

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.01.2018
PRONOUNCED ON : 22.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1761 of 2003

1. Nachi (died)
2. Govindan
3. Sevi ...Appellants/Respondents 2 & 3/Defendants 2 & 3

Vs.

1. Poongodi
2. Thyli
3. Rojamani
4. Vasantha ... Respondents/Appellants/Plaintiffs

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.06.2003 made in A.S.No.45 of 2001 on the file of the Sub Court Sankari reversing the judgment and decree dated 14.06.2001 made in O.S.No.108 of 1998 on the file of the District Munsif Court Sankari.

For Appellants : Mr.N.Manokaran

For Respondents : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 25.06.2003 passed in A.S.No.45 of 2001, on the file of the Sub Court Sankari, reversing the judgment and decree dated 14.06.2001 passed in O.S.No.108 of 1998, on the file of the District Munsif Court, Sankari.

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

3. Suit for permanent injunction.

4. The case of the plaintiffs, in brief, is that the suit properties, village natham lands are in the possession and enjoyment of the plaintiffs for more than 30 years and considering their possession and enjoyment, the plaintiffs had been granted HSD patta nos.118 to 121/1403, dated 07.10.93, respectively, in respect of the plaint A to D schedule properties and accordingly, the plaintiffs are enjoying the suit properties by paying necessary kists to the Government and further, the plaintiffs are enjoying the suit properties by raising natural herbs, small trees etc., and other than the plaintiffs no one is entitled to be in the possession and enjoyment of the suit properties. While so, the defendants, who are strangers to the suit properties, having no right or title with reference to the same, attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties and left with no other alternative, the plaintiffs had been necessitated to obtain the necessary reliefs against the defendants and hence the suit.

5. The case of the defendants, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. It is false to state that the plaintiffs had been in possession and enjoyment of the suit properties for more than 30 years and on account of their possession and enjoyment, they had been granted HSD pattas in respect of the suit properties. According to the defendants, no valid patta has been granted in favour of the plaintiffs and it is false to state that the plaintiffs are paying necessary kists to the Government with reference to the suit properties and enjoying the same by raising trees etc. It is false to state that the defendants are attempting to interfere with the plaintiffs possession and enjoyment in respect of the suit properties. The plaintiffs have no right or title to the suit properties and not in the possession and enjoyment of the same and the defendants have preferred an appeal petition to the RDO against the patta granted in favour of the plaintiffs and the same is pending and hence, the suit laid without any cause of action is liable to be dismissed.

6. In support of the plaintiffs' case PWs 1 and 2 were examined, Exs.A1 to A5 were marked. On the side of the defendants DW1 was examined, Ex.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 dismiss the suit. On appeal, the first appellate Court, on an appreciation of the materials placed, set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiffs, decreed the suit as prayed for. Impugning the same, the present

second appeal has come to be laid.

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

1. Whether in law the first appellate Court is right in omitting to note that the order of the Deputy Tahsildar in Ex.B1 has become final and the very claim of the plaintiffs right based on Exs.A1 to A4 are in question in appeal before the R.D.O. in Appeal No.1004 of 1998 as per the provisions of Survey and Boundaries Act?
2. Whether the decision of the first appellate Court is vitiated for non consideration of the entire oral and documentary evidence in reversing the judgment of the trial Court especially when there is no document in favour of the plaintiffs to disprove the possession of the defendants over the suit property?

9. It is seen that the suit properties are village natham lands. Now according to the plaintiffs, recognising their possession and enjoyment of the suit properties for several years, HSD pattas had been granted in their favour in respect of the suit properties and the same had come to be marked as Ex.A1 to A4. Thus, according to the plaintiffs, they are in possession and enjoyment of the suit properties by paying kists, raising trees etc., and as the defendants attempted to interfere with their possession and enjoyment, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

10. Though the defendants have disputed the title to the plaintiffs to the suit properties as well as their possession and enjoyment, as alleged in the plaint, it is found that no acceptable and reliable document has been placed by the defendants to evidence that they are in valid possession and enjoyment of the suit properties. It is found that both Courts have determined that the defendants have failed to establish that they are in possession and enjoyment of the suit properties.

11. The suit properties being village natham lands, it is found that HSD pattas had been issued in favour of the plaintiffs, recognising their possession and enjoyment. Now, according to the defendants, the said pattas are not validly issued in favour of the plaintiffs and impugning the same, they

had preferred an appeal before the RDO in appeal petition no.1004/98 and as the same is pending, according to them, the plaintiffs cannot be allowed to obtain the relief sought for. As such, it is found that challenging the grant of patta issued in favour of the plaintiffs by way of Exs.A1 to A4, the defendants have preferred an appeal petition. Admittedly, even according to the defendants, the appeal petition is still pending and we do not know what would be the outcome of the said petition. As on date, the defendants had not been granted patta in respect of the suit properties and on the other hand, it is seen that only the plaintiffs had been granted patta in respect of the suit properties marked as Exs.A1 to A4. Until Exs.A1 to A4 are legally set-aside, as rightly determined by the first appellate Court, the same would be in force and binding on all the parties concerned. Thus, prima facie, it has been established by the plaintiffs that they are in possession and enjoyment of the suit properties and accordingly, recognising their possession and enjoyment, it is found that the pattas marked as Exs.A1 to A4, have come to be issued in their favour. Therefore, the plaintiffs have shown a better title than the defendants in respect of the suit properties and further, the plaintiffs have established prima facie that they are in possession and enjoyment of the suit properties. Whereas, as rightly found by the Courts below, the defendants have miserably failed to establish that they are in possession and enjoyment of the suit properties.

12. The only document placed by the defendants marked as Ex.B1 said to have been issued by the Tahsildar, styled as natham settlement deed, it is found that the same had been issued pending litigation. In such view of the matter, as rightly found by the first appellate Court, the same could not be given any credence, particularly, when the same has not been established to be a genuine document issued by the appropriate authority. More so, when it is found that the said document has come into existence after the institution of the suit, therefore, no error could be attributed on the part of the first appellate Court in discarding Ex.B1 projected for accepting the defendants version.

13. In the light of the above position, it is found that the first appellate Court has rightly not considered Ex.B1 and the first appellate Court has also rightly determined that the mere pendency of the appeal preferred by the defendants in RDO in appeal no.1004/98, by itself would not discredit Exs.A1 to A4 and till the outcome of the appeal proceedings, as rightly determined by the first appellate Court, Exs.A1 to A4 validity cannot be rejected as such and accordingly, it is found that based on Exs.A1 to A4, the first appellate Court has rightly held that the plaintiffs have a better title in respect of the suit properties and that they are in possession and enjoyment of

the suit properties. The first appellate Court had properly appreciated the evidence on record, both oral and documentary, in the right perspective and accordingly, rightly reversed the judgment and decree of the trial Court. When it is found that the plaintiffs have established clearly that they are in possession and enjoyment of the suit properties and as such the defendants have no better title to the suit properties than that of the plaintiffs, it is seen that the defendants are not entitled to disturb the plaintiffs possession and enjoyment of the suit properties. Therefore, it is seen that the first appellate Court is perfect in granting the relief sought for by the plaintiffs as prayed for.

14. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

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

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

sli

To

1. The Sub Judge, Sankari.
2. The District Munsif, Sankari.

copy to

The Section officer
VR Section, High Court, Madras (2 copies)

+1 Cc to Mr.N. Manokaran, advocate sr 4775

WEB COPY

S.A.No.1761 of 2003

SSD(CO)
SP(12/04/2018)