



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD).No.256 of 2016

and

CMP(MD) No.3451 of 2016

1. S.Jebamalai
2. Chithiraipazham
3. Murugesan
4. Karuthiah
5. Suyambu

... Appellants/Appellants/Defendants

Vs.

1. P.John Thomas
2. P. Devasagayam

... Respondents/Respondents/Plaintiffs

PRAYER : Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 16.03.2012 rendered in A.S.No. 142 of 2011 on the file of the Sub ordinate Judge, Thoothukudi as confirmed by the decree and judgment dated 28.06.2011 rendered in O.S.No.45 of 2010 on the file of the District Munsif of Sathankulam by allowing this second appeal.

For Appellants : Mrs. Jessi Jeeva Priya
for Mr.S.Subbiah
For Respondent NO.1 : Mr.R.Balakrishnan

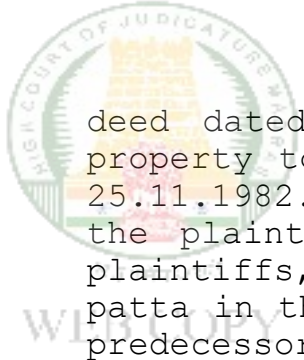
ORDER

The defendants in the suit in O.S.No.45 of 2010 on the file of the learned District Munsif, Sathankulam are the appellants in this Second Appeal. The Suit is O.S.No.45 of 2010 on the file of the learned District Munsif, Sathankulam was filed by the respondents 1 and 2 for permanent injunction restraining the defendants, their men and agents not to disturb the peaceful possession and enjoyment of the suit property. The suit property has been described as a property measuring an extent of 1.49.5 Hectares in Survey Number 437/3A in Eluvaraimukki Panchayat within Nazareth Sub-Registration District.

2. The case of the plaintiffs as stated in the plaint are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

The suit property originally belonged to one Thangiah Nadar and he sold the property to one Gandhimathi by a registered sale



deed dated 29.01.1974. The said Gandhimathi once again sold the property to one Ambigaiaammal through a registered sale deed dated 25.11.1982. The said Ambigaiaammal sold the properties in favour of the plaintiffs by a registered sale deed dated 28.08.2008. The plaintiffs, after purchasing the property from Ambigaiaammal, got patta in their name. The patta stood in the name of the plaintiffs' predecessors-in-interest. The plaintiffs have paid the kist and the possession and enjoyment of the plaintiffs is well established by the revenue records and title deeds. The defendants, who have no right over the suit property, encroached into the suit property on 20.03.2010 and made an attempt to disturb the possession of the plaintiffs. Hence, the suit.

3. The suit was resisted by the appellants disputing the title of the plaintiffs' predecessors-in-interest. The defendants also questioned how the sale deed could be executed in favour of the plaintiffs' by their predecessors-in-interest, who have no title to the property. Contending that the defendants are in possession of the property, the defendants/appellants prayed for dismissal of the suit. The defendants have also raised a plea that the suit property as described in the plaint is not in existence.

4. The appellants' further case is that the properties in Survey Nos.435,436 and 437 including the suit property originally belonged to Adhi Dravidar People of Thaivilai village for about four generations. It is only the Adhi Dravidars in the village who were cultivating the land by raising manawari crops. It is further stated that in the suit property, there were several palmyra trees and tamarind trees. The defendants/ appellants further contended that they are paying tax to the Government for the trees and that 2 (C) patta was also issued to the Adhi Dravidars living in that village. Since the suit property belongs to one Pulamadan @ David, it is contended that the property in Survey No.437 belongs to him. It is to be seen that the contents of the written statement are self-contradictory. The defendants claimed right under 2(C) patta admitting that the property is Government property and the defendants tried to set up the title in the name of a single individual by name Pulamadan @ David.

5. Before the Trial Court, the plaintiffs examined the first plaintiff as PW- 1 and marked four documents as Exhibits.A1 to A4. The defendants have examined two witnesses and marked thirteen documents as Exhibits.B1 to B13. Apart from the documents filed by both sides, a Commissioner was also appointed by the Court to file his report and the report, plan and sketch filed by him were marked as Exhibits C.1 to C.3.

6. The Trial Court specifically found that the witnesses examined by the defendants themselves admitted that no patta has been granted either in favour of the defendants or in favour of



other villagers in respect of survey no.437/3A. Though the documents filed by the defendants show that 2(C) patta had been issued, it is now admitted before this Court and the lower Court that the documents relied upon by the defendants, namely 2(C) patta are related to survey No.437/2 and not with reference to survey no.437/3A. The learned counsel appearing for the appellants admitted this in the course of argument. The trial court as well as the lower appellate court considered all the factual issues in a proper perspective, in the light of the pleadings and overwhelming evidence and allowed the suit specifically holding that the plaintiffs have established their title and that the defendants' plea of enjoyment is not supported by any document or oral evidence. 2(C) patta is given for the enjoyment of trees. In this case admittedly patta has been issued to the plaintiff's. The court below have concurrently held that the plaintiffs have established their title and possession and the defendants have miserably failed to prove their claim of title or enjoyment over the suit property. As against the concurrent judgments of both Courts below, the defendants have preferred the present Second Appeal.

7. The learned counsel for the appellants is unable to convince the court that anyone of the substantial question of law framed by the appellants has substance.

8. Having regard to the specific findings of the court below and the findings of the Courts below are supported by material documents both oral and documentary and proper reasoning, this Court is unable to interfere with the findings of the courts below in view of Section 100 of the Code of Civil Procedure.

9. In the absence of any substantial question of law, this Court is inclined to dismiss the second appeal.

10. As a result, this second appeal is dismissed and the judgment and decree of the learned Sub ordinate Judge, Thoothukudi in A.S.No. 142 of 2011 confirming the judgment and decree of the learned District Munsif, Sathankulam passed in O.S.No. 45 of 2010 are confirmed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub Assistant Registrar(CS-IV)



To

1. The Sub-ordinate Judge,
Thoothukudi District.

2. The District Munsif,
Sathankulam.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mrs.JESSI JEEVA PRIYA, Advocate in SR.No.71815

+1 CC to Mr.R.BALAKRISHNAN, Advocate in SR.No.72037

AAV

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