

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2018

PRONOUNCED ON : 26.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1934 of 2004

1. Ramappa
2. Ramaiya
3. Undoorappa
4. Govindappa

... Appellants/Defendants 2,4 to 6

Vs.

1. G.Prasanth
2. R.Thangavel

... Respondents/Plaintiff &
3rd Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.23/2000 on the file of the III Additional District Judge, Dharmapuri at Krishnagiri dated 09.08.2001 in confirming the judgment and decree in O.S. No.202/1995 dated 29.02.2000 on the file of the District Munsif, Krishnagiri.

For Appellants : Mrs. V.Srimathi

For R1 : Mr.J.Hariharan
for M/s. V.Nicholas

For R2 : No appearance/set ex-parte
vide order 06.07.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 09.08.2001, passed in A.S.No.23/2000, on the file of the III Additional District Court, Dharmapuri at Krishnagiri, confirming the judgment and decree dated 29.02.2000, passed in O.S. No.202/1995, on the file of the District Munsif Court, Krishnagiri.

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

"a. Whether the courts below are right in decreeing the suit in O.S. No.202/1995 for title, when the plaintiff had failed to establish either possession or title to it?

b. Whether the courts below have not misplaced the burden of proof on the appellants herein to disprove Ex.A1?

c. Whether the civil court has jurisdiction to decide the title in respect of Natham lands when grant of patta is governed by G.O.1971 dated 14.10.88 issued by Government of Tamil Nadu (Revenue Department)?

d. Whether the public interest should not prevail over the private claims of the plaintiff in O.S.No.202/1995 on the file of the District Munsif Judge, Krishnagiri?"

3. The suit has been laid by the first respondent against the appellants and the second respondent for the reliefs of declaration and permanent injunction in O.S.No.202/1995 on the footing that the suit property is in his possession and enjoyment and the suit property being a grama natham house site and accordingly, contending that the first respondent has put up a stone foundation in the suit property and enjoying the same and according to the first respondent, inasmuch as the appellants and the second respondent had interfered with his possession and enjoyment of the suit property, it is his case that he has been necessitated to lay the suit for necessary reliefs.

4. The suit laid by the first respondent has been contested by the defendants i.e., the appellants and the second respondent putting forth that the suit property is not in the possession and enjoyment of the first respondent and on the other hand, the suit property has been in the possession and enjoyment of the appellants/defendants and hence, it is contended that the first respondent is not entitled to obtained the reliefs sought for.

5. In this connection, it is found that the first respondent in support of his case had relied upon the patta issued in his favour in respect of the suit property by the Special Tahsildar Natham Scheme, Krishnagiri. The appellants in their written statement had contended that the abovesaid patta issued in favour of the first respondent had been set-aside by the higher authorities and therefore, it is their case that the first respondent is not entitled to plead that the suit property is in his possession and enjoyment. The parties have placed necessary documents in support of their contention.

6. In this connection, it is to be mentioned that the appellants and the second respondent have laid the suit against the first respondent in O.S. No.258/95 for the reliefs of declaration and permanent injunction on the footing that the suit property is in their possession and enjoyment and that the first respondent is attempting to interfere with their possession and enjoyment of the same. In the said suit, the first respondent has raised the defence that the suit property is in his possession and enjoyment as contended by him in his suit in O.S. No.202/95.

7. It appears that both the suits were jointly tried and common evidence has been recorded. It is found that in support of the first respondent's case PWs 1 to 6 were examined and Exs.A1 to A4 were marked. On the side of the appellants/defendants, DWs 1 to 3 were examined, Exs.B1 and B2 were marked. Further, CW1 was examined and Exs.C1 and C2 were marked.

8. The trial Court, on a consideration of the materials placed on record, was pleased to decree the suit laid by the first respondent as prayed for and dismissed the suit laid by the appellants and the second respondent. Aggrieved over the judgment and decree of the trial Court, it is found that the appellants had preferred A.S.Nos.23/2000 and 43/2000 and the first appellate Court, on an appreciation of the materials placed on record, was pleased to dismiss both the first appeals and thereby, it is found that the first appellate Court had confirmed the dismissal of the suit laid by the appellants and the second respondent in O.S. No.258/95 and upheld the decreeing of the suit by the trial Court laid by first respondent in O.S. No.202/95.

9. As against the dismissal of their suit in O.S. No.258/95, the appellants and the second respondent have not preferred any second appeal. On the other hand, the present second appeal has been preferred only against the judgment and decree passed in A.S.No. 23/2000 confirming the judgment and decree passed in O.S.No. 202/95.

10. Both parties had been vying with each other contending that the suit property is in their respective possession and enjoyment. In this connection, as above noted, the first respondent had placed reliance upon the patta issued in his favour under the UDR scheme. On the other hand, the appellants and the second respondent had contended that the above said patta order issued in favour of the first respondent had been cancelled by the higher authorities and they have exhibited the orders passed by the higher authorities on their side. Other

than that, the appellants and the second respondent have not placed any other document to evidence that the suit property is in their possession and enjoyment. Based on the available materials, it is found that the Courts below had noted that it is only the first respondent, who is in the possession and enjoyment of the suit property, accordingly, granted the reliefs as prayed for by the first respondent in the suit preferred by him and dismissed the suit laid by the appellants and the second respondent. It is found that the Courts below had appreciated the oral evidence adduced by the respective parties and found that the first respondent's claim of possession and enjoyment of the suit property was found to be more probable considering the fact that the appellants had admitted that they had entrusted the money to the first respondent for raising the super structure in the suit property. However, as rightly determined by the Courts below, there is no material placed by the appellants that they had collected money from the public at large and entrusted the same to the first respondent for raising the super structure in the suit property. Accordingly, it is found that the Courts below had determined that the foundation had been put up in the suit property by the first respondent on his own accord and in this connection, the mason who has put up the work has been examined on behalf of the first respondent and his evidence had been taken into consideration by the Courts below for upholding the plea of possession and enjoyment of the first respondent. No doubt, the patta relied upon by the first respondent had been cancelled by the higher authorities. However, it is found that the first respondent had preferred writ petition in the High Court challenging the cancellation of the patta issued in his favour. The High Court, while disposing of the writ petition, had directed the civil court not to take into consideration the abovesaid orders and on the other hand, proceed to adjudicate the issues between the parties based upon the materials placed on record. Accordingly, it is found that the Courts below had, on the basis of the materials placed on record, noting that not a scrap of paper has been filed on behalf of the appellants to evidence their possession and enjoyment of the suit property and on the other hand, finding that the first respondent has placed reliable materials for sustaining his claim of possession and enjoyment of the suit property, it is found that the Courts below had concurred with the case of the first respondent and accordingly, granted the reliefs as prayed for. At this juncture, it is to be noted that both the parties had admitted that the suit property is only a grama natham site and accordingly, it is found that based on the materials placed on record by the respective parties, both oral and documentary and on the basis that possession follows title, it is found that the Courts below had upheld the first respondent's case and as no material whatsoever has been placed by the appellants to establish either their claim of title or

their possession and enjoyment of the same, it is found that the Courts below had negated the suit laid by the appellants and the second respondent. It is thus found that the determination of the Courts below that it is only the first respondent who is in the possession and enjoyment of the suit property, being a pure question of fact, based on the appreciation of the materials placed on record and when it is found that the Courts below had arrived at the determination on the proper appreciation of the materials placed on record, it is not proper to interfere with the said determination of the Courts below at this stage by way of second appeal as the same do not involve any point of law as such. When it is found that the appellants have not placed any proof whatsoever to establish their plea of title, possession and enjoyment of the suit property and on the other hand, the materials placed on record, as determined by the Courts below, point to the possession and enjoyment of the suit property by the first respondent, it is found that the judgment and decree of the Courts below do not warrant any interference.

11. In the light of the above discussions, it is found that the Courts below are right in decreeing the suit in O.S.No.202/95 preferred by the first respondent, on the establishment of the possession and enjoyment of the suit property by the first respondent and the Courts below having not misplaced the burden of proof on the appellants as canvassed by the appellants in this case, the substantial questions of law No.1 and 2 formulated in the second appeal are accordingly answered in favour of the first respondent and against the appellants and the second respondent. The substantial questions of law No.3 and 4 formulated in the second appeal are not required to be answered as they are found to be not germane for the adjudication of the issues involved in the matter and also not raised by the appellants in their plea before the Courts below.

12. In addition to that, as above seen, both the suits, one preferred by the first respondent and the other preferred by the appellants and the second respondent had been jointly tried and the trial Court had decreed the suit laid by the first respondent and dismissed the suit laid by the appellants and the second respondent. The first appeals preferred by the appellants had been dismissed. Despite the above position, the appellants have not chosen to prefer any appeal against the dismissal of the other appeal preferred by them, which in turn had been filed challenging the dismissal of their suit filed in respect of the suit property. In such view of the matter, as rightly put forth by the first respondent's counsel, considering the principles of law enunciated in the decisions relied upon by him and reported in (2001) 2 M.L.J.283 (V.Pandian and others vs. K.P.Subramanian and another), (2006) 4 MLJ 1016 (S.A.Viswanathan

(died) and another Vs. R.Krishnan and another), 2008-3-LW 747 (Brij Narain Singh Vs. Adya Prasad (dead) & others), 2010 (3) CTC 799 (1. K.Viswanathan 2. Karuppanna Chettiar Vs. R.Appavoo chettiar and 6 others) (R.Appavoo chettiar and 6 others Vs. 1. K.Viswanathan 2. Karuppanna Chettiar), 2016-2-L.W.581 (O.S.Suriyavelu Mudaliar Vs. J.Palanivelu Mudaliar), 1992 AIR (Madras) 280 (Arumugha Nainar Vs. Lakshmana Perumal (died) and others), 1993 Supp (2) SCC 146 (Premier Tyres Limited Vs. Kerala State Road Transport Corporation) and (1997) 9 SCC 543 (Ram Prakash Vs. Charan Kaur (smt) and another), it is found that the failure of the appellants in not preferring the appeal against the other appeal in respect of their suit would operate as res-judicata and in such view of the matter, it is found that the appellants' second appeal cannot be entertained, as such, as the second appeal preferred by them is hit by the operation of res-judicata.

13. The counsel for the appellants placed reliance upon the decision of this Court dated 28.11.2017 passed in S.A. (MD) No. 337/2017 (1. M.Rajendran 2. Rajkumar Vs. K.N.Kaliyappan). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

14. 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)

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Sub Assistant Registrar

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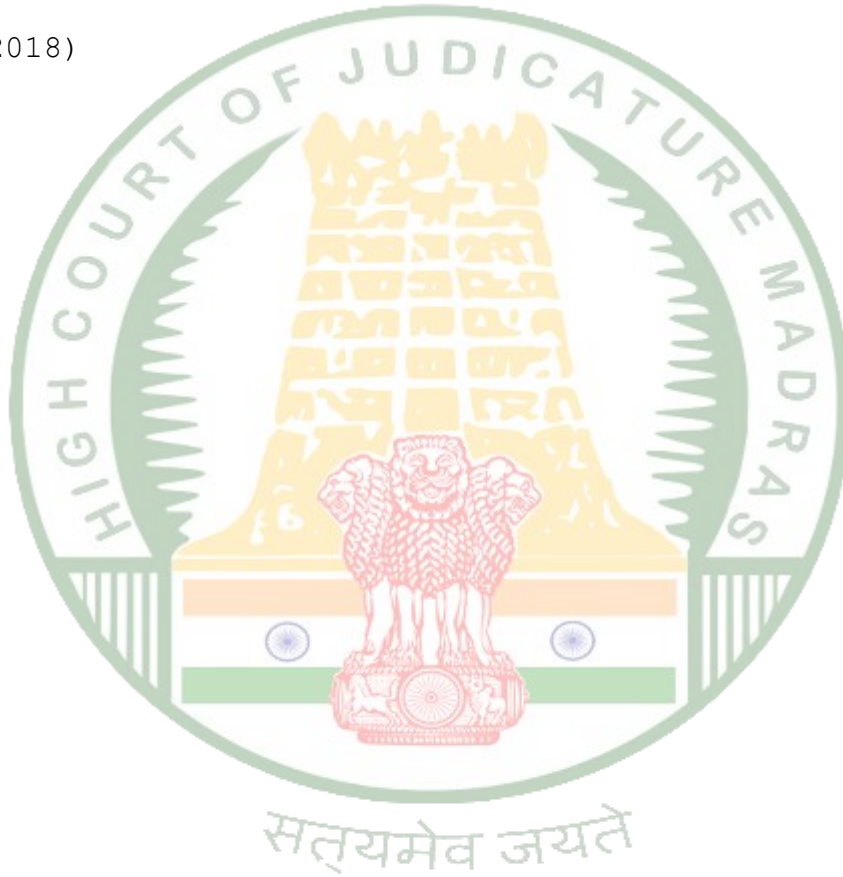
1. The III Additional District Judge,
Dharmapuri, Krishnagiri.
2. The District Munsif,
Krishnagiri.

3. The Section Officer,
V.R.Section,
High Court, Madras.(2 COPIES)

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No.50196
+1cc to Mr.V.NICHOLAS, Advocate, S.R.No. 50488

Judgment in
S. A.No.1934 of 2004

PA (CO)
TR(23/08/2018)



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