



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.01.2019	Pronounced on: 24.01.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.1682 of 2004
& C.M.P.No.13143 of 2004

1. Venu Naidu,
2. Srinivasalu Naidu ... Appellants /Defendants
/versus/
1. G.Mythila,
2. Kala,
3. Kokhila,
4. Sampathrani,
5. Karunakaran,
6. Jeeva,
7. Kumari ... Respondents/Plaintiffs

PRAYER: This Second Appeal has been filed under Section 100 of Civil Procedure Code, praying against the judgment and decree passed by the Additional District Court (Fast Track Court) Tirupattur, Vellore District in A.S.No.91 of 2002 dated 23.04.2003 reversing the judgment and decree passed by the Additional District Munsif Court, Ambur, Vellore District in O.S.No.24 of 1998 dated 02.07.2001.

For Appellants : Mr.K.R.A.Muthukriushnan

For Respondents : No appearance

J U D G M E N T

The defendants in the original suit are the appellants before this Court in this Second Appeal.

2. The case of the plaintiff is that the suit property originally belongs to his paternal uncle Ananda Naidu who got the property by way of grant from the Government. In the suit property, the plaintiff's father and plaintiff's paternal uncle put a small hut and enjoying the same. The plaintiff's paternal uncle died intestate as a Bachelor. After his death, the entire property came into the possession and enjoyment of the plaintiff's father. After the death of plaintiff's father in the year 1979, the plaintiff and his brother Munisamy are in possession and enjoyment of the property jointly. The Natham patta has been issued in the name of the plaintiff. During the lifetime of the plaintiff's father, the suit property was let out to one Babu. He was permitted to put a thatched house. Later, Babu vacated the property and handed over the possession to the plaintiff. The first defendant has no right whatsoever over the suit property. He forcibly evicted the plaintiff through his men and agent. The complaint given to the police went in vein. Despite several request made to the first defendant to handover the suit property, he has not handed over the property to the plaintiff but had leased it out to the 2nd defendant for a monthly rent of Rs.200/-. Therefore, suit for declaration to declare the rights of the plaintiff and mandatory injunction, directed the 2nd defendant to vacate the suit property and handover the vacant possession.

3. In the written statement filed by the first defendant and adopted by the 2nd defendant, the appellants herein had contended that the suit property was owned by Sri Muthalamman Temple situated at Udayendram Village. The Temple Authorities leased out the property to one Babu, 20 years ago on conditions that he should put up the construction on the vacant land. The cost of construction will be adjusted from the monthly rents. After expiry of the lease period of 20 years, Mr.Babu should vacate the suit land and handover the land along with building to the Temple Authorities. Accordingly, on expiry of 20 years, Babu vacated and handed over the suit property to the Temple Authorities. Thereafter, the suit property was leased out to one Harikrishnan for the period of 2 years. On expiry of the said lease period, it was leased out to one Nagaraj for a period of one year. Then, it is leased out to the 2nd defendant for a period of 1½ years. On expiry of the lease period, the 2nd defendant has handed over the suit property to the Temple Authorities. The suit property is owned by "Sri Muthalamman Temple". Superstructure was constructed by Babu. After expiry of the lease period, the 2nd defendant who was the last lessee has handed over the possession of the suit property to the Temple Authorities. The suit was never been in possession and enjoyment of the plaintiff. Further, the suit is bad for non-joinder of necessary parties namely Sri Muthalamman Temple and the valuation of the property is also not properly

assessed. The Court Fee paid is not correct.

4. The trial Court has framed the following issues:

(i). Whether the plaintiff is entitled for declaration and mandatory injunction for possession as prayed for in the suit?

(ii). What are the reliefs the plaintiff is entitled?

5. The plaintiff has examined two witnesses and 28 documents were marked as Ex.A.1 to Ex.A.28. On the side of the defendants 2 witnesses were examined.

6. The trial Court, after considering the evidence placed before it, dismissed the suit.

7. The trial Court accepted the plea of the defendants that the suit property is owned by Sri Muthalamman Temple and it is a necessary party in the suit filed for declaration of title. Regarding patta Ex.A.25 issued in the name of the plaintiff and the tax receipts in the name of Ananda Naidu and the plaintiff, the trial Court has held that these document do not convey title or proof of tile. Further, the trial Court has also on scrutiny of the tax demand and receipts relied by the plaintiff has pointed that in Ex.A.11, the tax assessment number is shown as 159 for Door No.8/A. Whereas in Ex.A.7 to Ex.A.10, Ex.A.12 to Ex.A.15, Ex.A.17 and Ex.A.18 the assessment number is shown as 175 for door No.17. In Ex.A.19 to Ex.A.22 the tax receipts issued in the name of the plaintiff the assessment number is shown as 925 for Door No.17. The trial Court observing that if the patta initially granted to Ananda Naidu for S.No.11. Ex.A.23 is issued to the father of the plaintiff in respect of S.No.567/3B. This has been transferred to the plaintiff under Ex.A.25 mentioning new S.No.630/4 and old S.No.567/3B. So the trial Court has held that the documents relied by the plaintiff does not indicates they are in respect of the suit property.

8. Hence the plaintiff preferred the Appeal. In the Appeal, the Lower Appellate Court has formulated the following points for determination.

1. Whether the plaintiff's father's brother was granted Natham patta with regard to suit property and the suit property was in their possession till it was let out to one Babu?

2. Whether the plaintiff's/Appellants further proves that after handling over possession by the said Babu these Appellants/Plaintiff are in possession of the suit property.

3. Whether the 1st Respondent/Defendant, dispossessed this Appellant/Plaintiff from the suit property, claiming the suit property belonged to the Muthalamman Temple.

4. Whether the defendant/Respondent proves that the suit property belonged to the Muthalamman Temple and this Temple only rented the suit property to one Babu, who constructed the building in the suit property?

5. Whether the suit filed by the Appellant is to be dismissed for non-joinder of Muthalamman Temple?

6. To what relief?

9. Considering the deposition of PW.1/Plaintiff (Murugasan), PW.2 (Babu) and DW.1 (Venu Naidu) and extracting the relevant portion of their deposition, the Lower Appellate Court held that the defendants have admitted that patta for the suit property stands in the name of the plaintiff. The plaintiff's father and after his demise, the plaintiff were paying Kist for the suit property. The temporary possession with Babu and the construction made by him in the said property was pursuant to the lease given in favour of Babu by the plaintiff's father and not by the Temple Authorities. Therefore, the Lower Appellate Court held that when the plaintiff's father and the brother of plaintiff's father were granted Natham Patta with regard to the suit property, the plea that the said land was in their possession and they let out to Babu found to be proved.

10. The Lower Appellate Court has also ruled-out that there is no evidence let in by the defendants to prove the suit property belongs to Sri Muthalamman Temple or the Temple Authorities leased it to Babu. Since, the defendants have failed to establish the contra plea that the suit property belongs to "Sri Muthalamman Temple", the plea of the plaintiff that they were forcibly dispossess by the defendants ought to be accepted.

11. Regarding non-joinder of necessary party, the Lower Appellate Court has held that the property is proved to be owned by the plaintiff through patta. So, Sri Muthalamman Temple is not a necessary party to the suit. Having held so, the trial Court reversed the finding of the trial Court and allowed the suit granting decree of declaration and recovery of possession.

12. Aggrieved by the judgment of the Lower Appellate Court, the present Second Appeal is preferred by the defendants.

This Court, at the time of admission of the Second Appeal has formulated the following Substantial Questions of Law.

(i). Whether patta is the conclusive proof to determine the title of the suit immovable property especially when the survey number varies in the suit schedule ?

(ii). Whether the suit against second appellant is maintainable in law when the plaintiff admitted that the second appellant vacated from the suit property and Muthalamman Temple authorities let out the suit property to the third party?

(iii). Whether the First Appellant Court is right in law to decided the issue of declaration in favour of the respondents when the plaintiff failed to prove the case as per plaint pleadings and lot of variation in pleadings and evidence of PW.1?

13. The learned counsel for the Appellants would submit that the Lower Appellate Court had erred in relying upon the patta which is not proof for title. Without impleading the true owner namely Sri Muthalamman Temple, the suit has framed is not maintainable. While the trial Court has rightly considered the inherent defect in the plaint and had dismissed the suit.

14. The Lower Appellate Court has erred in relying upon the patta without proper verification of the survey numbers mentioned in the suit schedule and in the patta. The suit against the 2nd Appellant ought not to have been proceeded when the 2nd appellant has categorically stated that he has handed over the possession to the Temple Authorities and he has nothing to agitate in the suit. When the plaintiff has failed to prove title as well as the possession, the First Appellate Court ought not to have granted decree of declaration in the light of contradictions in the PW.1 pleadings and his evidence.

15. The learned Counsel for the appellant would submit that when the plaintiff himself admits that the electricity service connection for the suit land stands in the name of Sri Muthalamman Temple, the Lower Appellate Court ought to have held that Sri Muthalamman Temple is a necessary party and non-impleading the Sri Muthalamman temple is fatal to the plaintiff case.

16. The learned counsel would mainly harp on the point that the property belongs to Sri Muthalamman Temple. Therefore, the declaration of title in respect of the suit property in

favour of the plaintiff ought not to have been granted. The plaintiff has traced the title and possession of the suit property through his father and senior paternal uncle.

17. To prove the possession and title, the plaintiff has rely upon the communication received from Land Survey and Record Department, dated 20.04.1982, addressed to Gurusamy Naidu/the father of the plaintiff, which is the earliest document from the Revenue Department relied by the plaintiff. Prior to that, House Tax Receipts (Ex.A.2 to Ex.A.14 for the years 1977 to 1997), issued in the name of Ananda Naidu senior paternal uncle of the plaintiff are marked. Thereafter, house tax receipts stands in the name of plaintiff. The Patta has been issued in the name of the plaintiff is marked as Ex.A.25.

18. To contradict and disprove the case of the plaintiff, the defendants have not produced any document either to show the property owner by Sri Muthalamman Temple or the Electricity service connection stands in the name of Sri Muthalamman temple or Sri Muthalamman Temple, earlier lease out the property to one Babu, who enjoyed lease holder right, for more than 20 year and handed over the land and building, back to the Temple Authorities. In the absence of documentary proof, to dis-believe the claim of the plaintiff, the Lower Appellate Court has allowed the suit reversing the finding of the Trial Court.

19. The Trial Court, while appreciating the Ex.A.23, Ex.A.24 and Ex.A.25 had pointed out the variations in the survey numbers to dismissed the suit. Further, the trial Court took exception on non-production of agreement between the plaintiff's father and one Babu (PW.2) to show that Sri Muthalamman Temple is not the owner of the property but only the plaintiff.

20. These findings of the trial Court has rightly negatived by the Lower Appellate Court since, the property described in the plaint carries both the old and new survey numbers and the patta number issued in the name of the plaintiff. While, the identification of the property for which the declaration and injunction is sought for by the plaintiff is clear and unambiguous, also tallies with the documents relied by the plaintiff, without an iota of material the defendants question the right of the plaintiff on an imaginary ground that the suit property belongs to Sri Muthalamman Temple. If really, Sri Muthalamman Temple has any right over the suit property, it is always open to them to identify the property and claim for possession. When the defendants have not produced any documents that they were in possession of the property under Sri Muthalamman Temple, mere averment without any documents will not lend any credence to their case.

21. In the result, the Second Appeal is dismissed. No costs. Consequently, Connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District Court
(Fast Track Court) Tirupattur,
Vellore.
- 2.The Additional District Munsif Court,
Ambur, Vellore.
3. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.K.R.A..Muthur Kriushnan, Advocate, S.R.No. 5829

Second Appeal No.1682 of 2004

CNR(CO)
GN(14/03/2019)

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