



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.43 of 2018 and
C.M.P.(MD)No.721 of 2018

Balakrishnan(died)

1. Veeralakshmi
2. Raja Vengatesan
3. Meenakshi

(1st Appellant died and his LR's added as
per order in I.A.No.174 of 2016, dated 09.11.2016
and amended as per order in I.A.No.22 of 2017,
dated 08.02.2017)

... Appellants/Appellants/
Plaintiffs

Vs.

Sivagangai Samastham Devastham,
Raja Chathira Street,
Sivagangai Town, Sivagangai District,
through its Manager.

... Respondent/Respondent/
Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C., to set aside the Judgment and Decree, dated 01.09.2017 made in A.S.No.128 of 2013 on the file of the Subordinate Court, Sivagangai, confirming the Judgment and Decree, dated 26.09.2013 made in O.S.No.84 of 2011 on the file of the District Munsif Court, Sivagangai, and to allow this Second Appeal.

For Appellants : Mr.S.Srinivasa Raghavan

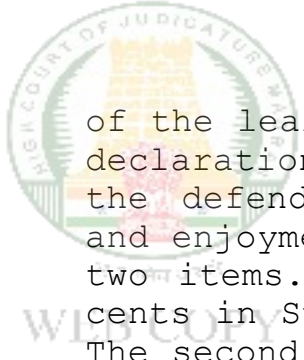
JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed by the learned Subordinate Judge, Sivagangai, in A.S.No.128 of 2013, dated 01.09.2017, confirming the Judgment passed by the learned District Munsif, Sivagangai, in O.S.No.84 of 2011, dated 26.09.2013.

2. Heard the learned counsel appearing for the appellants.

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3. The first appellant is the wife and appellants 2 and 3 are son and daughter of the plaintiff in O.S.No.84 of 2011 on the file

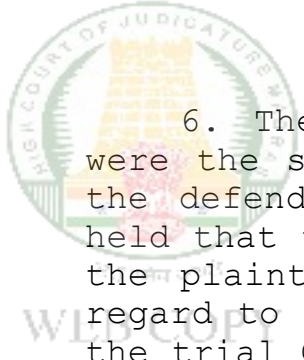


of the learned District Munsif, Sivagangai. The suit was filed for declaration of title and for consequential injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property. The suit property consists of two items. The first item is a land measuring an extent of 73 cents in Survey No.190/10 in Soorakulam Village, Sivagangai Taluk. The second item is another piece of land measuring an extent of 37 cents in Survey No.188/5, in Soorakulam Village, Sivagangai Taluk.

4. The case of the plaintiff in the Suit are as follows:-

The suit first item originally belonged to one Valliammai Achi, wife of Udaiyappa Chettiyar @ Narayanan Chettiyar and that the plaintiff's mother, by name, Ponnammal, purchased from the said Valliammai Achi, by a registered Sale Deed, dated 29.06.1978. The suit second item belonged to the plaintiff's mother, Ponnammal as it was her ancestral property. The plaintiff's mother was in enjoyment of the property, continuously and thereafter, she orally gifted the suit properties in favour of the plaintiff. Patta was also transferred in the name of the plaintiff and he was in possession and enjoyment of the suit properties. Hence, the plaintiff also perfected title to the suit properties by adverse possession.

5. The Suit was resisted by the defendant, specifically, denying the title of the vendor of the plaintiff's mother, namely, Smt.Valliammai Achi. It is specifically stated in the written statement that the said Valliammai Achi made a rival claim before the settlement Authorities and that during settlement, the title and continuous enjoyment of "Arulmighu Kannudaiya Nayagi Amman" temple of Natarasankottai, which is under the control of defendant was upheld by granting Ryotwari Patta in favour of the said temple. The settlement officer has specifically held that the vendor of the plaintiff's mother, Valliammai Achi did not have title or enjoyment over the suit properties. Since the claim of the said Valliammai Achi was also negated by the settlement Authorities in respect of the suit second item of the property, the defendant specifically contended that the plaintiff's claim that the suit second item of the property belonged to Ponnammal, the plaintiff's mother is unsustainable and mischievous. In the written statement, it is specifically stated that the sale deed executed by the said Valliammai Achi in favour of the plaintiff's mother is null and void, as her vendor had no title. It is stated in the written statement that the suit properties belonged to the temple, namely, "Arulmighu Kannudaiya Nayagi Amman" temple of Natarasankottai, which is a temple comes under the control of Sivagangai Devasthanam which in turn is governed by the provisions of Hindu Religious and Charitable Endowments Act. Since the suit properties belonged to "Arulmighu Kannudaiya Nayagi Amman" temple of Natarasankottai and Ryotwari Patta was given to the said temple, the defendants pleaded that the suit is liable to be dismissed.

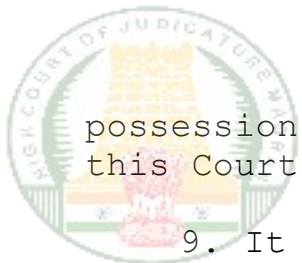


6. The trial Court, after holding that the suit properties were the subject matter before the settlement Authorities between the defendant's temple and the vendor of the plaintiff's mother held that the decision of the settlement Authorities is binding on the plaintiff as well as his predecessors in interest. Having regard to the fact that the plaintiff claimed under an oral gift, the trial Court also found that there cannot be a valid conveyance by way of oral gift and that the plaintiff cannot claim any right on the basis of the oral gift. It is also pointed out by the trial Court that the revenue records produced by the plaintiff do not establish the claim of the plaintiff as the Patta which was granted in favour of the plaintiff in the middle was cancelled by a subsequent proceedings by the Tahsildar, which is evident under Ex.B.5. Since the classification of the lands as minor inam is not in dispute and it has been held so by the settlement Authorities under the provisions of Madras Minor Inam (Abolition and Conversion into Ryotwari) Act 30 of 1963, and settlement Patta is granted in favour of the temple, unless the classification of the land is challenged by the process known to law, this Court is unable to uphold the title of the plaintiff as purchaser from the said Valliammai Achi who had failed to establish her claim/case before the settlement Authorities. No doubt the civil Court has got jurisdiction to declare title otherwise despite a decision by the settlement authorities negating the claim of the said Valliammai Achi. However, in this case no steps have been taken for more than three decades to establish her right by filing an independent suit claiming title to the property. However, the said Valliammai Achi seems to have created a document in the year 1978, after Ryotwari Patta was given in favour of the temple. The same cannot be ignored by the Courts below unless there are substantial evidence to prove title in this case. No document is produced to prove or establish the title of the said Valliammai Achi from whom the plaintiff's mother had purchased. Hence, the findings of the trial Court and the dismissal of the Suit is proper. The legal heirs of the plaintiff have preferred an Appeal in A.S.No.128 of 2013 on the file of the Subordinate Judge, Sivagangai.

7. The lower Appellate Court also considered the claim of the plaintiff in the light of settled law on the validity of the settlement officer's decision regarding grant of Ryotwari Patta in favour of the temple. It is not in dispute that the suit property is only a vacant land. Hence, presumption that possession follows valid title cannot be disregarded. Applying settled legal principles, the lower Appellate Court also agreed with the view expressed by the trial Court. Aggrieved by the concurrent findings and Judgment and Decree of the Courts below, the appellants have preferred the above Second Appeal.

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8. The learned counsel appearing for the appellants submitted that the Courts below have not dealt with the issue regarding



possession of minor inam lands. He also made an attempt to impress this Court by referring to Commissioner's report in this case.

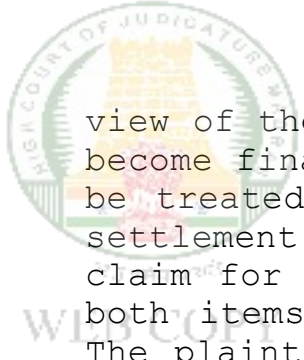
9. It is well settled that the Commissioner's report cannot be relied upon for the purpose of establishing one's possession. In this case, the Commissioner's report refers to the statement of some of the employees of the plaintiff stating that they are doing some agricultural activities in the suit property on behalf of the plaintiff. The principles behind reiterating that the Commissioner's report cannot be relied upon for establishing one's possession has to be appreciated, having regard to the nature of the report that was filed by the Advocate Commissioner during the course of inspection. Hence, this Court has no hesitation to hold that the said report of the Advocate Commissioner cannot be relied upon to establish one's possession. As pointed by the Courts below, though the plaintiff has relied upon certain documents which are revenue records to show that at some point of time, Patta was also given to the plaintiff to prove his case claiming title to the suit properties, the document filed by the defendant under Ex.B.5 would dislodge the claim of the plaintiff. Ex.B.5 is an order passed by the Tahsildar cancelling the Patta by which the name of the plaintiff was included in the revenue records. Hence, the documents, namely, Chitta or Kist receipts relied upon by the plaintiff have no significance in this case in view of the final order passed by the Tahsildar. Since the Courts below have considered the oral and documentary evidence and the pleadings of both parties in a proper perspective, the findings of the Courts below are supported by material documents and reasons which do not suffer from any legal infirmities.

10. The following substantial questions of law have been raised by the appellants in the memorandum of grounds:-

"(1) Whether the Courts below failed to find that in the absence of any other document of title Ex.B.1 to Ex.B.5, the Patta and other revenue records by themselves cannot confer title to the suit property for the respondents/ defendants?

(2) Whether the Courts below have failed to find that the entries in survey and settlement Register(Ex.A.2) served as impeccable documents of title in the absence of any other contra evidence?"

11. Ex.B.1 is an order passed by the settlement Officer granting settlement Patta in favour of the temple. This document can be considered as a document of title as it is given in recognition of pre existing after the village is taken over by the Government under the provisions of Madras Minor Inam (Abolition and Conversion into Ryotwari) Act 30 of 1963. The survey and land record under Ex.A.2 in the name of Ponnammal cannot be accepted in



view of the final order passed by the settlement Officer which has become final. Mere entry in survey and settlement register cannot be treated as a document of title in view of the order granting settlement Patta in favour of the temple. Further, the plaintiff's claim for title is through Valliammai Achi who claimed Patta for both items of the suit properties before settlement Authorities. The plaintiff claimed that suit second item belonged to Ponnammal as it was her ancestral properties. However, no specific pleading in the plaint to rest the plaintiff's claim under Ex.A.2. Hence, the questions of law are answered against the appellants.

12. As a result, the Second Appeal is dismissed and the Judgment and Decree passed by the learned Subordinate Judge, Sivagangai, in A.S.No.128 of 2013, dated 01.09.2017, confirming the Judgment passed by the learned District Munsif, Sivagangai, in O.S.No.84 of 2011, dated 26.09.2013, is affirmed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Sivagangai.

2. The District Munsif, Sivagangai.

Copy to

The Record Keeper, V.R.Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1. CC to Mr.S.Srinivasa Raghavan, Advocate SR.No.46019

S.A. (MD)No.43 of 2018 and

C.M.P. (MD)No.721 of 2018

01.02.2018

pmu

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