

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Second Appeal No.313 of 2008

and

Second Appeal No.314 of 2008

A. Manickam ... Appellant in both the appeals

-Vs-

1. Jayakumari ... Respondent both the appeals

2. The District Collector,
Vellore District,
Vellore.

3. The Tahsildhar,
Tirupatur Taluk,
Vellore District.

4. The Village Administrative Officer,
Puthagaram Village,
Tirupathur, Tirupathur Taluk,
Vellore District.

... Respondents 2 to 4
in S.A.No.313 of 2008

PRAYER in S.A.No.313 of 2008: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 31.10.2007 passed in A.S.No.37 of 2007 by the Subordinate Judge, Tirupathur, Vellore reversing the decree and judgment dated 22.12.2006 passed in O.S.No.199 of 1999 by the District Munsif, Tirupathur, Vellore.

PRAYER in S.A.No.314 of 2008: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 31.10.2007 passed in A.S.No.38 of 2007 by the Subordinate Judge, Tirupathur, Vellore reversing the decree and judgment dated 22.12.2006 passed in O.S.No.598 of 1998 by the District Munsif, Tirupathur, Vellore.

For Appellant in both appeals : Mr. T.Dhanyakumar

For respondent/1st respondent : Mr. V.Ragavachari
in both the appeals

For respondents 2 to 4
in S.A.314/2008 : No appearance

COMMON JUDGMENT

S.A.No.313 of 2008 has been filed against the judgment of the first appellate court, reversing the findings of the trial court in O.S.No.199 of 1999. Similarly, S.A.No.314 of 2008 has been filed against the judgment of the first appellate court, reversing the findings of the trial court in O.S.No.598 of 1998.

2. The brief facts leading to file a suit in O.S.No.598 of 1998 are as follows. The plaintiff is the brother of the defendant. Item No.1 of the suit property was settled in favour of the defendant on 19.12.1973 by the father of the parties. The defendant was given in marriage in some other place, which is 70 kilometers away from the suit property. Therefore, the plaintiff was enjoying the suit property and he is in possession of the suit property. The 2nd item of the suit property in O.S.No.598 of 1998 was purchased by the defendant in the year 1981. Though the first and second item of the suit properties are stand in the name of the defendant, she never in possession of the suit properties. The plaintiff was cultivating the suit property and also obtained patta in his name and patta pass book under the Tamil Nadu Pass Book Act, Adangal and other revenue records are also stand in the name of the plaintiff. Therefore, the plaintiff has perfected to his title by way of adverse possession and hence, he prayed for declaration of his title and right over the suit property and also permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. The defendant in O.S.No.598 of 1998, who is the plaintiff in O.S.No.199 of 1999, denied the contention of the plaintiff. Her contention is that the suit property was in her possession and that the plaintiff has obtained patta in unlawful manner and hence, the same will not bind her. According to the defendant, the other revenue records are also fabricated one and hence prayed for dismissal of the suit.

4. The defendant in O.S.No.598 of 1998 has filed a suit in O.S.No.199 of 1999 for cancellation of patta issued in the name of her brother, who is the plaintiff in O.S.No.598 of 1998.

It is the contention of defendant in O.S.No.199 of 1999 that he is in continuous possession of the suit property for more than 12 years and that the patta has also been issued after due enquiry and hence there is no cause of action to file the above suit.

5. The trial court after framing necessary issues and after analysing the evidence on record, partly decreed the suit in O.S.No.598 of 1998 with regard to the Item No.1 of the suit property and dismissed with regard to the item No.2 of the suit property and also dismissed the suit in O.S.No.199 of 1999 on 22.12.2006 by way of common judgment . Aggrieved over the said decree and judgment of the trial court, the defendant (Jayakumari) filed appeals in A.S.No.37/2007 and A.S.No.38/2007. The first appellate court allowed the said appeals and reversed the decree and judgment of the trial court. Against which, the present second appeals have been filed by the plaintiff (Manickam) .

6. While admitting the second appeal in S.A.313 of 2008, the following substantial questions of law were framed.

1. Whether the suit is barred under Section 14 of the Tamil Nadu Patta Pass Book Act.
2. Whether the entry in the patta pass book under Ex.A56 issued under Section 3 of the Tamil Nadu patta Pass Book Act is the prima facie evidence of title in favour of the 4th defendant?

7. Similarly, in S.A.No.314 of 2008, the following substantial questions of law were framed.

1. Whether the defendant is entitled to mark xerox copy of the settlement deed as Ex.B1, without any pleadings and ground for marking secondary evidence as prescribed under Section 65 of Indian Evidence Act.
2. Whether the entry in the patta pass book under Ex.A56 issued under Section 3 of the Tamil Nadu Patta Pass Book Act is prima facie evidence of title in favour of the plaintiff.

8. For the sake of convenience, the parties are referred to as per their rank in the suit in O.S.No.598 of 1998.

9. The learned counsel appearing for the appellant in both the appeals would submit that the revenue records and patta issued in the name of the plaintiff in O.S.No.598 of 1998 clinchingly established the fact that much prior to the

settlement deed executed in favour of the defendant, the plaintiff was in possession of the property and his possession is continues till filing of the suit. He would further submit that the revenue records are stand in the name of the plaintiff and patta also issued in his name under Section 3 of the Tamil Nadu Patta Pass book Act, after due enquiry and the possession of the plaintiff is open, continuous, uninterrupted one. Hence, he perfected his title to the property by adverse possession. However, the first appellate court without analysing the evidence properly, dismissed the appeals and hence the same is required to be interfered with by this court.

10. Per contra, the learned counsel appearing for the first respondent/defendant would submit that the defendant is the owner of the item No.1 of the suit properties in O.S.No.598 of 1998 vide settlement deed dated 19.12.1973 (Ex.B1) and therefore, issuing patta in the name of the plaintiff, without any enquiry, cannot confer any semblance of right in the suit property in the eye of law. His further submission is that the first appellate court considered the entire evidence thoroughly and rendered a well found judgment and hence, the same cannot be interfered with.

11. I have perused the judgment of the trial court, first appellate court and also the pleadings and evidence of the respective parties. The suit in O.S.No.598 of 1998 had been filed by the plaintiff against his own sister for declaration of his title over the suit property and permanent injunction restraining the defendant from interfering with his peaceful possession of the suit properties, on the ground that he is perfected his title to the suit property by way of adverse possession. The title deeds, namely the settlement deed dated 19.12.1973 (Ex.B1) in respect of the item No.1 and the sale deed dated 06.01.1981 (Ex.B2) in respect of the item No.2 in favour of the defendant are not disputed by the plaintiff. In fact, the plaintiff has also filed the said title deeds as Ex.A1 and Ex.A2 respectively and admitted the fact that the first defendant is the owner of the properties. However, he claimed right over the properties on the ground that he has perfected his title to the suit properties by way of adverse possession. It is to be noted that to establish the plea of adverse possession, the onus lies on the plaintiff to prove such plea. There must be an evidence to show that his possession is open, continuous, uninterrupted and hostile to the interest of the owner of the property.

12. A perusal of the entire plaint shows that there is no pleadings as to the date when the possession of the plaintiff become adverse to the interest of the owner of the property. It is essential to plead and prove the specific date when his

possession become adverse as against true owner. It is also curious to note that during the course of cross examination the plaintiff as PW1 has categorically admitted that since his sister (defendant) was given in marriage for some other village, he was requested to look after the property and only on permission given by his sister, he occupied the properties. In fact, he ignored the plea of adverse possession. Therefore, merely because the plaintiff has obtained certain revenue records on the strength of some cultivation made by him, the same cannot confer any title to him and it cannot be said that those documents are sufficient to prove the plea of adverse possession.

13. Admittedly, the title of the suit properties is always remained with the defendant. This being the position, without making any enquiry or serving any notice to the defendant, the revenue authorities issued the patta in the name of the plaintiff under Section 3 of the Tamil Nadu Patta Pass Book Act, which is nothing but illegal. When a person has no semblance of right in the suit property, having known that somebody is owner of the property, without serving any notice to the owner, issuing of pata in favour of such person cannot confer any title.

14. The defendant has filed a suit in O.S.No.199 of 1999 to cancell the patta issued in favour of the plaintiff on the ground that without serving any notice to her, patta was granted and she has also filed documents to establish her title. Therefore, there cannot be any bar under Section 14 of the Tamil Nadu Patta Pass Book Act to institute a suit. Accordingly, the substantial questions of law framed in A.S.No.313 of 2008 are answered against the appellant.

15. As far as the substantial question of law No.1 framed in A.S.No.314 of 2008 is concerned, admittedly, the title of the defendant has not been disputed. The settlement deed executed in favour of the defendant with regard to the item No.1 of the suit property was admitted by the plaintiff himself. Therefore, mere marking of xerox copy of settlement deed as Ex.B1 cannot be a ground to deny the right of the defendant, when the plaintiff himself admitted the title of the defendant. Even assuming that such original settlement deed has not been marked in the court below, that will not take away the right of the defendant, inview of the admission by the plaintiff in his pleadings with regard to the execution of the settlement deed in favour of the defendant. Therefore, the substantial question of law No.1 framed in S.A.No.314 of 2008 is answered against the appellant. As far as the substantial Question of Law No.2 is concerned, the same is already discussed above and answered against the appellant.

16. In the result,
(i) The second appeal in S.A.No.313 of 2008 is dismissed. No costs.
(ii) The second appeal in S.A.No.314 of 2008 is dismissed. No costs.
(iii) The decree and judgment dated 31.10.2007 passed by the Subordinate Judge, Tirupathur, Vellore District (first appellate court) in A.S.No.37/ 2007 and 38/2007 are upheld.
mst

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Thirupattur, Vellore.
2. The District Munsif,
Thirupattur, Vellore.

+1cc to Mr.T.Dhanyakumar, Advocate, vide SR.No.12484
+1cc to Mr.V.Raghavachari, Advocate, SR.No.12115

S.A.No.313 of 2008
and
S.A.No.314 of 2008

Kak(27/06/2019)

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