

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.06.2018

PRONOUNCED ON : 08.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1753 of 2004

1. The District Collector,
Tiruvannamalai.

2. The Tahsildar,
Cheyyar.

...

Appellants

Vs.

Thiruvandhipuram Nagarvazh People
rep. by

1. S.P.Pachaiyappa Mudaliar
2. B.P.Masilamani

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 14.11.2002 passed in A.S.No.36 of 2000 on the file of the Subordinate Court, Cheyyar, confirming the Judgment and Decree dated 31.01.2000 passed in O.S.No.126 of 1992 on the file of the Principal District Munsiff, Cheyyar.

For Appellants : Mr.A.Madhumathi
Additional Govt.Pleader (CS)

For Respondents : Mr.P.Arivudainambi

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 14.11.2002 passed in A.S.No.36 of 2000 on the file of the Subordinate Court, Cheyyar, confirming the Judgment and Decree dated 31.01.2000 passed in O.S.No.126 of 1992 on the file of the Principal District Munsiff, Cheyyar.

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

3. Suit for Mandatory injunction and Permanent injunction.

4. The case of the plaintiffs, in brief, is that the suit property has been used as playground by the Government High School for several years and accordingly, it is the case of the plaintiffs that they had been making representations to the defendants to grant patta in respect of the suit property in favour of the Government High School. However, the defendants had been evading to issue patta in favour of the Government High school and further, it is also the case of the plaintiffs that the suit property has also been used during the festival occasions for taking the temple car and thus, according to the plaintiffs, the defendants are not entitled to grant patta in respect of the suit property to others,

particularly, to the NariKuravar community and hence, seeking a direction to the defendants to grant patta in respect of the suit property to the High School and for restraining the defendants from granting patta to others, according to the plaintiffs, they had been necessitated to lay the suit against the defendants.

5. The case of the defendants, in brief, is that the suit is not maintainable and that, the Government being the owner of the suit property, it is for the Government to determine as to in whose favour the patta should be granted in respect of the suit property and there is no paper pending with the Government for the grant of patta in respect of the suit property in favour of the High school and therefore, the plaintiffs cannot direct the Government to issue patta in respect of the suit property in favour of the High school and furthermore, the plaintiffs cannot direct the Government to issue patta in respect of the suit property in favour of a particular person or entity and the patta had been granted in favour of some persons and steps had been taken to cancel the same through proper channel and the plaintiffs are not entitled to insist the Government to grant patta in respect of the high school and by way of the present suit, the plaintiffs are attempting to exercise the sovereign functions of the Government, to which, they are not entitled to. The suit is pre-mature and the plaintiffs if at all have a case, should have approached the Government through proper channel for the issuance of

patta as prayed for and not by way of a civil action and hence, the suit is not maintainable and further, according to the defendants, the suit is bad for want of notices contemplated under Sections 79 & 80 of the Civil Procedure Code and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs1 to 4 were examined and Exs.A1 & A2 were marked. On the side of the defendants, DWs1 & 2 were examined and Exs.B1 was 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 decline the relief of mandatory injunction sought for by the plaintiffs. However, restrained the defendants from issuing patta in respect of the suit property in favour of eight persons and also directed, in the event of the defendants granting patta in favour of others the defendants to cancel the same and accordingly, disposed of the suit in favour of the plaintiffs. The first appellate Court also concurred with the judgment and decree of the trial Court and thereby dismissed the appeal preferred by the defendants. Impugning the same, the present second appeal has been preferred by the defendants.

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

" a. Whether the suit is not bad for non compliance of Section 80 CPC notice?

b. Whether the suit is not bad for non compliance of Order I rule 8 CPC?

c. Whether the issuance of patta by the defendant would be hit by lispendency as held by the Courts below?

d. Whether the relief claimed in the suit is of a civil nature enforceable through civil court especially in issuance of patta is a sovereign function and cannot be enforced through a common law remedy?"

9. The suit property admittedly belongs to the Government. It is therefore seen that as contended by the counsel appearing for the defendants that the defendants are entitled to issue pattas in respect of the suit property to the deserving persons as per law. There cannot be any compulsion from any quarters on the defendants to issue patta in respect of the suit property to a particular person or entity as such. Accordingly, it is found that the plaintiffs as such cannot be allowed to make a plea that the defendants are bound to issue patta in respect of

the suit property in favour of the High School. As rightly contended, there is no acceptable material placed as such on the part of the plaintiffs that the suit property had been used by the High School as a playground for several years as putforth in the plaint. Be that as it may, even if the same had been used as the playground at intermittent levels, on that basis, it cannot be contended that the defendants are bound to issue patta in respect of the suit property in favour of the High School.

10. At the foremost, it is found that as rightly contended that there is no material placed by the plaintiffs that any requisition has been made by any one including the plaintiffs to the defendants for the grant of patta in favour of the High School in respect of the suit property. It has not been established that the School authorities had made any such valid plea to the defendants for the issuance of patta. Such being the position, when there is no material available that a requisition had been made to the defendants for the issuance of the patta in respect of the suit property in favour of the High School, it is found that the plaintiffs, without any basis, cannot maintain a civil action for a direction to the defendants to issue patta in favour of a particular person or entity. Thus, it is found that the plaintiffs, by way of the present civil action, are attempting to usurp the sovereign functions of the defendants, which cannot be countenanced.

11. As above seen, the case of the plaintiffs for the grant of the relief of mandatory injunction directing the defendants to grant patta in respect of the suit property in favour of High School has been discountenanced by the Courts below. As regards the said determination, the plaintiffs have not preferred any challenge.

12. It is found that the defendants have issued pattas in favour of some persons during the pendency of the civil action or even prior to the same. On noting the same, the Courts below had restrained the defendants from granting pattas in favour of others by way of permanent injunction and also directed the defendants that in the event of grant of pattas in favour of others, to cancel the same. However, it does not stand to reason as to how the civil Court would be entitled to compel the defendants in a civil action not to grant pattas in favour of a particular persons or to cancel the pattas already issued in favour of certain persons. If at all the defendants had granted patta in favour of the third parties pertaining to the suit property, the aggrieved parties should resort only to the legal remedies available as per law challenging the same. On the other hand, it is found that the plaintiffs, without any basis, have moved the civil Court with reference to the grant of pattas by the defendants. Even assuming for the sake of arguments that the defendants have issued pattas in favour of the persons, who are not actually entitled to, the only remedy available to the aggrieved persons is

to prefer the appropriate appeal or revision to the concerned authorities as provided under law as regards the same. In such view of the matter, it is found that the Courts below have exceeded their jurisdiction in restraining the defendants from granting patta in favour of the third parties and also further exceeded their limits in giving further direction to the defendants to cancel the said pattas, in the event of the issuance of the pattas to the third parties. In my considered opinion, the Courts below had exceeded their jurisdiction. As rightly put forth by the counsel appearing for the defendants, when the defendants have exercised their statutory functions, the parties, who are really aggrieved over the same, should only approach the next higher authorities as provided under law and in such view of the matter, it is found that the present suit laid by the plaintiffs, without any basis, for restraining the defendants from granting pattas to the third parties is found not justifiable.

13. That apart, as rightly put forth, if the plaintiffs are really aggrieved by the grant of pattas in favour of the third parties and if they are entitled to seek the cancellation of the same, as rightly contended, without impleading the said parties, it does not stand to reason as to how the plaintiffs would be entitled to seek the reliefs with reference to the same. The Courts below had also been blindly accepted the case of the plaintiffs in restraining the defendants from granting the pattas to the third parties or giving a direction to the defendants to cancel the patta

issued in favour of the third parties without providing an opportunity to the said parties to represent their case. This is found to be highly improper and against the provisions of law and it is thus found that on the above score also, the reliefs granted by the Courts below in favour of the plaintiffs do not stand approval in the eyes of law.

14. The case of the plaintiffs that the suit property is also used during the festival occasions for pulling the temple car is not borne out by acceptable materials. Equally, the case of the plaintiffs that the temple car could not be pulled, if the defendants are allowed to grant patta in respect of the suit property to the third parties as such, is also found to be not acceptable in the absence of any reliable evidence pointing to the same.

15. In the light of the above discussions, the Courts below had erred in holding that the issuance of patta by the defendants in favour of the third parties during the pendency of the suit is hit by lis pendens and it is also found that the plaintiffs by way of the present civil action is not entitled to direct the defendants to perform their sovereign functions in a particular manner without making a case for the same as per law. The substantial questions of law 3 & 4 are accordingly in favour of the defendants and against the plaintiffs. In the light of the determination of the above substantial questions of law in favour of the defendants and

against the plaintiffs, in my considered opinion, it is unnecessary to deal with the other substantial questions of law formulated in the matter.

For the reasons aforesaid, the Judgement and Decree dated 14.11.2002 passed in A.S.No.36 of 2000 on the file of the Subordinate Court, Cheyyar, confirming the Judgment and Decree dated 31.01.2000 passed in O.S.No.126 of 1992 on the file of the Principal District Munsiff, Cheyyar are set aside. Resultantly, the suit laid by the plaintiffs in O.S.No. 126 of 1992 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed, if any.

Index : Yes / No
Internet : Yes / No
sms

08.06.2018

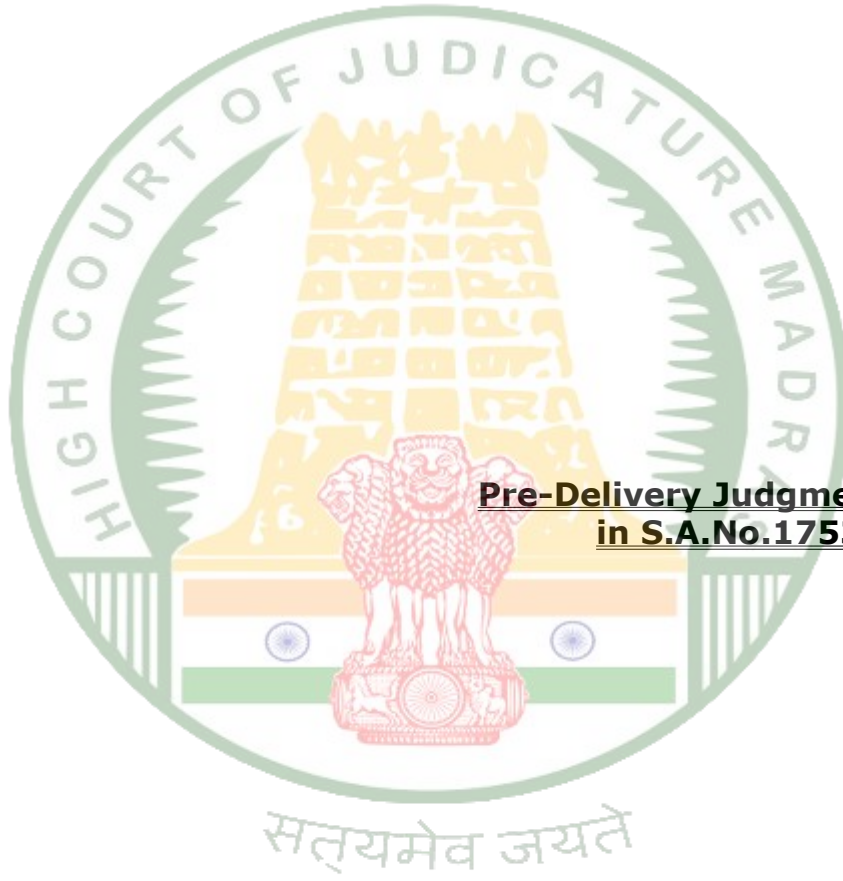
To

1. The Subordinate Court, Cheyyar.
2. The Principal District Munsiff, Cheyyar.
3. The Section Officer, V.R.Section, High Court, Madras.

WEB COPY

T.RAVINDRAN, J.

sms



**Pre-Delivery Judgment made
in S.A.No.1753 of 2004**

WEB COPY

08.06.2018