

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

SECOND APPEAL NOS. 1851 OF 2004 & 307 OF 2007

M.Mohamed Mansoorsha,
Son of Mohamed Hanifa,
Residing at No.38, North,
Pattakkal Street, Tittacherri,
Thittachery Post,
Nagapattinam Taluk and District.

... Appellant
in both cases

Vs.

1. S.Kateeya Banu,
Wife of Sheik Allavudheen,
Residing at 40-B, North,
Pattakkal Street, Tittacherri,
Thittachery Post,
Nagapattinam Taluk and District.

... 1st Respondent in
SA.No.1851 of 2004
at sole Respondent in SA.307 of 2007

2. Kasim Beevi,
W/o.Mohammed Hanifa,
North Pattakkal Street,
Thittacherry Village,
Nagapattinam.

... 2nd Respondent
in S.A.No.1851 of 2004

Prayer in S.A.No.1851 of 2004:-

Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Learned District Judge, Nagapattinam passed in A.S.No.52 of 2003 dated 14.10.2003 reversing the decree and judgment of the Learned District Munsif, Nagapattinam passed in O.S.No.489 of 2000 dated 11.02.2003.

Prayer in S.A.No.307 of 2007:-

Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Learned District Judge, Nagapattinam passed in A.S.No.72 of 2004 dated

12.09.2006 confirming the decree and judgment of the Learned Principal Subordinate Judge, Nagapattinam passed in O.S.No.83 of 2003 dated 07.06.2004.

For Appellant : Mr.S.Raghu
in all cases

For R1 & R2 : Mr.R.Venkatesulu
in
S.A.No.1851 of 2004 for Mrs.Usha Raman

For Respondent : Mr.R.Venkatesulu
in
S.A.No.307 of 2007 for Mrs.Usha Raman

COMMON JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. The dispute is around a piece of property in S.No.53/4, new S.No.53/9, to an extent of 5 cents and the construction put up on the said land.
S.A.No.1581 of 2004

3. The contention of the appellant is that the Government land which was assigned to the mother of the plaintiff by the Government and enjoyed by her along with the family members was sold by the mother to first defendant on 24.01.2000. The sale deed is a sham and nominal document without any validity. Hence, the appellant has filed the suit in O.S.No.489 of 2002 seeking relief of permanent injunction, contending that though the patta was granted to his mother the 2nd defendant, the property was jointly enjoyed by him along with his mother and she is carrying on wet-grinder shop in the premises, he being in continuous possession and enjoyment of the property under the sale deed dated 31.10.2000, the first defendant should not interfere with his peaceful possession and enjoyment. Both the Courts have held against the plaintiff/appellant. Though the appellant has lost his case, considering the possession being with the plaintiff/appellant the Appellate Court held that he cannot be evicted without due process of law.

3. Pending appeal, the first respondent herein has filed the suit in O.S.No.83 of 2003 for recovery of possession against this appellant. The said suit was allowed by the trial Court. On appeal, the trial Court judgment and decree was confirmed.

4. In this above said factual background, the appellant has preferred the S.A.No.1851 of 2004 on the ground that in a suit for injunction, the trial Court has incidentally gone into the title of the suit property and held against him. Though it granted a decree of injunction in his favour the adverse finding regarding title requires interference. The finding of the Lower Appellate Court that the defendants are having title to the suit property is beyond the scope of the relief sought in the suit.

S.A.No.307 of 2007

5. In the Second Appeal No.307 of 2007, the appellant has lost the case against the respondents regarding his prayer for recovery of possession. He has contended that the Court below has erred in casting the burden on the defendant/appellant regarding proof of title. The Courts below have committed grave error in upholding the title of the plaintiff vendor based on the patta. When it is settled preposition of law that the patta is not proof for title and patta cannot confer title without document of title.

6. It is contended by the learned counsel that the vendor of the plaintiff in O.S.No.83 of 2003 is none other than the mother of the appellant. The appellant is a co-owner of the suit property along with his mother. Therefore, the vendor of the plaintiff cannot alienate the suit property claiming it as her absolute property. In this connection, it is contending that the Courts below has failed to note that after the death of Mohammed Hanifa who is the husband of the plaintiff vendor, the plaintiff vendor would have inherited only a minor share and only to that extent, she can alienate. Therefore, the plaintiff would not have got better title than what her vendor had. Therefore, the decree for recovery of possession to the entire extent of the suit land is bad.

7. Both the Second Appeals were taken up together and heard the learned counsel for the appellant and the respondents.

8. In the course of the submission, it is brought to the notice of this Court that pending appeal, the 2nd respondent died. However, the Appellant is none other than the son of the 2nd respondent and it is an admitted fact that the suit property is already been alienated by the deceased 2nd respondent in favour of the 1st respondent who has been defending the suit filed by the appellant in O.S.No.489 of 2000 and he is also the plaintiff in O.S.No.83 of 2003. Therefore, the real litigation is only between the appellant and the first respondent in these two appeals.

9. As far as, the suit for injunction laid by the

appellant is concerned, the Lower appellate Court has gone into the issue of title incidentally and partially allowed the suit for injunction with liberty to the defendants to file the suit for recovery of possession. As a consequence, the respondent herein has initiated the suit in O.S.No.83 of 2003, seeking for recovery of possession. In the subsequent suit in O.S.No.83 of 2003, both the Courts have gone into the facts and the documents relied by the parties, had passed a decree for recovery of possession, based on the sale deed dated 21.12.2000, executed by the mother of the appellant in favour of the first respondent.

10. The learned counsel appearing for the appellant would submit that when patta was granted by the Government in favour of the Appellant's mother, the intention of the Government was to assign patta in favour of the entire family members and not for the Kasim Beevi individually. Therefore, the spirit of assigning patta has not been considered by the Courts below, while allowing the suit filed by the respondent for recovery of possession. However, to counter the same, the learned counsel appearing for the respondents would submit that the concept of joint family or un-divided family property is unknown to Mohammadan in law. When the patta was granted to Kasim Beevi by the Government, her husband was alive but patta was issued only to Kasim Beevi and not for the family members of Kasim Beevi.

11. In the normal circumstances, though grant of patta will not confer title, when the patta emanates from the proceedings of the Government by assignment, it is as good as a title document. The gravamen of litigation between the parties is regarding the right of the respondents, derived through the sale deed executed by Kasim Beevi. In the suit initiated by the appellant, the Lower Appellate Court had found that the appellant is in possession of the property, though he had no title over it. The mother of the appellant who had title over the property by way of assignment, has already alienated the property in favour of the 1st respondent through a valid sale deed. This has prompted the first respondent to initiate the fresh suit for recovery of possession and had succeeded in the both the Courts.

12. The legal preposition canvassed by the learned counsel for the appellant that the assignment of patta in favour of Kasim Beevi has to be construed, as an assignment to the entire family members does not have any backing of legal provision or judicial pronouncement.

13. In the light of the above facts, there is no

substantial Questions of law involved in both the appeals for this Court to interfere the finding of the Courts below. Hence, both the Second Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

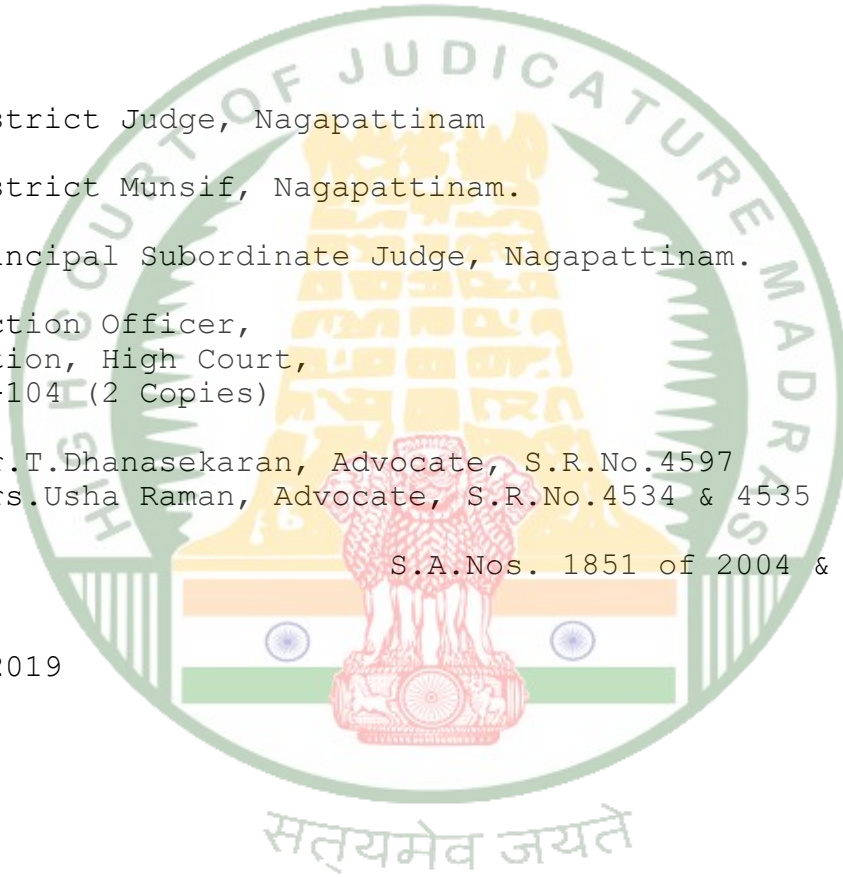
1. The District Judge, Nagapattinam
2. The District Munsif, Nagapattinam.
3. The Principal Subordinate Judge, Nagapattinam.
4. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+2cc to Mr.T.Dhanasekaran, Advocate, S.R.No.4597

+2cc to Mrs.Usha Raman, Advocate, S.R.No.4534 & 4535

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VSN-II (CO)
CS/01/03/2019



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