff to sell the suit property in their favour, to which course, the plaintiff had declined and aggrieved over the same, the defendants attempted to trespass into the suit property with the help of their men

unlawfully and in this connection, the plaintiff has lodged a complaint to the local authorities for necessary action and as the defendants unlawful acts persisted, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is false to state that the plaintiff had been validly assigned the suit property as put forth in the plaint and the said assignment had been illegally obtained by the plaintiff and it is only a paper order which has come to be issued without any possession and enjoyment of the suit property by the plaintiff and on the basis of the illegal collusion of the plaintiff with the VAO, the documents had been created as if he is in possession and enjoyment of the suit property and on the other hand, it is only the defendants who are in possession and enjoyment of the suit property for several years and the plaintiff is living far away from the suit property and not in possession and enjoyment of the suit property at any point of time and the defendants are poor harijans and holding the possession and enjoyment of the suit property. But the plaintiff colluding with the officials seem to have obtained the assignment unlawfully and subsequently, the RDO had taken steps to cancel the assignment issued in favour of the plaintiff and therefore, the plaintiff has no cause of action to lay the suit. Hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 5 were examined, Exs.A1 to A12 were marked. On the side of the defendants DWs 1 to 3 were examined, Exs.B1 to B4 were marked.

7. 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 decreed the suit in favour of the plaintiff as prayed for. 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:

1. Whether the Courts below are justified in declaring that the plaintiff is the absolute owner of the suit property relying upon Ex.A1 when the same has been cancelled by the appellate authority under Ex.B2?

2. Whether the Courts below are justified in coming to the conclusion that the plaintiff is in actual physical possession of the suit properties when he

himself admits that he is not residing in the suit village either at the time of filing suit or even prior to that date?

9. On a perusal of the materials placed, it is found that originally the plaintiff has laid the suit for two items of the properties and it is found that in so far as the property comprised in survey No.171/3, measuring 1.50 acres punjai lands, the plaintiff has not pressed the suit claim. It is thus found that only in respect of the other suit property comprised in survey No.171/5, measuring 2.94 acres, the suit is being continued.

10. On the materials placed on record, it is found that the plaintiff claims title, possession and enjoyment of the suit property based on the assignment issued in her favour by the Government, which proceedings have come to be marked as Ex.A1. On the basis of Ex.A1, it is the case of the plaintiff that he is in possession and enjoyment of the suit property by paying necessary kist, taxes to the Government and inasmuch as the defendants without any authority attempted to interfere with his possession and enjoyment, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

11. Per contra, the defendants have challenged the validity of the assignment said to have been issued in favour of the plaintiff marked as Ex.A1 and according to the defendants, the abovesaid assignment had been illegally obtained by the plaintiff in collusion with the officials and further, it is the case of the defendants that the plaintiff in collusion with the VAO had created documents of possession in respect of the suit property unlawfully and further, according to the defendants, the plaintiff had never been in possession and enjoyment of the suit property at any point of time and living far away from the suit property and it is only the defendants who are in possession and enjoyment of the suit property for several years and the defendants being harijans, the plaintiff in order to deprive the defendants of the suit property, according to them, the plaintiff has come forward with the false case based on unreliable and illegal records and hence, the suit is liable to be dismissed.

12. Thus, it is found that the only basis on which the plaintiff has laid the suit is the assignment said to have been issued in his favour marked as Ex.A1. However, on the materials placed on record, it is found that vide Ex.B2 proceedings, dated 29.05.1991, the assignment issued in favour of the plaintiff, marked as Ex.A1, had been cancelled. Thus, it is found that the only documents based on which the plaintiff had laid the suit has been cancelled by the RDO vide Ex.B2 proceedings. No doubt, the plaintiff has challenged the proceedings covered under Ex.B2 and it is found that the next higher authority had again remitted the matter back to the lower forum for a fresh consideration of the claim of the plaintiff for the assignment.

However, the fact remains that the assignment granted in favour of the plaintiff under Ex.A1 has been cancelled. It is found that there is no order of stay of the proceedings of the RDO, cancelling the assignment in favour of the plaintiff vide Ex.B2 proceedings. Thus, it is found that as on date, the plaintiff has no valid document to sustain his claim of title to the suit property.

13. Only on the claim of title to the suit property based on Ex.A1, the plaintiff claims to be in possession and enjoyment of the suit property. Though the plaintiff would claim that even prior to Ex.A1 assignment he has been in possession and enjoyment of the suit property for more than ten years, however, with reference to the abovesaid claim of the plaintiff, there is absolutely no material forth coming. It appears that the plaintiff has produced Chitta, adangal and kist receipt marked as Exs.A2 to A4, which are all dated 22.03.1990. As aboveseen, the defendants have pleaded that the abovesaid documents had been secured by the plaintiff in collusion with the VAO illegally. It is found that the plaintiff has laid the suit on 23.03.1990. Thus, it is found that one day prior to the institution of the suit, the plaintiff has been able to obtain the documents marked as Exs.A2 to A4 and on the basis of the same, it is found that the plaintiff claims that he is in possession and enjoyment of the suit property and has come forward with the suit. However, when it is not established that the abovesaid documents had been lawfully issued in favour of the plaintiff by the VAO and when the abovesaid documents have been found to be secured one day prior to the institution of the suit, on the basis of the abovesaid documents, it cannot be construed that the plaintiff has been in legal and valid possession and enjoyment of the suit property on the date of the suit or prior to the same.

14. As above seen, the document of title relied upon by the plaintiff for seeking the relief sought for marked as Ex.A1 had been cancelled. The defendants have contested the case of the plaintiff on all counts vehemently and according to the defendants, the plaintiff has no title, possession and enjoyment of the suit property at any point of time, particularly, on the date of filing of the suit as well as prior to the same and subsequent thereto. Despite the above stand of the defendants denying the plaintiff's claim of title, possession and enjoyment of the suit property tooth and nail, still the plaintiff for the reasons best known to him had not endeavoured to seek the relief of declaration by amending the suit. No valid reason has been adduced with reference to the same by the plaintiff. In this connection, the plaintiff's counsel would only contend that the defendants are not entitled to challenge the assignment issued in favour of the plaintiff by the Government and if at all the plaintiff's claim of title could be questioned, it could only be at the instance of the Government and not by the defendants and therefore, it is her contentions that the plaintiff is not

required to seek the relief of declaration in respect of the suit property. However, when the defendants have from the inception had been disputing the claim of title, possession and enjoyment of the suit property as claimed by the plaintiff and that apart, when in respect of the suit property, it is found that the parties are at loggerheads and when it is further seen that criminal proceedings had been pending between the parties in respect of the suit property, which could be evidenced from Ex.B1 order and when further the assignment deed stated to have been issued in favour of the plaintiff had been subsequently cancelled and till date, the same had not been restored and the matter is still pending with the revenue authorities and when the plaintiff has not placed any acceptable and reliable document to hold that he is in possession and enjoyment of the suit property pursuant to Ex.A1 or prior thereto, it is found that considering the principles of law outlined in the decision of the Apex Court reported in (2008) 4 SCC 594 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and others), it is found that the plaintiff should have endeavoured to seek the relief of declaration of title in respect of the suit property and such being the position, it is found that the plaintiff's continuance of the suit merely for the bare relief of permanent injunction, despite the defence projected by the defendant challenging the claim of title, possession and enjoyment of the suit property by the plaintiff forcibly, on the basis of the principles outlined by the Apex Court in the abovesaid decision, it is found that the plaintiff's suit should fail for want of seeking the relief of declaration of title to the suit property.

15. The plaintiff's claim of title to the suit property based on Ex.A1 assignment having been cancelled and till date not been restored, strangely, it is found that the Courts below, particularly, the trial Court seems to have declared that the plaintiff has title to the suit property. It has not been explained by the plaintiff's counsel as to how the Courts below is justified in upholding the claim of title of the plaintiff to the suit property, particularly, when the assignment relied upon by the plaintiff with reference to the same had been cancelled. The first appellate Court seems to have ignored the determination of title by the trial Court and not endeavoured to set-aside the same. In addition to that, both on a reading of the judgment and decree of the first appellate Court, it is found that the first appellate Court has shifted the burden on the shoulder of the defendants to establish that the plaintiff has not been in possession and enjoyment of the suit property on the date of the suit or prior or subsequent thereto. When the plaintiff has come forward with the suit by projecting a set of facts and when the same are being contested by the defendants lock, stock and barrel, it is for the plaintiff to establish that he is in legal possession and enjoyment of the suit property as put forth by him. Moreover, when it is found that the parties are competing with each other in respect of the suit property and there are criminal proceedings pending between the

parties in respect of the same and when the plaintiff has not placed any valid proof as such to hold that he is in legal possession and enjoyment of the suit property and when the documents marked as Exs.A2 to A4 are found to have come into existence just the previous date prior to the institution of the suit and when the said documents and other documents projected by the plaintiff are not shown to be lawfully issued in favour of the plaintiff and when as per the evidence of VAO, PW2, the adangal in respect of the suit property shows the description of the suit property only as tharisu lands and also admitted that he has not filed any document to establish the plaintiff's possession and enjoyment of the suit property and when the plaintiff's claim of possession and enjoyment of the suit property for more than ten years prior to the issuance of Ex.A1 assignment not being substantiated with acceptable materials whatsoever and when the plaintiff has failed to establish that he has been in possession and enjoyment of the suit property on the date of the suit or prior thereto and on the other hand, the materials placed on record go to show that the plaintiff is residing far away from the suit property, it is found that the Courts below had without appreciating the materials placed on record in the proper perspective, blindly seem to have been inclined to grant the reliefs in favour of the plaintiff without any rhyme or reason which cannot be sustained in the eyes of law. Thus, it is seen that the judgment and decree of the Courts below upholding the claim of title, possession and enjoyment of the plaintiff in respect of the suit property is not borne out by valid materials and in such view of the matter, the judgment and decree of the Courts below are liable to the set-aside. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

16. In fine, the judgment and decree dated 28.08.2003, passed in A.S.No.10/97, on the file of the Subordinate Court, Attur, confirming the judgment and decree dated 28.04.1995, passed in O.S.No.131/90, on the file of the District Munsif Court, Attur are set-aside and resultantly, the suit laid by the plaintiff in O.S. No.131/90 is dismissed with costs. Accordingly the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Subordinate Court, Attur.

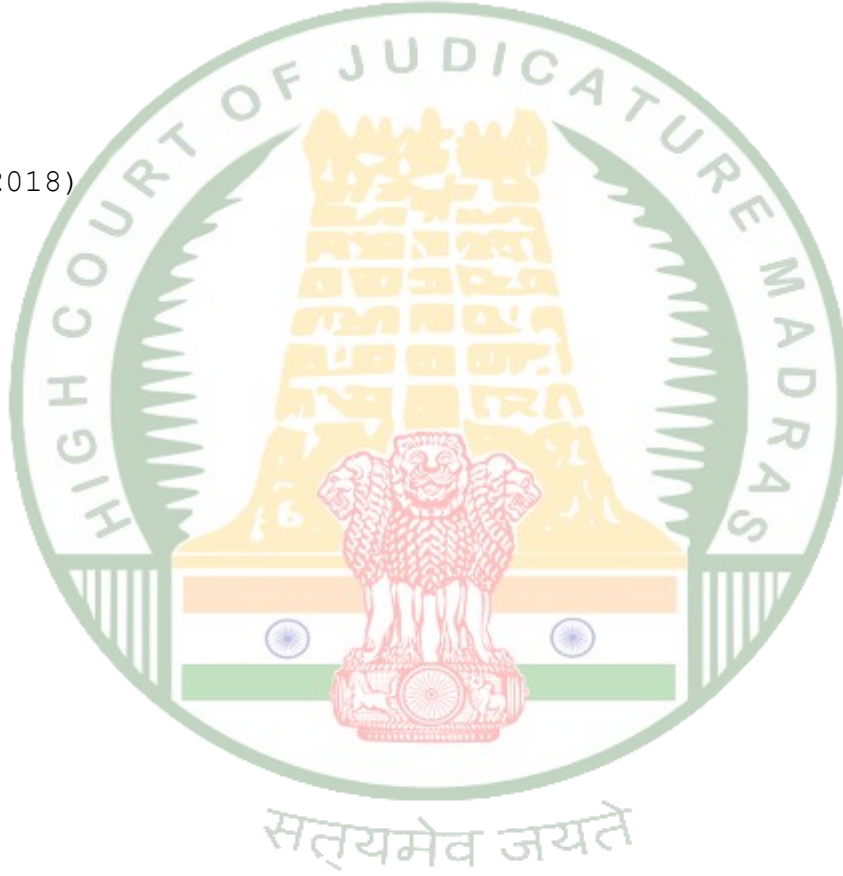
2. The District Munsif Court, Attur.

+ 1 cc to Mr.S. Kamadevan, Advocate Sr.36522

+ 1 cc to Mr.S. Kaithamalai Kumaran, Advocate Sr.36515

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KGK (CO)
EU (09/08/2018)



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