

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2019

PRONOUNCED ON : 14.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1505 of 2005

1.Kasi Naikar (Died)
2.Devaki
3.Elumalai
4.Alamelu

...Appellants/Plaintiffs

(Appellants 2 to 4 are brought
on record as LRs of the deceased
sold appellant vide order of Court
dated 31.07.2009 made in CMP.
Nos.2056 to 2058 of 2008 in
S.A.No.1505 of 2005)

Vs.

1.Boopathy Naikar
2.The Tahsildar
Taluk Office,
Tirukalukundran Town & Taluk,
Kancheepuram District.

...Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC
against the Judgement and Decree dated 27.07.2005 passed in
A.S.No.95 of 2004 on the file of the Principal Subordinate
Court, Chengalpattu, reversing the Judgment and Decree dated
02.11.2004 passed in O.S.No.44 of 2000 on the file of the
District Munsif cum Judicial Magistrate, Tirukalukundram.

For Appellants	: Mr.K.Hariharan
For Respondent	: Mr.R.Venkatesan
No.1	
For Respondent	: Mr.N.Manikandan
No.2	Govt. Advocate (C.S)

JUDGMENT

Challenge in this second appeal is made to the Judgement
and Decree dated 27.07.2005 passed in A.S.No.95 of 2004 on the
file of the Principal Subordinate Court, Chengalpattu, reversing
the Judgment and Decree dated 02.11.2004 passed in O.S.No.44 of
2000 on the file of the District Munsif cum Judicial Magistrate

Court, Tirukalukundram.

2.The Second appeal has been admitted on the following substantial questions of law:

"(i).Can the Lower Appellate Court ignore the plaintiff's Title Deed Ex.A1 and the consequential patta Ex.A2 based on independent title and try to find any title in the defendant without the first defendant producing any independent title deed?

(ii).Is it open for the Appellate Court to ignore the Ex.A1 Title Deed in favour of the plaintiff without assigning any reason and ignore the patta Ex.A2 based on it and to disbelieve the possession of plaintiff based on Exs.A3, A4 and A5?

(iii).Is not the act of Lower Appellate Court trying to believe a patta as a title in contract to the title deed i.e. independent title deed, a jurisdictional error and failure to exercise the jurisdiction and a material error apparent on the face of record and improper?

(iv).Is the Lower Appellate Court right in holding that the plaintiff did not prove his possession by ignoring the Exs.A3, A4 and A5 and is not such a conclusion (not even a finding) perverse even on facts?."

3.Parties are referred to as per their rankings in the trial Court.

4.The suit has been laid by the plaintiff for the reliefs of declaration, permanent injunction and mandatory injunction.

5.Putting forth the case that the suit property belongs to the plaintiff and as per the case of the plaintiff, the plaintiff's ancestors got a Pangu in the suit survey number and the other Pangutharar's of the suit survey number viz., Vedagiri, Irusappa Naicker, Duraisamy Udayar and Govindasamy Udayar, have sold their Pangus, in all, of an extent of 72 cents in the suit survey in favour of the plaintiff by way of a registered sale deed dated 11.11.1984 and thus, it is stated by the plaintiff that the entire extent comprised in the suit survey number belong to him and recognising his possession and enjoyment of the same, patta had been transferred in his favour in patta No.351 and accordingly, the plaintiff is also paying kist to the suit property and enjoying the suit property by

raising crops and the first defendant, who is a neighbour, put forth a false claim of right to the suit property without any basis as if he has been granted patta in respect of the suit property. On enquiry, the plaintiff has learnt that the patta has been transferred in favour of the first defendant without any notice and in this connection, it is stated that the plaintiff has issued a notice to the Thasildhar, the second defendant. However, no action has been initiated with reference to the same by the second defendant and inasmuch as the first defendant is attempting to interfere with the plaintiff's possession and enjoyment of the suit property, it is stated that the plaintiff has been necessitated to levy the suit for appropriate reliefs both as against the first defendant as well as the second defendant.

6.The case of the first defendant in brief is that the suit property belongs to the first defendant and patta has been issued in his favour and adangal extract also discloses the enjoyment of the suit property by the first defendant. The authority, on considering the title, possession and enjoyment of the suit property by the first defendant, accordingly, issued the patta proceedings in favour of the first defendant on 25.07.1997 and the same had been communicated to the plaintiff and if at all the plaintiff is aggrieved over the same, he has to prefer the appropriate appeal or revision to the concerned authorities as provided under law as regards the same and the plaintiff is not entitled to challenge the same by way of a Civil Action. The plaintiff is not in possession and enjoyment of the suit property as claimed in the plaint. The claim of title to the suit property by the plaintiff as described in the plaint is not true. The plaintiff has to establish that he has a valid claim of title to the suit property as put forth in the plaint and the plaintiff, without any cause of action, has laid the suit and accordingly, sought for the dismissal of the plaintiff's suit.

7.In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A7 were marked. On the side of the first defendant, DW1 was examined and Exs.B1 to B9 were marked.

8.The trial Court, on a perusal of the materials placed on record by the respective parties, both oral and documentary, was pleased to grant the reliefs in favour of the plaintiff as prayed for. Impugning the same, the first defendant has preferred the first appeal and the first appellate Court, on a consideration of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and consequently, dismissed the plaintiff's suit. Aggrieved over the same, the plaintiff has come forward with the present second appeal.

9.The suit property has been described lying in No.125 Naduvakkarai village, Kunnavakkam Village Punja Survey No.159/2H1 of an extent of 1.66 acres. The plaintiff has claimed title to the suit property on two counts. According to the plaintiff, his ancestors got Pangu in the suit survey number. However, as rightly determined by the first appellate Court as to how and when his ancestors and which of his ancestors had acquired Pangu in the suit survey number, with reference to the abovesaid plea projected in the plaint, absolutely there is no material forthcoming on the part of the plaintiff. Furthermore, to establish that the plaintiff's ancestors owned Pangu in the suit survey number and enjoyed the same, there is no material available on the part of the plaintiff. In such view of the matter, the claim of the plaintiff that his ancestors had a Pangu in the suit survey number without in any manner describing the extent of Pangu, the trace of his ancestors' entitlement to obtain the Pangu in the suit survey number and in such view of the matter, as regards the abovesaid case of the plaintiff, when there is no proof forthcoming on the part of the plaintiff, the first appellate Court is found to be justified in rejecting the abovesaid case of the plaintiff.

10.The plaintiff claims title to an extent of 72 cents in the suit survey number based on the sale deed dated 11.11.1984, which, according to the plaintiff, had been executed in his favour by the other Pangudharars of the suit survey number. However, as determined by the first appellate Court, when the entitlement of the plaintiff's vendors in the suit survey number is being challenged by the first defendant, it is for the plaintiff to establish by placing convincing and reliable materials to hold that his vendors had Pangus in the suit survey number and they had the legal competency to convey the same to the plaintiff by way of the sale deed dated 11.11.1984. However, the plaintiff has miserably failed to establish that his vendors had pangus in the suit survey number by placing reliable materials and when the sale deed dated 11.11.1984 traces the title of the plaintiff's vendors by claiming that they have a joint patta in their name and with reference to the same, there is no material placed by the plaintiff, either the joint patta or the other documents in proof of their title, as rightly determined by the first appellate Court, on the basis of the abovesaid sale deed, it cannot be held safely that the plaintiff's vendors owned Pangus in the suit survey number of an extent of 72 cents as claimed by the plaintiff. In the light of the above discussions, it is found that the plaintiff has failed to establish that his ancestors had any Pangu in the suit survey number and also failed to establish that his vendors also had Pangu's in the suit survey number entitling them to convey an extent of 72 cents in the suit survey number in his favour by way of the sale deed dated 11.11.1984 and in such view of the

matter, the plaintiff's claim of title to the suit property on the abovesaid lines sans any material or proof pointing to the same, the first appellate Court is found to be fully justified in not accepting the claim of title to the suit property by the plaintiff as projected in the plaint.

11. On a perusal of the materials placed on record by the plaintiff, it is found that in toto, the plaintiff is found to be relying only upon the patta dated 01.08.1989, to sustain his claim of title to the suit property marked as Ex.A2. However, as above discussed, when the plaintiff has failed to establish that his ancestors had Pangu in the suit survey number and his vendors had Pangus in the suit survey number and accordingly, when the sale deed dated 11.11.1984 cannot be accord any legal sanctity, as such, for holding that the plaintiff is entitled to an extent of 72 cents in the suit survey number, it does not stand to reason or explained as to on what basis the patta marked as Ex.A2 had come to be issued in favour of the plaintiff. When the plaintiff has come forward with the suit for seeking the relief of declaration of title, it is for the plaintiff to establish that the patta document relied upon by him for claiming title to the suit property had issued in his favour validly by the concerned authority. When the plaintiff has failed to establish his claim of title to the suit property in any manner, it is found that, as rightly put forth by the defendants' counsel, the plaintiff is found to have clandestinely obtained the patta in his favour marked as Ex.A2.

12. Considering the materials available on record and projected by the first defendant, it is found that the patta had been issued in favour of the first defendant in respect of the suit property way back in 1972 and the same could be gathered from the patta pass book marked as Ex.A8 as well as the patta documents projected by the first defendant marked as Exs.B4, B6, B7. It is thus found that the first defendant on coming to know that the plaintiff had obtained Ex.A2 patta in respect of the suit property without issuing any notice to him sought for the mutation of patta in his favour and accordingly, the Thashildar by way of the proceedings dated 25.07.1997 had passed a detailed order holding that no records are available as to on what basis the patta had been issued in favour of the plaintiff in respect of the suit property and accordingly, considering the materials projected before him is found to have directed to transfer of patta in favour of the first defendant and the abovesaid proceedings has come to be marked as Ex.B9. On a perusal of Ex.B9, it is found that the same had been communicated to the plaintiff and the plaintiff has also been advised that, if he is aggrieved over the said order, is entitled to prefer revision before the higher authority as per law. Admittedly, the plaintiff has not preferred any revision or appeal before the higher authority as per law. Now, according to the plaintiff,

the patta had been transferred in favour of the first defendant behind his back by way of Ex.B9 proceedings and despite his objection to the same, inasmuch as the second defendant Thashildar has not initiated any action, he has been necessitated to levy the suit. However, when the plaintiff has failed to establish that he had been validly issued the patta in respect of the suit property marked as Ex.A2 and on the other hand, from the documents projected by the first defendant, when it is noted that the patta had been issued in respect of the suit property in favour of the first defendant during 1972 itself and accordingly, the suit property has been in his possession and enjoyment, as rightly put forth by the first defendant, it is evident that the plaintiff had been able to secure the patta marked as Ex.A2 in his favour in a surreptitious manner and on that basis, seems to have come forward with the present suit for claiming title to the suit property. However, as above discussed, when the plaintiff has failed to establish his trace of title to the suit property through his ancestors or his vendors claim of title to the suit property, in such view of the matter, on the basis of Ex.A2 patta alone, the plaintiff cannot be granted the relief of declaration sought for in respect of the suit property.

13.As rightly determined by the first appellate Court, considering the documents projected in the matter, when the plaintiff has miserably failed to establish that his ancestors owned Pangu in the suit survey number and that his vendors had owned Pangu of an extent of 72 cents in the suit survey number and when the plaintiff has not placed any document evidencing that he is in valid possession and enjoyment of the suit property and the materials placed on record do not point out that the plaintiff is under settled or established possession of the suit property and merely stray or intermittent acts of enjoyment do not give such a right in favour of the plaintiff and when the plaintiff has failed to establish that his possession of the suit property is effective, undisturbed and to the knowledge of the true owner or without any attempt at concealment by the trespasser, it is found that on the basis of the materials placed on record by the plaintiff, as rightly determined by the first appellate Court, the plaintiff's claim of alleged possession of the suit property cannot be upheld and in the light of the abovesaid discussions, the first appellate Court is found to have appreciated the materials placed on record, both oral and documentary, in the right perspective and correctly determined that the plaintiff has failed to establish his case of title and possession of the suit property. When the claim of title and possession of the suit property as projected in the plaint has not been established by the plaintiff, thereby, rightly reversed the judgment and decree of the trial Court upholding the plaintiff's case and consequently, rightly dismissed the plaintiff's suit.

14.The Counsel for the first defendant, in support of his contentions, placed reliance upon the decisions reported in (1976) 3 SCC 642 (Vishwa Vijay Bharati Vs.Fakhrul Hassan and others) & (1997) 5 Supreme Court Cases 460 (Vankamamidi Venkata Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

15.In the light of the above discussions, the substantial questions of law formulated in the second appeal are accordingly, answered against the plaintiff and in favour of the first defendant.

In conclusion, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

- 1.The Principal Subordinate Judge
Chengalpattu.
2. The District Munsif cum Judicial Magistrate,
Tirukalukundram.
3. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.R.Venkatesan, Advocate sr 13285.
+1 CC to Mr.K.Hariharan, Advocate sr 13252.
+1 CC to Govt. Pleader sr 13814

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NMI (CO)
SP(26/04/2019)