

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.01.2019

DATED: 10.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 1543 of 2003

Sushila ... Appellant/Plaintiff

vs.

1. The Collector
Villupuram District
Villupuram.

2. The Tahsildar
Villupuram

... Respondents/ Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 17.03.2003 made in A.S.No. 175 of 2002 on the file of the Principal District Judge, Villupuram, confirming the Judgment and Decree dated 28.06.2002 made in O.S.No. 319 of 2000 on the file of Principal District Munsif, Villupuram.

For Appellant : Mr. T.R.Rajaraman

For Respondents : Mr.Sricharan Rangarajan
Special Government Pleader (CS)

JUDGMENT

The plaintiff in O.S.No. 319 of 2000 on the file of the Principal District Munsif Court, Villupuram, is the appellant herein.

2. O.S.No. 319 of 2000 had been filed by the plaintiff P.Sushila represented by her power agent Ms.V.Pushpa against the Collector, Villupuram District and the Tahsildar, Villupuram, seeking a Judgment and Decree directing the defendants to change the patta of the suit property in the name of the plaintiff and for costs.

3. The suit property was described as land in Thodarthanur village in New S.No. 4, Old S.No. 291, 1.06 acres in Patta No.

3, within Koliyanur Panchayat Limits, Villupuram District. This suit came up for consideration before the learned Principal District Munsif, Villupuram, on 28.06.2002 and the suit was dismissed.

4. The plaintiff filed A.S.No. 175 of 2002 on the file of the Principal District Court, Villupuram. By Judgment dated 17.03.2003, the Appeal was dismissed. Challenging that Judgment, the present Second Appeal has been filed. The Second Appeal had been admitted on the following two substantial questions of law:-

"(i) Is the Principal District Judge is right in dismissing the suit based on a suit register which is not even marked as document?;

(ii) When the title of the plaintiff is proved beyond by Exs. A-1 to A-56, is the Principal District Judge is correct in dismissing the suit brushing aside the same and placing reliance on a document not before the Court?"

O.S.No. 319 of 2000 - District Munsif Court, Villupuram:

5. The plaintiff claimed that the property in S.No. 4, Old S.No. 291, 1.06 acres in Thodarthanur village within Koliyanur Panchayat Limits, Villupuram District, originally belonged to Ruthrappa Chettiyar. Since he did not pay the land revenue, the Collector of South Arcot District brought the property for sale and it was purchased in revenue auction by Valeeswara Subramania Gurukkal and sale certificate was issued on 16.09.1880. It had been stated that the property then devolved to Arunachala Gurukkal, who leased it out to Duraisamy Goundar on 27.09.1970. Thereafter, his son Dhandapani Gurukkal enjoyed the properties. The son of Dhandapani by name Viswanathan succeeded to enjoy the suit property. He paid kist receipts. He sold the property along his sons Sivaraman and Sivakumar to the plaintiff on 22.01.1996 for a consideration of Rs.50,000/-. The plaintiff then made several representations to transfer the patta for her name. Since the defendants did not oblige, the suit had been filed for the reliefs stated above.

6. The second defendant filed written statement which was adopted by the first defendant. In the written statement, it was stated that the suit was not maintainable. It was stated that the averments made in the plaint regarding the successors in title to the suit property should be proved by the plaintiff. It was stated that patta was never issued to the predecessor in title of the plaintiff. It was stated that the suit property

was assigned in the name of Valeeswara Alayam. It was also stated that notice under Section 80 Civil Procedure Code had not been issued. It was also stated that the property was the subject matter of Hindu Religious and Charitable Endowment. It was stated that the suit should be dismissed with costs.

7. On the basis of the above pleadings, the learned Principal District Munsif, Villupuram, framed the following issues:-

"(i) Whether the defendants are to change the patta of the suit property in the name of the plaintiff?; and

(ii) To what other reliefs?"

8. During trial, the plaintiff examined two witnesses as PW-1 and PW-2. She also marked Exs. A-1 to A-56. Ex.A-1 dated 16.09.1980 is the sale certificate issued by the Collector, South Arcot District; Ex.A-2 is the xerox copy of the lease deed executed by Arunachala Gurukkal in favour of Duraisamy dated 29.09.1970; Ex.A-5 is the sale deed by Viswanathan and two others in favour of the plaintiff dated 22.01.1996; Ex.A-10 to A-29 are kists receipts; and Exs. A-32 and A-55 are receipts and demand notice of electricity board.

9. On the side of the defendants, one witness was examined and Ex.B-1 dated 12.04.2002 which is the copy of Adangal for 1390 fasli to 1405 fasli and 1409 fasli were marked. On the basis of the oral and documentary evidence, the learned Principal District Munsif found that the defendants have challenged the title of the plaintiff. However, the plaintiff had not instituted the suit seeking declaration of title. Without claiming that relief, it was observed that the plaintiff had only sought the relief to change the name in the patta. It was also found that the statements in the plaint regarding hierarchy of title were not supported by documents. It was also specifically found that Viswanatha Kurukkal was not examined as a witness and it was not proved that he was a descendant of Valeeswara Kurukkal and that he inherited the property. It was also found that the plaintiff had not produced encumbrance certificate to support her case. It was also seen that the trial Court had relied on Ex.B-1, which is the Adangal extract. Further, the District Munsif also relied on another unmarked document, which is the suit register in relation to O.S.No. 171 of 1957. In that suit, the property had been declared as owned by Valeeswara Kovil. Consequently, the suit was dismissed with costs.

A.S.No. 175 of 2002 - Principal District Court, Villupuram:

10. The plaintiff then filed Appeal before the Principal District Court, Villupuram. The learned Principal District Judge, reappraised the evidence and framed points for consideration. The Principal District Judge observed that the evidence of DW-1, who was a staff of the Taluk office indicated that the revenue records stood in the name of Valeeswara Temple. Ex.B-1, Adangal extract for a period of 20 years, was in the name of Valeeswarar. The learned Principal District Judge also found that in the suit register in relation to O.S.No. 171 of 1957, it was found that Valeeswara Temple was declared to be the owner of the suit property. It was specifically found that the trustees of the temple had no manner of right to deal with the possession of the property. It was specifically found that the suit property did not belong to the vendors of the plaintiff. It was therefore found that the plaintiff had not made out any case for transfer of patta and consequently, the Appeal was dismissed.

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11. Challenging that Judgment, the plaintiff had filed the present Second Appeal.

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

"(i) Is the Principal District Judge is right in dismissing the suit based on a suit register which is not even marked as document?;

(ii) When the title of the plaintiff is proved beyond by Exs. A-1 to A-56, is the Principal District Judge is correct in dismissing the suit brushing aside the same and placing reliance on a document not before the Court?"

13. The plaintiff, Susila represented by her power of attorney Pushpa had filed O.S.No. 319 of 2000 on the file of the District Munsif Court, Villupuram, seeking a Judgment and Decree directing the defendants, namely, the Collector, Villupuram District and the Tahsildar, Villupuram, to transfer patta with respect to the suit property in her name. The suit property was described as follows in the plaint:-

Description of the property

Villupuram Registration District Villupuram Joint I Sub Registration District at Thodarthanur Village, New S.No. 4 (Old S.No. 291) Ac 1.06 (out extent Ac 0.95) patta No.3 within the Koliyanur Panchayta Limits.

14. A bare reading of the description shows that the boundaries have not been given. The description is very vague to state the least. The plaintiff had not sought any declaration of title over the suit property. She claimed that the suit property had been purchased in revenue auction by Valeeswara Subramaniya Gurukkal. The said pleadings are also very vague. Thereafter, the plaintiff had given the descendants of Subramaniya Gurukkal and finally stated that she had purchased the property from one Viswanathan by registered sale deed dated 22.01.1996. The plaintiff had not proved the lineage as claimed by her. She had not proved that Viswanathan and his sons, who were the vendors were actually descendants of Valeeswarar Subramanian Gurukkal.

15. A reading of the Judgment of the First Appellate Court reveals that the learned First Appellate Court had noted that the Principal District Munsif, while examining Ex.A-1, which is the original sale certificate issued in favour of Valleswara Subramaniya Gurukkal dated 16.09.1880 by the Collector, South Arcot, had found that it was already marked in O.S.No. 171 of 1957. The Principal District Munsif, therefore examined the issue further by examining the suit register. It is seen found that the First Appellate Court also called for the suit register from the District Munsif Court, Villupuram and perused the relevant entries of O.S.No. 171 of 1957. It was found that three persons were plaintiffs who had instituted the suit against Valeeswara Temple by the trustees Arumuga Chettiyar of Koliyanur Village Taluk.

16. That suit was for a declaration that the suit schedule property belonged to the plaintiff's family. It was found that joint endorsement was made in the plaint and accordingly, it was agreed that the title of the property vested with the temple. Consequently, it was found that the vendors of the plaintiff in the present suit had no right or title to convey property. The present suit was be dismissed on that ground.

17. The substantial questions of law which had been framed was whether the Principal District Judge was right in dismissing the suit based on a suit register which was not marked as document.

18. Rule 74 of Civil Rules of Practice is as follows, which relates to protection of records in the custody of a Court:-

" (2) When a court finds it necessary to require the production of the records of another court, it shall address a letter of request as in Form No.22 to the presiding judge of that court."

19. Every Civil Court has a right to examine the records of another case and call for the records and rely on the same. They need not be marked as evidence. The documents are public documents. They are admissible in law. In this case, the entries relating to O.S.No. 171 of 1957 in the suit register was very relevant. There is a presumption under Section 114(e) of the Indian Evidence Act that any entry made in a Government register had been made in the normal official course and regularly performed. Consequently, I hold with respect to the first substantial question of law that the Principal District Judge was right in dismissing the suit based on the suit register of O.S.No. 171 of 1957. As a matter of fact, both the Principal District Munsif, Villupuram and the Principal District Judge, Villupuram are to be commended for preventing a fraud being played in the guise of a suit seeking transfer of patta without seeking declaration of title.

20. The second substantial question of law is whether the title of the plaintiff had been proved by Exs. A-1 to A-56. The First Appellate Court was right in brushing aside the said documents. Exs. A-1 to A-56 do not prove the title of the plaintiff. At the most, they can prove that as a fact kist was paid and electricity charges were paid. It would never imply that the persons in whose names the receipts were are the title holders of the property. The person, who paid the taxes/charges would be shown in the receipt. The documents cannot and do not establish title. I hold that the plaintiff has not established title over the property. The plaintiff has come to Court with a false and fraudulent case. Consequently, I hold that the Principal District Judge was correct in dismissing the suit.

21. For all the reasons stated above, I hold that the Second Appeal has to fail and accordingly it is dismissed with costs. The Judgment and Decree dated 17.03.2003 made in A.S.No. 175 of 2002 on the file of the Principal District Judge, Villupuram, and also the Judgment and Decree dated 28.06.2002 made in O.S.No. 319 of 2000 on the file of Principal District Munsif, Villupuram are confirmed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge,
Villupuram.
- 2.The Principal District Munsif,
Villupuram.
- 3.The Section Officer,
VR Section, High Court, Madras.

+1cc to the Special Government Pleader Sr.2945

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