

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2018

PRONOUNCED ON: 31.08.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2193 of 2003

and

C.M.P.No.20470 of 2003

1.P.Subramaniya Reddy (Died)

2.S.Anthony

3.Devanai Ammal (Died)

4.S.Madhvan (Died)

[Appellants 3 & 4 are brought on record as LR's of the deceased First appellant vide order of Court dated 31.10.2007 made in CMP.No.3184 of 2007 in S.A.No.2193 of 2003]

5.M.Aruna

6.M.Sangeetha

7. Minor.M.Guruprasad

[Minor Represented by Mother and guardian M.Aruna, Mother the 5th appellant]

[Appellants 5 to 7 brought on record as LR's of the deceased 4th appellant vide order of Court dated 16.07.2018 made in CMP.No.11843 to 11845 of 2018 in S.A.No.2193 of 2003]

... Appellants/Respondents/Plaintiffs/
LRs of deceased 1st Plaintiff

Vs.

Sumathi

... Respondent/Appellant/8th Defendant

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 09.12.2002 passed in A.S.No.124 of 2001 on the file of the Court of the Additional District Judge, Fast Track Court No.V , Thiruvallur, reversing the judgment and decree dated 30.04.1999 passed in O.S.No.780 of 1990 on the file of the Court of the District Munsif of Tiruttani.

For Appellants : M/s.N.Maninarayanan

For Respondent : M/s.G.Thiagarajan

J U D G E M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 09.12.2002 passed in A.S.No.124 of 2001 on the file of the Additional District Judge, Fast Track Court No.V, Thiruvallur reversing the judgment and decree dated 30.04.1999 passed in O.S.No.780 of 1990 on the file of the District Munsif Court, Thiruthani.

2. The Second Appeal has been admitted on the following substantial questions of law:

(i) Is the Lower Appellate Court correct and justified in holding that the plaintiffs' suit is not maintainable in spite of its finding that originally property belonged to Munuswamy through whom plaintiffs claim title?

(ii) Having held that the property originally belonged to Munuswamy is the Lower Appellate court correct and justified in reversing the decision of the Trial Court and holding that defendant's 1 to 3 have right to assign?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass , it is not necessary to dwell into the facts of the case in detail.

4. Suffice to state that the plaintiffs had laid the suit against the defendants for the relief of permanent injunction on the footing that they are in the possession and enjoyment of the suit property and the first plaintiff had purchased the same from one Thanikachalam, who in turn obtained the suit property from one V.N.Munusamy and accordingly, it is stated that the plaintiffs and their predecessors in title had been in the possession and enjoyment of the suit property continuously and uninterruptedly and thereby, it is stated that they had prescribed title to the suit property by way of adverse possession also and further it is stated that the plaintiffs are in the possession and enjoyment of the other properties adjacent to the suit property and contending that the third defendant i.e., Tahsildar, Thiruthani attempted to issue patta in respect of the suit property in favour of the defendants 4 to 8 and as the defendants 4 to 8 are not entitled to obtain the patta assigned in their favour as the same had been already assigned in favour of V.N.Munisamy, accordingly, contending that the defendants thereby are attempting to interfere with their possession and enjoyment, the plaintiffs had come forward with the suit for the relief of permanent injunction.

5. The defendants had contested the case of the plaintiffs and particularly the 8th defendant has raised the defence that the case of the plaintiffs that they had purchased the suit property lawfully from Thanikachalam is false and in particular, he had questioned the entitlement of Thanikachalam to sell the suit property in favour of the plaintiffs and also challenged the case of the plaintiffs that they and their predecessors in interest had preferred title to the suit property by way of adverse possession. On the other hand, projected the case that the defendants 4 to 8 had been enjoying the suit property over a long period and spent huge amount for reclaiming the same and accordingly recognizing their possession and enjoyment of the suit property, it is stated that the suit property had been subdivided and accordingly patta had been assigned in the name of the defendants 4 to 8, who thereby had become the lawful owners of the suit property as per the subdivisions effected and hence the plaintiffs being not in the possession and enjoyment of the suit property and not having title to the same, and hence not entitled to maintain the suit and hence the suit is liable to be dismissed.

6. Based on the materials placed on record by the respective parties, it is found that, the trial court had accepted the case of the plaintiffs. The 8th defendant preferred the first appeal and the first appellate court, on an appreciation of the materials placed on record was pleased to set aside the judgment and decree of the trial court and thereby dismissed the suit laid by the plaintiffs. Impugning the same, the present Second Appeal has been laid.

7. Materials placed on record would go to show that the plaintiffs seek title to the suit property based on the sale deed said to have been executed in favour of the first plaintiff on 10.09.1990 marked as Ex.A1. It is further noted that the suit property was originally assigned in favour of V.N.Munusamy on 25.01.1963. It is the case of the plaintiffs that V.N.Munusamy had sold the suit property to one Thanikachalam on 12.04.1975 and with reference to the same, the plaintiffs had marked only the unregistered sale agreement marked as Ex.A2. As rightly determined by the first appellate court, when Ex.A2 is found to be not a registered document as per law, it is found that based on the same, it cannot be considered that Thanikachalam had obtained a valid title to the suit property as put forth by the plaintiffs. In such view of the matter, it is found that, when the plaintiffs have not placed any proof whatsoever worth acceptance to evidence that Thanikachalam had acquired a valid title to the suit property by way of Ex.A2 and also failed to establish that Thanikachalam had been in the possession and enjoyment of the suit property pursuant to Ex.A2, the case of the plaintiffs that they had

acquired title to the suit property by way of Ex.A1 sale deed as such cannot be countenanced in any manner. If really, Thanikachalam had acquired a valid title to the suit property from V.N.Munusamy, as rightly determined by the first appellate court, he would have approached the Revenue Officials for obtaining the transfer of patta in his favour following the same. But no document has been produced to establish, other than Ex.A2, and to safely hold that Thanikachalam had acquired a valid title and having the legal possession and enjoyment of the suit property and entitled to alienate the same in favour of the first plaintiff by way of Ex.A1 sale deed.

8. In the light of the above position, it is found that the suit property belonging to the Government and the original assignee V.N.Munusamy had expired, it is found that the suit property got subdivided into various subdivisions and accordingly, considering the long possession and enjoyment of the suit property by the defendants 4 to 8, on that basis, the Government recognizing their possession and enjoyment, accordingly, granted the patta in their favour marked as Ex.B1 on 08.09.1990. It is found that only after knowing that the assignment had been granted in favour of the defendants 4 to 8 and the plaintiffs having failed to secure the patta in their favour, it is seen that the plaintiffs had chosen to levy the suit for the relief of permanent injunction. When it is found that the suit property has been classified as Punja Anatheenam and the Government is entitled to assign the same in favour of the eligible persons and accordingly assigned by way of Ex.B1 in favour of the defendants 4 to 8 and when the said assignment in favour of the defendants 4 to 8 is not shown to be against the provisions of any law and on the other hand, the plaintiffs having come forward with the case claiming title to the suit property based on the sale deed executed by one Thanikachalam and it is found that Thanikachalam is not entitled to the suit property as above discussed, the title deed projected by the plaintiffs for claiming title, possession and enjoyment of the suit property i.e., Ex.A1 falls to the ground and thus it is found that the plaintiffs have failed to establish their claim of valid title to the suit property as well as the possession and enjoyment of the same as put forth by them. The plaintiff's claim of title to the suit property has been stoutly resisted by the defendants. Despite the same, the plaintiffs have not chosen to seek the relief of declaration with reference to the suit property. Particularly, when the defendants have challenged their claim of title to the suit property, the plaintiffs should have sought for the relief of declaration and despite the above position, the plaintiffs having failed to seek the relief of declaration, it is found that on the above score also, the plaintiffs' suit is liable to be dismissed.

9. The plaintiffs have failed to establish that their alleged vendor Thanikachalam was in the possession and enjoyment of the suit property pursuant to Ex.A2 sale agreement and furthermore, the plaintiffs having also not established that the original assignee V.N.Munusamy was in the possession and enjoyment of the suit property following the assignment in his favour, accordingly, it is found that, the plaintiffs are unable to place any proof whatsoever with reference to their possession other than Exs.A3 and A4. When Exs.A3 and A4 could not be relied upon safely for upholding the claim of possession and enjoyment of the suit property by the plaintiffs, as determined by the first appellate court, thus, it is found that no document has been placed by the plaintiffs worth acceptance to conclude that they are in the possession and enjoyment of the suit property as put forth by them. Therefore, their further claim that they had perfected title to the suit property by way of adverse possession also cannot be upheld.

9. Per contra, as per Ex.B1, it is found that the assignment of the suit property had been granted only in favour of the defendants No.4 to 8 and the "A" Register extract, Settlement Register, Copy of chitta and Sagupadi adangal produced by the defendants would go to show that, it is only the defendants, who are in possession and enjoyment of the suit property and accordingly recognizing their possession and enjoyment, the Government had assigned the suit property in their favour. The plaintiffs would claim that the defendants 4 to 7 had released their interest in respect of the suit property in favour of the plaintiffs by way of Exs.A9 to A12. The abovesaid documents have come into existence after the institution of the suit and that by themselves would not be sufficient to uphold the case of the plaintiffs as projected in the matter. The other documents projected by the plaintiffs are found to be not genuine for determining their claim of title, legal possession and enjoyment of the suit property by the plaintiffs and accordingly, it is found that the suit laid by the plaintiffs for the relief of permanent injunction does not lie as per law and as determined by the first appellate court, the same is liable to be rejected. As rightly argued by the counsel appearing for the 8th defendant, the failure of the plaintiffs in seeking the relief of declaration despite the resistance projected to the same by the defendants, it is found that on that footing also the suit laid by the plaintiffs is liable to be dismissed. In this connection, the principles of law outlined in the decision reported in 2015 (5) CTC 730 [M.Ramamoorthy and R.Senthilkumar Vs. R.Thirunavukkarasu] are taken into consideration. Further, as rightly argued by the defendants' counsel, when the suit property is classified as Punja Anatheenam and it is open to the Government to assign the said land in favour of the eligible persons and accordingly,

when it is found that the Government had chosen to assign the same in favour of the defendants 4 to 8 and when the plaintiffs had not shown that the Government is not entitled to assign the same and also that the assignment made by the Government in favour of the defendants 4 to 8 is illegal, accordingly, it is found that when the authorities concerned had acted within their scope of powers in granting the assignment of the suit property in favour of the defendants 4 to 8, in the light of the principles of law outlined in the decision reported in 74 Law weekly 347 [R.Sivaji Rao Saheb Soorvai Vs. Akilandathammal and others], the Civil Court would not be entitled to discuss the sufficiency or otherwise of the ground or the regularity of the procedures adopted by the concerned authorities in issuing the assignment in favour of the defendants 4 to 8 in respect of the suit property.

10. In the light of the above discussions, even though the suit property is found to have been originally assigned in favour of V.N.Munusamy, inasmuch as the plaintiffs claim title to the suit property based on Ex.A1 sale deed said to have been executed by Thanikachalam and when the plaintiffs have failed to establish that Thanikachalam had a valid title to the suit property and further the plaintiffs having failed to establish that V.N.Munusamy and Thanikachalam had been in the possession and enjoyment of the suit property over a long period of time and when it is found that the suit property is Punjai Anadheenam land and the Government is competent to assign the same to the eligible persons and accordingly, the Government had assigned the same in favour of the defendants 4 to 8 and the plaintiffs having not established that the abovesaid assignment in favour of the defendants 4 to 8 is against any provisions of law and furthermore, when the plaintiffs have failed to establish their legal possession and enjoyment of the suit property and also not sought the relief of declaration of title in respect of the suit property, despite the challenge thrown to their claim of title to the suit property by the defendants, in all, it is found that the first appellate court is justified in dismissing their lis. The substantial questions of law formulated in the Second Appeal are accordingly answered against the plaintiffs.

11. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

mfa

To

1. The Additional District Judge,
Fast Track Court No.V , Thiruvallur.
2. The District Munsif,
District Munsif Court, Tiruttani.

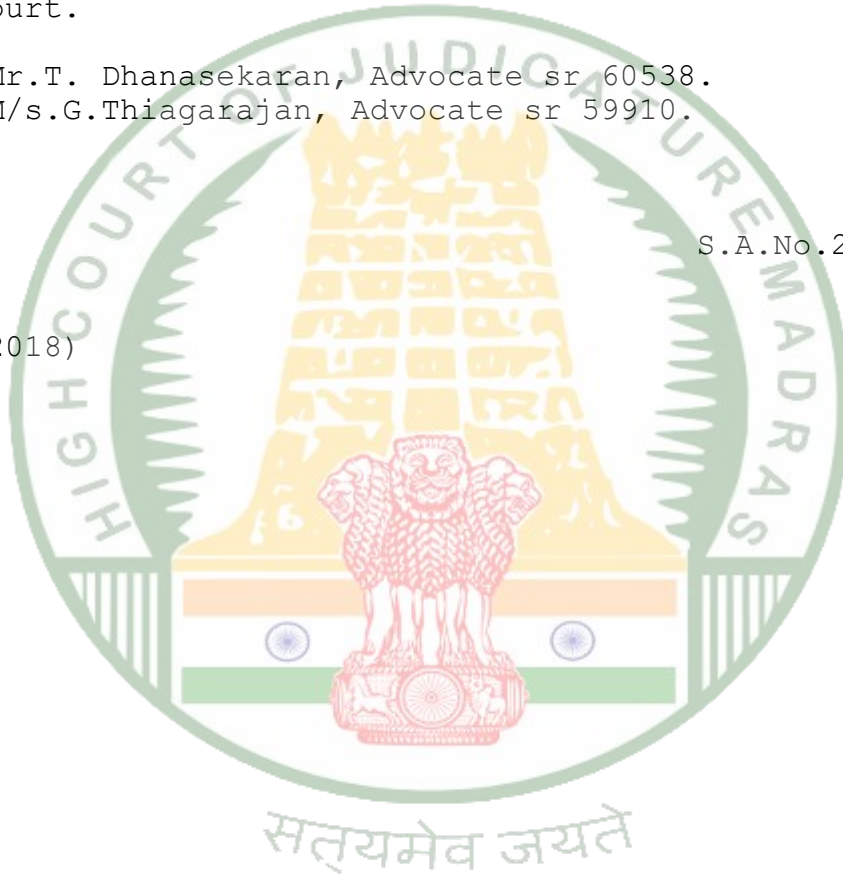
Copy to

The Section Officer,
VR Section,
High Court.

- +1 CC to Mr.T. Dhanasekaran, Advocate sr 60538.
+1 CC to M/s.G.Thiagarajan, Advocate sr 59910.

S.A.No.2193 of 2003

GJ(CO)
SP(04/10/2018)



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