

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2019

DATED: 25.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
S.A. No. 1349 of 2003
And
C.M.P.No. 11907 of 2003

Meenakshi ... 1st Defendant/Appellant/Appellant

Vs.

1. K.Marimuthu ... Plaintiff/1st Defendant/1st Respondent

2. The District Collector
Salem.

3. The Assistant Commissioner
Urban Land Tax Salem - 7
Salem District. ... 2nd & 3rd Defendants/ 2nd & 3rd
Respondents

/ 2nd and 3rd Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment dated 18.02.2003 made in A.S.No. 8 of 2002 on the file of the Sub Court, Mettur, confirming the decree and Judgement dated 27.04.2000 in O.S.No. 71 of 1992, on the file of the District Munsif Court, Mettur.

For Appellant : Mr. Venkataseshan

For 2nd Respondent : Mr. N.Manikandan
Government Advocate

JUDGMENT

The first defendant in O.S.No. 71 of 1992 on the file of the District Munsif Court, Mettur, is the appellant herein.

2. O.S.No. 71 of 1992 had been filed by K.Marimuthu against Meenakshi and the District Collector, Salem and the Assistant Commissioner, Urban Land Tax Salem, seeking a Judgment and Decree declaring that the patta issued in the name of the first defendant with respect to the suit property as null and void and to grant a mandatory injunction directing the third

defendant to issue patta jointly in the name of the plaintiff and the first defendant. By Judgment dated 27.04.2000, the suit was decreed.

3. The first defendant then filed A.S.No. 8 of 2002 before the Sub Court, Mettur. By Judgment dated 18.02.2003, the appeal was dismissed. As against that Judgment, the first defendant had filed the present Second Appeal.

4. The Second Appeal had been admitted on the following two substantial questions of law:-

"(i) Whether the Courts below are right in decreeing the suit when the suit itself is not maintainable since there is a specific bar under Section 14 of the Tamil Nadu Patta Pass Book Act 4/1986?;

(ii) Whether the plaintiff is entitled to file this suit without seeking remedy provided under the Tamil Nadu Patta Pass Book Act before the appellate authorities in the year 1992 when the patta was granted in the year 1984?".

5. O.S.No. 71 of 1992 had been filed by the plaintiff Marimuthu stating that he was the brother-in-law of the first defendant Meenakshi and that the property, namely, land and house at Kuttapatty Village in S.No. 111/1 to an extent of 1038 sq.ft., was the joint family property of himself and the first defendant. It was stated that he was an ex-serviceman and the first defendant was the widow of his elder brother Thangavel. It was stated that the first defendant had obtained patta in her name for the property from the third defendant who had issued patta and consequently, the suit had been filed for a declaration that the patta issued in the name of the first defendant was null and void and for a mandatory injunction directing the first defendant to issue joint patta in the name of the plaintiff and the first defendant.

6. The first defendant filed a written statement denying that the suit property was a joint family property. It was stated that Thangavel, the husband of the first defendant, had constructed the building on 15.11.1970 and had obtained patta on 28.09.1984. After his death, the first defendant continued to be in possession. It was stated that the first defendant was entitled to the property absolutely and the plaintiff had no right over the same.

7. The third defendant filed a written statement which was adopted by the second defendant in which it had been stated that the plaintiff had no right or title over the suit property, and that the first defendant had produced house tax receipts and consequently is the absolute owner. It was also stated that under Section 14 of the Tamil Nadu Patta Pass Book Act 1986, no suit shall lie against the Government in respect of any claim in relation to entries in any patta pass book. It was stated that the suit should be dismissed.

8. The District Munsif, Mettur, by Judgment dated 27.04.2000, decreed the suit. The District Munsif did not frame any issue with respect to the maintainability of the suit and with respect to the jurisdiction of the Civil Court to examine issues raised under the Tamil Nadu Patta Pass Book Act 1986. The District Munsif just examined the documents of possession filed by the plaintiff and the first defendant and decreed the suit. The first defendant then filed A.S.No. 8 of 2002. This Appeal came up for consideration before the Sub Court, Mettur. By Judgment dated 18.02.2003, the Sub Judge framed only one point for consideration, namely, whether the Appeal should be allowed or not. The Sub Judge also did not examine the issue relating to the maintainability of the suit and relating to the jurisdiction of the Civil Court to examine the issues raised in the plaint. The appeal was dismissed. Challenging the said judgment, the first defendant had filed the present Second Appeal.

9. The Second Appeal had been admitted on the following two substantial questions of law:-

"(i) Whether the Courts below are right in decreeing the suit when the suit itself is not maintainable since there is a specific bar under Section 14 of the Tamil Nadu Patta Pass Book Act 4/1986?;

(ii) Whether the plaintiff is entitled to file this suit without seeking remedy provided under the Tamil Nadu Patta Pass Book Act before the appellate authorities in the year 1992 when the patta was granted in the year 1984?".

10. Section 14 of the Tamil Nadu Patta Pass Book Act 1986 is as follows:-

"14. Bar of suits - No suit shall lie against the Government or any officer of the

Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with such declaration."

11. The case of the plaintiff in the suit was that the suit property, namely, land and building at Kuttapatty Village, Mettur, Salem District, was a joint family property belonging to him and to the first defendant. The first defendant was the widow of his elder brother Thangavel. However, the first defendant claimed that the suit property was her absolute property and that her husband Thangavel had constructed the house. The third defendant had granted patta in the name of the first defendant. The suit was filed for a declaration that the said grant of patta in the name of the first defendant was null and void and for a mandatory injunction against the third defendant to issue patta jointly in the name of the plaintiff and the first defendant. As seen, Section 14 of the Tamil Nadu Patta Pass Book Act, 1986 provides a specific bar to file a civil suit for the said relief. The parties should approach the revenue authorities and seek cancellation / modification of the grant of patta. Both the Courts below have erred in law in entertaining the suit and in decreeing the suit.

12. With respect to the first substantial question of law, I hold that the suit is not maintainable since there is a specific bar under Section 14 of the Tamil Nadu Patta Pass Book Act 1986. With respect to the second substantial question of law, I hold that the plaintiff was not entitled to file the suit without seeking the remedy provided under the Tamil Nadu Patta Pass Book Act before the Appellate Authorities as provided in the said Act in the year 1992 when the patta was granted in the year 1984.

13. I hold that the suit itself is not maintainable. Consequently, the Judgments passed have no force of law.

14. The Second Appeal is therefore allowed, however without costs. The suit in O.S.No. 71 of 1992 on the file of the District Munsif Court, Mettur, is struck off the records. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

vsg

To

1. Sub Court, Mettur.
2. District Munsif Court, Mettur.
3. VR Section, High Court, Madras
4. The District Collector, Salem
5. The Assistant Commissioner,
Urban Land Tax Salem-7, Salem District

+1cc to Special Government Pleader SR.No.6220

S.A. No. 1349 of 2003
And
C.M.P.No. 11907 of 2003

CP(CO)
GMY(29/03/2019)

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