

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2018
PRONOUNCED ON : 05.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.2037 of 2003

1. The State of Tamil Nadu,
rep.by District Collector,
Erode.
2. Revenue Divisional Officer,
Erode.
3. The Thasildar,
Erode. Appellants/Defendants

Vs.

S.K.Paramasivam Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.49/94 dated 22.09.1994 passed by the Principal District Judge, Erode, reversing the judgment and decree made in O.S. No.285/91 dated 03.01.1994 by IInd Additional Sub Judge, Erode.

For Appellants : Mr.V.S.Sethuraman, AAG
assisted by Mrs. A.Madhumathi,
Additional Government pleader (CS)

For Respondent : Mr.R.Gandhi, Senior Counsel
for Mr. R.G.Narendiran

JUDGMENT

This second appeal is directed against the judgment and decree dated 22.09.1994, passed in A.S.No.49/94, on the file of the Principal District Court, Erode, reversing the judgment and decree dated 03.01.1994, passed in O.S. No.285/91, on the file of the IInd Additional Sub Court, Erode.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that his father S.Kumaraswamy gounder purchased the right of enjoyment of the suit properties in the revenue auction held in the year 1940 and accordingly, an order of assignment had been issued in his

favour by the Tahsildar, Erode and pursuant to the same, a conditional patta was issued in favour of the plaintiff's father and since then, it is only the plaintiff's father and after his demise, the plaintiff, who had been in possession and enjoyment of the suit properties without violating the conditions of the patta. Whiles, the plaintiff received a copy of the order dated 19.4.91 of the Revenue Divisional Officer, Erode, stating that the suit properties are being taken over by the Government on the footing that the suit properties had been kept fallow without making any improvement and the same is being required for public purpose. The above said order is highly arbitrary, ultravires and illegal and also not valid, bonafide and binding upon the plaintiff. The plaintiff has not been given any opportunity to putforth his case as regards the same prior to the passing of the abovesaid order and the objections of the plaintiff to the same had not been heard. In the patta issued in favour of the plaintiff's father, there is no condition that the suit land should not be kept fallow. The suit lands are pucca dry lands without any source of irrigation and only rain fed crops could be raised in the lands. The plaintiff, prior to him, his father, had been raising dry crops as and when there were rains and hence, the plaintiff's father nor the plaintiff ever violated any of the conditions in the patta and hence, the order dated 19.04.91, issued by the second defendant is invalid and the reasons given by the second defendant that the suit lands are required for public purpose is also not bonafide and the suit lands being located in the remote area would be of no use for any public purpose and the reason with reference to the same is found to be vague and bereft of any details and hence not bonafide. The plaintiff is in possession and enjoyment of the suit lands without any interruption for more than 50 years from the days of his father and also without violating any of the conditions of the patta and hence, the defendants are not entitled to dispossess the plaintiff from the suit properties by way of the abovesaid order dated 19.4.91 and hence, 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 is not maintainable either in law or on facts and it is true that the suit properties were assigned under project conditions in favour of the plaintiff's father S.Kumaraswamy gounder and the plaintiff and his predecessors have got only enjoyment right over the suit lands and no outright patta has been issued in their favour. As per the conditions, the Government can at any point of time resume the lands. The plaintiff for the past 51 years kept the suit lands waste and not done any cultivation and the suit lands are required for the purpose of the construction of the Government officers quarters and free assignment for the houseless harijans and action had been initiated by the Government to resume the lands and in this connection, notice has been issued to the plaintiff calling upon to submit his objections if any with reference to the resumption proceedings.

The plaintiff refused to receive the same and hence, the same was affixed in the house of the plaintiff and the plaintiff has not raised any objections to the resumption proceedings. Therefore, an order dated 19.4.91 has come to be passed by the second defendant to resume the lands and accordingly, possession of the suit lands had also been taken by the revenue authorities and entries had been made with reference to the same in the records of the revenue department. Hence, the suit has become infructuous and there is no cause of action for the suit and therefore, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 3 were examined, Exs.A1 to A5 were marked. On the side of the defendants, DW1 was examined, Exs.B1 and B2 were 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 laid by the plaintiff. 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 plaintiff, granted the decree as prayed for by the plaintiff. 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 the respondent is closing cultivation in the suit property as per the condition of the auction?
2. Whether the respondent is entitled to outright patta in the suit property?

9. It is not in dispute that the plaintiff's father S.Kumaraswamy gounder was granted conditional patta to enjoy the suit lands from the year 1940. The documents marked as Exs.A1 to A3 are with reference to the same. It is thus found that the assignment holder, namely, S.Kumaraswamy gounder and his successors are entitled to enjoy the suit lands as per the conditions stipulated in the patta. It is found that thereafter, the suit lands had been in the possession and enjoyment of the plaintiff's father and after his demise, the plaintiff for more than 50 years. Whiles, it is seen that the second defendant has passed an order dated 19.4.91, intimating that the suit properties are being taken over by the Government on two grounds, namely, the suit properties had been kept fallow without any cultivation or any improvement and the suit lands are required for public purpose and challenging the same, the present suit has come to be laid by the plaintiff. It is the specific case of the plaintiff that the suit properties are pucca dry lands without any source of irrigation and only rain fed crops could be cultivated in the same and it is the case of the plaintiff that whenever there is rain, they used to

cultivate dry crops like maize etc., and the allegation that the lands are being kept without any cultivation is false and on that ground, the Government is not entitled to resume the suit lands. Further, according to the plaintiff, the plea put forth by the Government that the suit lands are being resumed as they are needed for public purpose is also not valid and bonafide, as no details with reference to the same are spelt out by the Government that the suit lands are really required for public purpose and hence, according to the plaintiff, inasmuch as none of the conditions had been violated, the Government is not entitled to resume the suit lands, particularly, without providing an opportunity to the plaintiff to put forth his objections to the same and as the plaintiff had not been served with any notice to enable him put forth his case as regards the resumption proceedings, it is contended by the plaintiff that the resumption proceedings initiated by the Government is against law and liable to be set-aside.

10. According to the Government, as the plaintiff had violated the conditions of the patta and not put the suit lands for cultivation and kept them fallow, the plaintiff had violated the conditions imposed in the patta and hence, the resumption proceedings had been initiated. Further, according to the Government, the suit lands are required for public purpose and according to them, the Government is entitled to resume the suit land. In this connection, the further case of the Government is that prior to the resumption proceedings, notice has been issued to the plaintiff and inasmuch as the plaintiff has refused to receive the same, consequently the notice was affixed in the plaintiff's house and as the plaintiff has not put forth any objections whatsoever to the resumption proceedings, according to the Government, the suit lands had been resumed by the Government and taken by the Government and hence, it is stated that the suit laid by the plaintiff has become infructuous and liable to be dismissed.

11. From the evidence adduced by the plaintiff, examined as PW1, it is found that the suit lands are only dry lands and the lands could be cultivated only whenever there is rain and accordingly, PW1 has tendered evidence that whenever there is rain, they used to cultivate dry crops like maize etc., and in support of PW1's evidence, the neighbouring land owner PW2 has also tendered evidence that whenever there is rain, the cultivation operation had been done in the suit lands by the raising maize etc., As he is the neighbour he is aware of the said position and supported PW1's evidence. PW3 ex-Karnam has also deposed in favour of the plaintiff that the suit lands are only rain fed lands and accordingly, dry crops such as maize only could be cultivated whenever there is rain and accordingly, it is found from the evidence of PWs 1 to 3 that apart from rain, there is no other source of irrigation for the cultivation of the suit lands. It is thus found that the cultivation activities are possible only when there is rain and thus, it is

found that dry crops like maize had been raised in the suit lands during the rainy season. DW1, examined in this connection, has also admitted that the suit lands are rain fed lands and when there is rain, cultivation can be done in the suit lands. It is thus found that from the abovesaid materials placed, regular cultivation is not possible in the suit lands and it is possible only during rainy season and in such view of the matter, it is found that the case of the defendants that the suit lands had been kept fallow since the date of the patta, as such, cannot be accepted.

12. It is found that during the year 1940, patta had been granted in favour of the plaintiff's father giving right to enjoy the suit lands. Thus, it is found that since 1940 till the date of notice issued during 1991, the suit lands were in the possession of the plaintiff and his father. In such view of the matter, it does not stand to reason as to how come the defendants had suddenly arrived at the conclusion that the suit lands had been kept fallow without any cultivation for the past 50 years or more. In this connection, DW1 has admitted that he is not presently aware of the happenings in the suit lands during 1940 to 1991 and in such view of the matter, when there is no proof whatsoever placed by the defendants that the suit lands had been kept fallow without any cultivation for the past 50 years i.e., 1940 to 1991 the hasty claim that the plaintiff had kept the suit lands fallow without any cultivation or improvement as such cannot be countenanced in the absence of any material pointing to the same. From the evidence of PWs 1 to 3 as also spoken to by DW1, it is noted that the cultivation is possible only when rains are there. Accordingly, it is seen that during rainy season, dry crops had been raised by the plaintiff and his predecessors in interest and therefore, the action initiated by the defendants that the suit lands had been kept fallow for ever since the date of assignment as such cannot be countenanced and hence, the very premise of the resumption proceedings initiated by the Government seems to be unacceptable and cannot be countenanced.

13. As rightly determined by the first appellate Court, the Government being the revenue collection authority, if really no cultivation had been done in the suit lands right from the date of the assignment by the plaintiff's predecessors or the plaintiff, the Government would be in the know of things and accordingly, it is seen that the adangal extract maintained by the Government for the suit lands would disclose the factual position. If really, the plaintiff or his predecessors in interest had not engaged in any cultivation of the suit lands, the same would have been reflected in the adangal extract maintained by the Government and that being the position, nothing prevented the Government from producing the said extract before the Court to establish that the suit lands had been kept fallow as put forth by them. The Government however for the reasons best known had not come forward to produce the adangal

extract. Accordingly, the first appellate Court had rightly taken adverse inference against the Government, since, it has failed to produce the best records available with them with reference to the case that the suit lands had been kept fallow without any cultivation by the plaintiff and his predecessors in interest.

14. As regards the second reason projected by the Government for the resumption proceedings that the suit lands are required for public purpose, as rightly put forth by the plaintiff, the details with reference to the same are completely absent in the written statement. Even during the course of evidence, no material is placed as to for what purpose the suit lands are required etc., Such being the position, the case of the Government that the suit lands are required for public purpose as such cannot be rightly countenanced without any material pointing to the same.

15. Be that as it may, according to the Government, resumption proceedings had been initiated against the plaintiff for the reasons aforesaid and it is found that notice sent to the plaintiff in connection with the same had been refused by the plaintiff and accordingly, the notice had been affixed in the plaintiff's residence and eventually as no objections had been put forth by the plaintiff with reference to the same, it is the case of the Government that the resumption proceedings had been done properly and as per law and it is the further case of the Government that the suit lands had since been taken possession by the Government and therefore, the suit laid by the plaintiff is liable to be dismissed. In this connection, the document marked as Ex.B1, the notice said to be issued has come to be marked. On a perusal of Ex.B1, it is found that the notice had been addressed to Tmt.Kuppayammal, wife of S.Kumaraswamy gounder. Materials placed on record would go to disclose that on the date of notice, Kuppayammal was not alive and in such circumstances, when S.Kumaraswamy gounder as well as Kuppayammal were not alive on the date of notice, it is found that the notice should have been ordered to be issued to the legal representatives of the assignment holder. The plaintiff is the one of the legal representatives of the assignment holder. In such view of the matter, the Government should have endeavoured to issue the notice at least to one of the legal representatives of S.Kumaraswamy gounder or Kuppayammal. However, no such endeavour has been made by the Government. Be that as it may, in Ex.A1, there is an endorsement that Kuppayammal had died and the notice had been served on the legal representative, namely, the plaintiff and as he had refused to receive the same, the same had been affixed. It is found that the author of the said endorsement has not been examined by the defendants, despite the same being challenged by the plaintiff. In this connection, the defendants had not cared to either examine the author of the said endorsement or the attestors of the same to show the veracity of the same. As rightly found by the first appellate Court, there appears to be material

contradictions as regards the service of notice. According to the defendants, in the written statement inasmuch as the plaintiff had refused to receive the same, the same had been affixed in his residence. DW1 would tender evidence that the notice had been given to the plaintiff's mother and as she had refused to receive the same, the notice had come to be affixed in the survey stone available in the suit lands and when it is noted that on the date of Ex.B1 notice, the plaintiff's mother is not alive and such being the position, it is found that no proper explanation has been offered by the defendants as regards the above said material contradictions. That apart, when DW1 has no personal knowledge with reference to the notice marked as Ex.B1 and when the plaintiff has challenged the same tooth and nail and when the person to whom the notice has to be sent was not alive on that date and there are legal representatives to the assignment holder other than the plaintiff, it does not stand to reason as to why no endeavour has been made to send the notice to the legal representatives so as to invite their objections with reference to the resumption proceedings etc., In such view of the matter, when none pertaining to Ex.B1 has been examined by the defendants, merely from the endorsement found therein, we cannot safely hold that Ex.B1 notice had been served on the plaintiff and that he had refused to receive the same and therefore, the same had come to be affixed in his residence and when with reference to the same, as seen there are material contradictions, it is found that as rightly put forth by the plaintiff and determined by the first appellate Court, the defendants have failed to establish that due notice had been served on the plaintiff or any other legal representative of the assignment holder prior to the initiation of the resumption proceedings. The further case of the defendants that the suit lands had been taken by the Government cannot also be accepted, when it is found that the Government has not placed any material worth acceptance pertaining to the same. In this connection, the document marked as Ex.B2 would not serve the purpose. If really, the suit lands had been taken really by the Government, the said facts would have been reflected in the concerned register maintained by the Government. However, the said register has not been placed for the consideration of the Courts. Further, according to DW1, the Tahsildar took possession of the properties by way of Mahazar marked as Ex.B2. The said Tahsildar had not been examined and no one associated with the Mahazar has been examined. The attestation of the neighbouring land owners or occupiers had not been obtained in the Mahazar marked as Ex.B2. Further, no proof has been placed by the Government pursuant to Ex.B2 Mahazar, as to how the suit lands had been dealt with by the Government in their revenue records by placing the said records for the consideration of the Courts. In such view of the matter, as rightly determined by the first appellate Court, merely on the production of mahazar, without any proof to lend authenticity to the same and when DW1 is not personally aware of the same and the records pertaining to the same had not been produced before the Court, it is seen

that on the basis of Ex.B2 ipso facto, we cannot conclude that the suit lands had been taken possession of by the Government.

16. In the light of the above position, it is found that the suit lands continue to remain in the possession of the plaintiff and accordingly, it is found that the Government is unable to place acceptable and reliable materials to conclude that they had taken the possession of the suit lands as per law by placing relevant registers available with them and also by placing necessary evidence in connection with the same.

17. When on the materials placed, it is noted that the suit lands had been in the possession and enjoyment of the plaintiff's family for more than 50 years since 1940 onwards, the sudden initiative of the Government to resume the lands as aforesaid without providing an opportunity to the plaintiff or the other legal representatives to putforth their objections to the same and when on the materials placed, it is found that the so called conditions of the patta had not been violated by the plaintiff in any manner, particularly, when it has not shown that the suit lands had been kept fallow by the plaintiff and his predecessors in interest without any cultivation and on the other hand, when it is found that the suit lands are capable of cultivation only during rainy seasons and further, when there is no proof placed to show that the suit lands are really required by the Government for public purpose, it is found that, even assuming for the sake of arguments that the Government is entitled to resume the suit lands, still the Government is expected to follow the procedure with reference to the same in accordance with law, particularly, only after due opportunity to the plaintiff to putforth his objections with reference to the same and only thereafter, it is found that the Government is entitled to resume the lands, if at all, they are really needed by the Government for any public purpose or if there is any infraction of the conditions of the patta as putforth by them. In so far as this case is concerned, when none of the conditions projected by the Government for entitling them to resume the lands is made out and further when the plaintiff had not been provided with the requisite opportunity to putforth his objections to the resumption proceedings and such being the position, the resumption proceedings being found to be initiated in violation of the principles of natural justice, it is found that the first appellate Court is perfect in holding that the resumption proceedings cannot be allowed to sustain in the eyes of law.

18. In the light of the above reasonings, inasmuch as the resumption proceedings are found to be done not in accordance with law, the plaintiff is entitled to seek the reliefs sought for and accordingly, though the plaintiff is not entitled to obtain the outright patta in respect of the suit lands, when it is found that the plaintiff had not kept the suit lands fallow as projected by the Government and when it is further found that

the Government has not made out the case that the suit lands are really required for public purpose and in addition to that, as above seen, when the resumption proceedings are initiated and done by the Government behind the back of the plaintiff without providing him due opportunity to put forth his objections, it is found that the judgment and decree of the first appellate Court upholding the plaintiff's case do not warrant any interference. The substantial questions of law formulated in the second appeal are accordingly answered.

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

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sli

To

1. the Principal District Judge,
The Principal District Court, Erode.
2. The Sub Judge
The IIInd Additional Sub Court, Erode.

+lcc to Mr.R.G.Narendiran, Advocate Sr.No.25039

+lcc to Special Government Pleader SR.No.25017

VGI(CO)

sm:23.4.2018

सत्यमेव जयते

S.A.No.2037 of 2003

WEB COPY