

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2018
PRONOUNCED ON : 21.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1789 of 2004

Gabriel Udayar ..Appellant/Appellant/Plaintiff

Vs.

1. State of Tamil Nadu,
Rep by the District Collector,
Trichy - 620 001.

2. The Tahsildar,
Jayamkondan,
Udayarpalayam Taluk,
Perambalur District.

3. The Commissioner,
Panchayat Union,
Jayamkondan,
Udayarpalayam Taluk,
Perambalur District.

..Respondents/Respondents/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 17.09.2003 made in A.S.No.41/2002 on the file of Additional District Court, Ariyalur confirming the judgment and decree dated 27.04.1995 made in O.S. No.50/1993 on the file of the District Munsif Court, Jayamkondan.

For Appellant : Mrs. Mythili Suresh for
M/s. Sarvabhauman Associates

For Respondents: Mrs. A.Madhumathi,
Additional Government Pleader.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 17.09.2003, passed in A.S.No.41/2002, on the file of the Additional District Court, Ariyalur, confirming the judgment and decree dated 27.04.1995, passed in O.S. No.50/1993, on the file of the District Munsif Court, Jayamkondan.

2. The second appeal has been admitted on the following substantial questions of law:

1. Whether the courts below are correct in law in the construction of Ex.A-1 Sale Deed and Ex.A-20 Survey Land Register which would establish the title and possession of the predecessor-in-title of the appellant?

2. When the respondents had promised under Ex.A-5 order dated 28.08.1974 that patta would be granted to the appellant after conversion of land into Tharisu land, whether not the respondents estopped from denying patta to the entire suit property by virtue of Ex.A-5 Order?

3. Whether the courts below are correct in law in ignoring the material evidence marked as Exs.A-1 to A-23 coupled with admission of DW-1 in the suit?

3. The plaintiff, who is the appellant in the second appeal, having suffered concurrent judgments and decrees, is found to have laid the suit for permanent injunction and mandatory injunction against the defendants. The relief of permanent injunction is sought with reference to the first item of the plaint schedule properties and the relief of mandatory injunction is prayed for with reference to the second item of the suit properties.

4. Claiming that the plaint schedule properties are in his possession and enjoyment and also contending that the defendants, at the instigation of others, are attempting to cut the trees in the suit properties and auction the same without any authority and also seeking patta in respect of the second item of the suit properties, it is found that the plaintiff has laid the suit for necessary reliefs.

5. The defendants have also contested the plaintiff's claim and contended that in respect of the 50 cents of land in the concerned suit survey numbers which is found to be in the possession and enjoyment of the plaintiff, he had been granted the patta and further, according to the defendants, the grant of patta in respect of the second item of the suit properties in favour of the plaintiff would result in the stagnation of water and also the destruction of crops in the neighbouring lands and also contended that the plaintiff is not entitled for the grant of patta in respect of the above item of the suit properties, accordingly, prayed for the dismissal of the suit. Further, it is contended that the plaintiff's suit is premature as he has not instituted the suit as per the provisions contemplated under law, after the issuance of the statutory notice and on that score also sought for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A23 were marked. On the side of the defendants, DW1 was examined, Exs.B1 to B11 were marked. Exs.C1 and C2 were also marked. As abovestated, on the assessment of the materials placed on record, both oral and documentary, the Courts below were pleased to dismiss the plaintiff's suit.

7. At the outset, it is noted that the plaintiff had issued the statutory notice to the defendants on 12.01.93. It is found that the abovesaid notice had been received by the defendants and before the expiry of 60 days contemplated under law, it is found that the plaintiff has come to lodge the civil suit against the defendants on 27.01.93 itself. Accordingly, it is found that even before the expiry of the statutory period the plaintiff having laid the suit, particularly, as regards the second item of the suit properties, it is found that the suit laid by the plaintiff is not maintainable and accordingly, the Courts below are justified in not granting the reliefs sought for by the plaintiff, particularly, with reference to the second item of the suit properties.

8. Further, it is found that on the materials placed on record, the plaintiff had been granted patta in respect of the 50 cents of land in his possession and enjoyment and such being the position, it is found that the other extent of land involved in the suit being classified as vaari poramboke and in the possession and enjoyment of the defendants and further, when it is found that the plaintiff has not placed any acceptable and reliable material as such to hold that the entire suit property has been in his possession and enjoyment, as put forth by him, other than the 50 cents of land and further, when it is seen that the plaintiff having admitted that the lands comprised in survey No.116/1 belongs to the Government, classified as poramboke land, only on the establishment of the entitlement of the plaintiff to obtain the patta, it is seen that the plaintiff would not be entitled to maintain the suit against the defendants. Further, as rightly pointed out by the Courts below, inasmuch as the plaintiff has not made a valid requisition for the grant of patta to the respondents and from the materials projected by the defendants, it is found that the plaintiff as such would also not be entitled to the grant of patta in respect of the land in survey No.116/1, measuring 0.16 cents and when the patta had already been granted in favour of the plaintiff as regards the land in his possession and enjoyment, as outlined by the defendants, it is found that the Courts below are justified in negating the suit laid by the plaintiff. I do not find any reason to interfere with the abovestated reasonings and conclusions of the Courts below for dismissing the plaintiff's suit.

9. In my considered opinion, no substantial question of law is involved in this second appeal. For the reasons aforesaid, it is to be noted that the plaintiff has failed to establish his

possession and enjoyment of the suit properties based on Ex.A1 sale deed and Ex.A2 Survey Land Register. Particularly, when it is found that the plaintiff has admitted that the property comprised in survey No.116/1 being the Government land and further, when the plaintiff has not establish his entitlement and also not shown to be in the possession and enjoyment of the entire suit properties as claimed by him, it is found that the defendants are justified in refusing the grant of patta for the suit properties. The Courts below are found to have assessed the materials placed on record in the proper perspective, both factually and legally and in such view of the matter, the dismissal of the plaintiff's suit by the Courts below do not warrant any interference as such. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

10. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Ariyalur.

2. The District Munsif,
Jayamkondan.

3. The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc to M/s. Sarvabhauman Associates, Advocate Sr.39062
+ 1 cc to Mr. the Additional Government Pleader Sr.38924

S. A.No.1789 of 2004

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