

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

S.A.No.213 of 2007
& MP.No.2 of 2007

[Judgment Reserved on 28.01.2019]

Srinivasalu Naidu ... Appellant / Plaintiff
Vs.

1.Chandran Naidu ... 1st Respondent / Defendant No.1

2.The Tahsildar,
Katpadi Taluk,
Katpadi,
Vellore

3.The Collector of Vellore District,
Collectors Office,
Sethavachari,
Vellore - 632 009 ... Respondents 2 & 3 /
Defendants 2 & 3

PRAYER: Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 28.04.2006 made in A.S.No.7 of 2005, on the file of the Subordinate Judge, Gudiyatham, Vellore District, in reversing the Judgment and Decree, dated 15.10.2004 made in O.S.No.518 of 2000, on the file of the District Munsif, Gudiyatham.

For Appellant : Mr.J.Shanmuga Sundara Balu

For Respondent-1 : Mr.G.T.Subramanian

For Respondents : No Appearance
(R2 and 3)

JUDGMENT

This second appeal has been filed by the appellant / plaintiff, against the Judgment and Decree, dated 28.04.2006 in A.S.No.7 of 2005, on the file of the learned Subordinate Judge, Gudiyatham, Vellore District, in reversing the Judgment and Decree, dated 15.10.2004 made in O.S.No.518 of 2000, on the file of the District Munsif, Gudiyatham.

2. The appellant herein had filed a Suit in O.S.No.518 of 2000, on the file of the learned District Munsif, Gudiyatham, seeking for the relief of permanent injunction, restraining the defendants 2 and 3 and their subordinates, from changing the patta in favour of the 1st defendant, in respect to the suit property. The learned District Munsif, Gudiyatham, by the Judgment and Decree, dated 15.10.2004, allowed the Suit and granted injunction in favour of the appellant / plaintiff.

3. Aggrieved by the same, the first respondent herein had filed an appeal in A.S.No.7 of 2005, on the file of the learned Subordinate Judge, Gudiyatham. The learned Subordinate Judge, Gudiyatham, by the Judgment and Decree, dated 28.04.2006, allowed the said appeal and set aside the decree passed by the learned District Munsif, Gudiyatham. Feeling aggrieved by the same, the plaintiff herein has filed the present Second Appeal.

4. For the sake of convenience, the parties are referred to herein, as per their ranking in the Suit.

5. The averments made in the plaint, in brief, are as follows:-

The plaintiff and the first defendant are brothers. The suit property is the ancestral property of the plaintiff and he is paying necessary Kist to the Government. The first defendant is absolutely stranger to the Suit property and he has no right or title over the same. Now, the first defendant is trying to change the patta in his name by influencing the 2nd and 3rd defendants. After hearing the same, the plaintiff issued a Notice on 21.07.2000, to the 2nd defendant with a request not to change the patta, with regard to the suit properties either in the name of 1st defendant or any other name. Even after receiving the said Notice, the second defendant attempted to change the patta in favour of the first defendant. Hence, the plaintiff had filed the suit for injunction, restraining the defendants 2 & 3, not to change the patta in the name of the first defendant, pertaining to the suit schedule properties.

6. Written statement filed by the 1st defendant, in brief, reads as follows:-

The defendant and the plaintiff are son of Late Muthukrishna Naidu. Initially, both the defendant and the plaintiff had filed a Suit, before the Sub-Court, Vellore, in O.S.No.861/1979, for the relief of partition, in respect to the joint family property. In the said Suit, preliminary decree for partition was passed and thereafter, the defendants in the said Suit, who are none other than, the other brother and sister of plaintiff and defendants, prepared an appeal before this Court in A.S.No.919/1982 and the same was dismissed. Subsequent to that, based on the preliminary decree, the learned Subordinate

Judge, Vellore, in I.A.No.633/1993, appointed an Advocate Commissioner to divide the suit property. The Advocate Commissioner, after complying the order passed by the Court, divided the Suit property and submitted a report. In the meantime, the above referred Suit is transferred to the Sub Court, Gudiyatham, for passing the final decree and it is numbered as O.S.No.4/1999.

7. The plaint schedule property is the subject matter of the suit in O.S.No.861/1979, on the file of the Sub Court, Vellore. By suppressing the result of the above Suit, the plaintiff obtained a patta and the same was questioned by the 1st defendant. Only thereafter, the plaintiff filed the partition suit and the same is pending, still now. The present Suit is in abuse of process of law. The present Suit filed by the plaintiff is hit by resjudicata, under Section 11 of C.P.C., and not maintainable under Order 2, Rule 2 C.P.C., The 1st defendant, who is the co-parcener along with the plaintiff, is entitled to a share in the plaint mentioned property. The plaintiff cannot claim exclusive right over the plaint schedule property and this defendant has got every right to get joint patta. There is no cause of action. According to the first defendant, the appeal is liable to be dismissed. In respect of the defendants 2 and 3 are concerned, they were remained ex-parte in the trial Court.

8. Based on the above pleadings, the learned District Munsif, framed necessary issues and tried the Suit.

9. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1. He examined one Ellappa Naidu as P.W.2 and 8 documents were marked, as Exs.A1 to A8. On the side of the defendants, the first defendant examined himself as D.W.1 and no document was marked.

10. The learned District Munsif, Gudiyatham, after considering the materials produced before him found that the documents executed on the side of the plaintiff proves the right and title of the plaintiff and granted a decree for injunction. In the appeal filed by the appellant, in A.S.No.7/2005, observing that the plaintiff, after suppressing the pending suit in O.S.No.4/1999, manipulated the records and obtained a patta from the Revenue Authorities and further, restrained defendants 2 and 3, from transferring patta into the name of 1st defendant or any other person, is unwarranted, uncalled for and finally came to the conclusion that the plaintiff is not entitled to the discretionary relief of permanent injunction and allowed the appeal and set aside the injunction granted in favour of the plaintiff.

11. While admitting the Second Appeal, this Court has

formulated the following Substantial Questions of Law, for consideration:-

1. Whether in Law till finality of effecting delivery by metes and bounds after the final decree, whether any finality is reached in a partition suit and as such, the adverse findings of the first appellate Court in holding that mere passing of preliminary decree itself will constitute the finality of partition suit, is sustainable in Law?

2. Whether in Law the First Appellate Court has not misconstrued the cause of action and the nature of relief sought for in the present suit and as such, the findings of the first appellate Court in non-suing the plaintiff is not perverse?

3. When the main cause of action for the present suit namely the first defendant's attempt to change the patta to the suit property is only subsequent to the filing of earlier suit and when the same is not available at the time of filing of earlier suit more particularly when the present plaintiff and first defendant, jointly stood as plaintiffs and filed earlier suit, whether in law the present suit is hit by the provisions under Order 2 Rule 2 CPC and as such, the adverse findings of the First Appellate Court is sustainable in Law?

12. I have heard the learned counsels for the parties and have also gone through the record of the case. My findings on the above substantial questions of law are as under :--

Substantial Questions of Law Nos.1 & 2:-

13. The learned counsel appearing for the appellant would contend that as of now, final decree application filed by the plaintiff before the Subordinate Court, Vellore, has been transferred to the Sub-Court, Gudiyatham and is still pending. In the said circumstances, before reaching the finality in the partition suit, the first appellate Court, by holding the preliminary decree, allowed the appeal, which is unsustainable.

14. On the other hand, the learned counsel appearing for the first respondent would contend that as of now, no valid partition has been effected between the plaintiff and the defendant and thereby, if the decree of injunction is granted in favour of the plaintiff, it would restrain the Government Officers viz., defendants 2 and 3, in performing their duties.

15. Mere passing the preliminary decree does not confer any right or title over the suit property. The appellant / plaintiff sought relief only as against defendants 2 and 3. Admittedly, they are the Government servants perform their duties, as per the Act and Rules. Even though they issued a patta in favour of the plaintiff, if in the final decree proceedings, the right of the plaintiff is modified, it is necessary for the defendants 2 and 3, to change the patta. In civil law, when there is a dispute between the rival parties, touching upon the title to the property, the competent forum could be only the civil Court. In the instant case, the second respondent had not followed such procedures. Based on the application submitted by the plaintiff, the patta has been changed in favour of the plaintiff.

16. The first appellate Court only by considering the above position of Law, denied the relief sought for by the plaintiff. So, the order of the first appellate Court, is not perverse. Otherwise, the relief of injunction is a discretionary one. For obtaining the said relief, the plaintiff has to prove a prima facie case, balance of convenience and irreparable injuries. But, in this case, the document submitted on the side of the plaintiff does not show any prima facie case. Mere filing a copy of Patta Pass Book, Kist receipt and other receipts, pertaining to the suit property, which stand in favour of the plaintiff, will not create any cause of action in the present suit and the first appellate Court has correctly observed the case of the plaintiff and allowed the appeal. Accordingly, the Substantial Question of Law Nos.1 and 2, are answered and decided in favour of the 1st respondent.

Substantial Questions of Law No.3:-

17. Admittedly, before the learned District Munsif, Gudiyatham, both the plaintiff and the first defendant filed a Suit for partition. During the time of pendency of the said suit, as per the case of the plaintiff, the 1st defendant attempted to change the patta in his name. In the said circumstances, the learned counsel appearing for the respondent made a submission before this Court that the suit filed by the plaintiff is hit by Order 2, Rule 2 CPC. Even though the appellant is the plaintiff in the earlier suit, the cause of action arose for the suit filed for the relief of partition and cause of action arose for filing the suit pertaining to the appeal, are entirely different. In fact, in the earlier suit, the defendants 2 & 3 / respondents 2 & 3 herein are not parties to the proceedings. So, the relinquishment part of claim is not all arise in the Suit. It is a settled law that the injunction will not be granted for any purpose, for which, the law furnished an adequate remedy. An action at law will not be enjoyed where adequate relief can be obtained in the Court,

where that action is pending. In respect to the relief asked by the plaintiff, he is having an option to file an appeal before the competent Authority in respect to the order passed by the defendants 2 & 3. In the said circumstances, since the law permits an adequate remedy, the order of injunction cannot be granted. Moreover, where a remedy for any wrong or injury has been provided by a statute, no relief in equity can be awarded by any injunction. As already pointed out, the remedy is available to the plaintiff under the statute of Patta Passbook Act, 1983. Without choosing the modalities mentioned in the said Act and Rules, filing the suit for discretionary relief cannot be entertained. Section 49(h) of the Specific Relief Act provides that an injunction cannot be granted, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust.

18. It is settled principles of law that, if the authority acts, in violation of instruction and Rules, then, the civil Court has got all the jurisdiction under Section 9 of CPC. However, the Courts of equity have no power to restrain the Public Officers by injunction, from performing any official act, which they are by Law, required to be performed or acts which are not in exercise of the Authority or discretion reposed in them. In general rule, the Court of equity will not compel the public officers to perform their official duty. In this case, granting injunction in favour of the plaintiff is nothing but, a compulsion to restrain the public officers from doing their duties. The Substantial Question of Law No.3 is answered accordingly.

19. On a careful consideration of factual position and in the light of qualitative and quantitative discussions mentioned supra, I have no hesitation to hold that the Judgment and Decree passed by the learned Subordinate Judge, Gudiyatham, in A.S.No.7/2005 is a well considered one and no interference is necessary.

20. In the result, the Second Appeal is dismissed, by confirming the Judgment and Decree, dated 28.04.2006 passed in A.S.No.7 of 2005, by the learned Subordinate Judge, Gudiyatham, Vellore District, in reversing the Judgment and Decree, dated 15.10.2004 made in O.S.No.518 of 2000, on the file of the District Munsif, Gudiyatham. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

MPK
To

1.The Subordinate Judge,
Gudiyatham,
Vellore District.

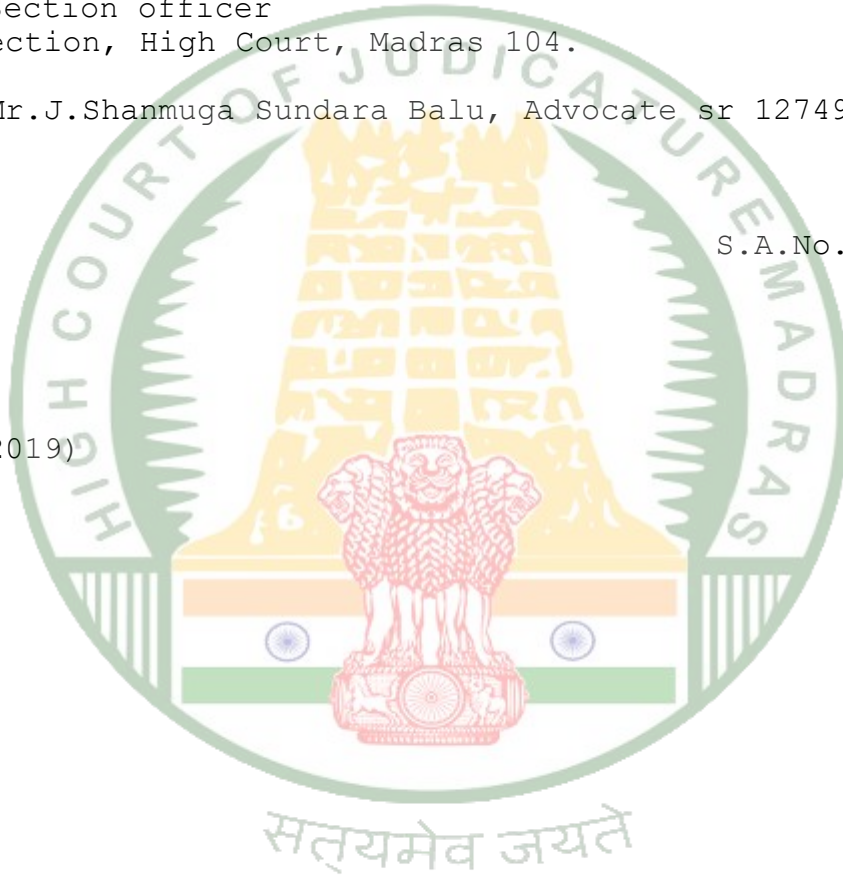
2.The District Munsif,
Gudiyatham

Copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.J.Shanmuga Sundara Balu, Advocate sr 12749.

S.A.No.213 of 2007

RJI (CO)
SP(07/05/2019)



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