

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2018

PRONOUNCED ON : 06.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2110 of 2003

Ramar

...

Appellant

Vs.

1. Singaram Ammal

2. Ramachandran

3. Minor Raja @ Prabhu

...

Respondents

represented by mother &
guardian Singaram Ammal

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 11.02.2003 passed in A.S.No.114 of 2000 on the file of the Additional District Judge, Fast Tract Court, at Kallakurichi, reversing the Judgment and Decree dated 11.04.2000 passed in O.S.No.651 of 1994 on the file of the I Additional District Munsif Court, Kallakurichi.

For Appellant : Mrs.Mythili Suresh

for M/s.Sarvabhuman Associates

For Respondents : Mr.A.G.Rajan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 11.02.2003 passed in A.S.No.114 of 2000 on the file of the Additional District Judge, Fast Tract Court, at Kallakurichi, reversing the Judgment and Decree dated 11.04.2000 passed in O.S.No.651 of 1994

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 plaintiffs, in brief, is that the suit property originally belonged to the Government and classified as Natham Poramboke, which was assigned to the first plaintiff's husband and the father of the plaintiffs 2 & 3, Mannankatti on 23.01.1967 conditionally and since then, it is only Mannankatti, who has been in possession and enjoyment of the suit property and accordingly, rough patta has also been granted in favour of Mannankatti on 23.04.1991 and even during 1992, patta had been granted in favour of Mannankatti in respect of the suit property and Mannankatti died intestate leaving the plaintiffs as his legal heirs and accordingly, the plaintiffs had obtained the suit property by inheritance and been in possession and enjoyment of the same and the defendant has no manner of right, title or interest in respect of the suit property in any manner. While so, on account of enmity and the instigation of others, the defendant is attempting to interfere with the plaintiffs' possession and enjoyment of the suit property and thereby, denying their title to the suit property and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. It is true that the suit property had been originally assigned in favour of Mannankatti.

However, Mannankatti had alienated the suit property for a valid consideration by way of a registered sale deed in favour of Sadaiya Moopan on 05.10.1997 and in the said sale deed, the second plaintiff Ramachandran had attested and the defendant had purchased the suit property for a valid consideration from Sadaya Moopan on 27.02.1989 and enjoying the same by putting up a cattle shed, tying cattle, laying haystack etc. and in the sale deed of the defendant dated 27.02.1989, Mannankatti had attested and hence, the suit property is only in the possession and enjoyment of the defendant and the defendant has obtained patta in respect of the suit property and enjoying the same and the plaintiffs cannot lay any claim of title, possession and enjoyment of the suit property in any manner and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' claim, PWs 1 & 2 were examined and Exs.A1 to A3 were marked. On the side of the defendants, DWs 1 & 2 were examined and Exs.B1 to B3 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 plaintiffs. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the plaintiffs, decreed the suit as prayed for. Aggrieved over the same, the present

second appeal has been laid.

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

" (i) When respondents admitted title of the husband of the first respondent, are they not estopped from challenging the validity of Ex.B-2 sale deed executed by the husband of the first respondent?

(ii) Whether the lower appellate Court is right in law in granting equitable relief of injunction, particularly when the respondents approached the court with unclean hands suppressing Ex.B2 sale deed in favour of the vendor of the appellant who subsequently sold the same in favour of the appellant under Ex.B1 wherein both the 2nd respondent and his father had attested the document?"

9. It is not in dispute that the suit property originally belonging to the Government had been assigned in favour of the first plaintiff's husband and the father of the plaintiffs 2 & 3, by name, Mannangatti and the order of assignment has been marked as Ex.A1. Now, according to the plaintiffs, since the date of the assignment, it is only Mannangatti, who has been in possession and enjoyment of the suit property and after his demise, the plaintiffs, being his legal heirs, continued to be in the

possession and enjoyment of the suit property and inasmuch as the defendant attempted to disturb their possession and enjoyment by denying their title, according to the plaintiffs, they had been constrained to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that Mannangatti, even during his life time, had alienated the suit property to one Sadaya Moopan by way of a sale deed dated 05.10.1987 and in turn Sadaya Moopan had conveyed the suit property to him by way of the sale deed dated 27.02.1989 and since then, it is only the defendant, who has been in possession and enjoyment of the suit property by putting up a cattle shed, tying cattle, laying haystack etc., and therefore, according to the defendant, the plaintiffs cannot lay any claim of title, possession and enjoyment of the suit property and therefore, the suit is liable to be dismissed.

11. On a perusal of Ex.A1 assignment, it is found that by way of the same, the Harijan Welfare Department has issued the assignment in favour of Mannangatti. As rightly pointed out by the first appellate Court, on a perusal of the conditions stipulated in Ex.A1 assignment, it is found that the assignment holder is not entitled to alienate the suit property for a period of 30 years from the date of the assignment and in case of any breach of the conditions stipulated therein, the assignment is liable to be cancelled. It is further found that in the event of the assignee selling the land, the same should not be effected without the sanction of the

Government or the authority concerned and it is thus noted that the assignee is precluded from alienating the suit property to the third parties without the sanction of the Government or the authority concerned. In such view of the matter, the claim of the defendant that Mannangatti had chosen to alienate the suit property in favour of Sadaya Moopan by way of a sale deed dated 05.10.1987, as such, cannot be straightaway accepted. It has not been established by the defendant, by placing any acceptable material, that in respect of the above said sale transaction, which has come to be marked as Ex.B1, Mannangatti had obtained the sanction of the Government or the authority concerned before effecting the said transaction. Even a perusal of Ex.B1 does not point out that any such sanction had been obtained by Mannangatti as stipulated in the assignment marked as Ex.A1. It is therefore found that when Mannangatti is not entitled to alienate the suit property as stipulated in Ex.A1 for a period of 30 years without the sanction from the Government or the authority concerned, the argument projected by the defendant that Mannangatti himself had alienated the suit property in favour of Sadaya Moopan by way of Ex.B1 sale transaction, though may be a true one, but, it cannot be construed as a valid conveyance and in such view of the matter, as rightly determined by the first appellate Court, Ex.B1 would not confer any valid title in respect of the suit property in favour of Sadaya Moopan. No doubt, the second plaintiff would have been an attester to the abovesaid sale transaction, that by itself would not confer any validity to the sale transaction Ex.B1, when it is noted that the sanction of the Government or the authority concerned had not been

obtained by Mannangatti before the said alienation. It is thus found that the attestation of the second plaintiff by itself would not confer any validity as per law on the sale transaction marked as Ex.B1, particularly, when it is noted that Mannangatti himself has no legal entitlement to convey the suit property to Sadaya Moopan under Ex.B1. Thus as rightly determined by the first appellate Court, Sadaya Moopan cannot be conferred any legal title in respect of the suit property by way of Ex.B1.

12. The defendant claims title to the suit property only by way of purchase from Sadaya Moopan by way of a sale deed dated 5.10.1987 marked as Ex.B2. When Sadaya Moopan himself has not acquired any valid title to the suit property by way of Ex.B1, it is found that as rightly argued by the plaintiffs, he would not be legally competent to convey the suit property to the defendant by way of Ex.B2 sale transaction and it is thus found that the defendant also cannot lay any legal and valid title to the suit property by way of Ex.B2, when it is noted that his vendor has no legal competency as per law to convey the suit property to him. Such being the position, as rightly found by the first appellate Court, the defendant cannot be allowed to lay a valid claim of title to the suit property by way of Ex.B2 when it is noted that though the above said transaction may be true one, it cannot be construed a valid sale transaction.

13. Pursuant to Ex.A1 assignment, it is found that rough patta had been granted in favour of Mannangatti marked as Ex.A2 and the kist

receipt has also been marked on the side of the plaintiffs as Ex.A3. Per contra, the defendant has marked only rough patta as Ex.B3. There is no other material placed on record on the side of the defendant to evidence that the suit property has been in his possession and enjoyment as projected in the written statement. As rightly determined by the first appellate Court, when the defendant has not acquired any valid title to the suit property as such by way of Exs.B1 & B2 and other than Exs.B1 & B2, he has only marked the rough patta as Ex.B3, similar to the same, the rough patta also being marked as Ex.A2 by the plaintiffs, it is found that the plaintiffs being the legal representatives of the original assignee i.e. Mannangatti would be entitled to succeed to the suit property and in such view of the matter, it is found that the first appellate Court is justified in upholding the plaintiffs' claim of title to the suit property.

14. The mere fact that Mannangatti has attested the sale transaction marked as Ex.B2 by itself would not lend any credence to the abovesaid sale transaction, particularly, when it is noted that the vendor of the defendant has no legal competency to execute the same in favour of the defendant in respect of the suit property.

15. The argument has been projected by the defendant's counsel that if there is any breach of the conditions of the assignment by Mannangatti, it is only for the government to take appropriate action as regards the same and inasmuch as the government has not chosen to initiate any action against the assignee Mannangatti, the sale effected by

him by way of Ex.B1 and the further sale executed by Sadaya Moopan by way of Ex.B2, should be treated as valid sale transactions and thereby, the defendant's acquisition of title to the suit property should be upheld. However, when Mannangatti himself has no entitlement as per law to convey the suit property to the third parties without the sanction of the Government or the authority concerned and when from the recitals/conditions contained in Ex.A1 assignment read together, it is found that the further transactions made in respect of the suit property in breach of the conditions would not get any legal sanctity as such and therefore, it is found that merely because the government had not chosen to initiate action against Mannangatti as regards Exs.B1 and B2, that by itself would not lend any valid acceptance to the above said transactions, particularly, when they are found to be in violation of the conditions stipulated in Ex.A1. As above noted, the mere attestation of the sale transactions Exs.B1 & B2 by the second plaintiff and Mannangatti respectively would not confer any validity on the abovesaid sale transactions, when the said sale transactions are found to be in breach of the conditions stipulated in Ex.A1 and in such view of the matter, there is no question of estoppel on the part of the plaintiffs in disputing the sale transactions projected by the defendant by way of Exs.B1 & B2. The substantial questions of law formulated in this second appeal are accordingly answered against the defendant and in favour of the plaintiffs.

with costs. Consequently, connected miscellaneous petition, if any, is closed.

06.04.2018

Index : Yes / No

Internet : Yes / No

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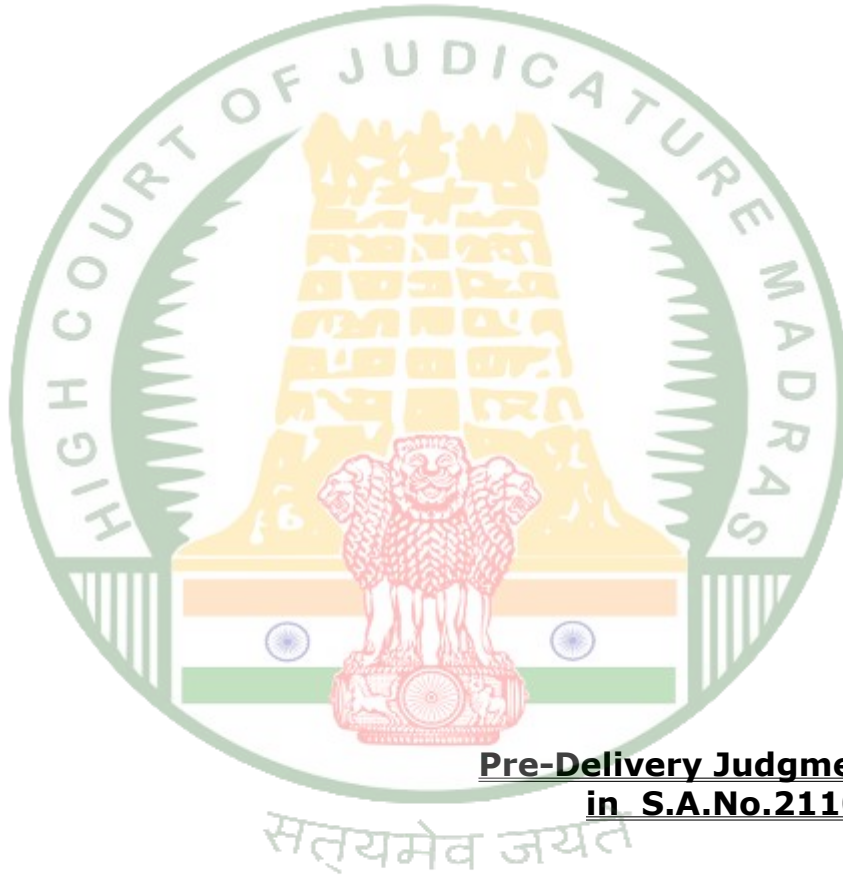
1. The Additional District Judge,
Fast Tract Court, at Kallakurichi.
- 2.The I Additional District Munsif Court, Kallakurichi.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.2110 of 2003**

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