

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

PRONOUNCED ON : 17.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 736 of 2019

Arjunan (Died)

1. Ammachi
2. Jayalakshmi
3. Adhilakshmi
4. Anbalagan
5. Kannan
6. Santhi

...Appellants/LRs of Deceased Appellant/
Lrs of Deceased Plaintiff
Vs.

1. Ranganathan
2. Sekar

...Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.06.2017 made in A.S.No.28 of 2012 on the file of I Additional Subordinate Court, Villupuram, in confirming the judgment and decree dated 10.10.2011 made in O.S.No.252 of 2009, on the file of Principal District Munsif Court, Villupuram.

For Appellant : Mr.C.Prabakaran

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 23.06.2017, passed in A.S.No.28 of 2012, on the file of I Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 10.10.2011, passed in O.S.No.252 of 2009, on the file of Principal District Munsif Court, Villupuram.

2. The suit has been laid by the plaintiff claiming the relief of declaration and permanent injunction and according to

the plaintiff, he and his predecessors in interest has been in the possession and enjoyment of the suit property for several years by obtaining patta and enjoying the same and the defendants, without any authority, are attempting to interfere with his possession and enjoyment and hence, according to the plaintiff, the need for the suit.

3. The defendants resisted the plaintiff's suit contending that the claim of the plaintiff that he and his predecessors in interest has been in the possession and enjoyment of the suit property for several years by obtaining patta is false and furthermore, according to the defendants, the alleged patta put forth by the plaintiff has been stealthily obtained by him and the same cannot lend any colour to the claim of the plaintiff that he is in the possession and enjoyment of the suit property and on the other hand, according to the defendants, it is only the defendants and their predecessors in interest who are in the possession and enjoyment of the suit property for several decades and accordingly, prayed for the dismissal of the plaintiff's suit.

4. Based on the materials placed on record, both oral and documentary, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the plaintiff has come forward with the second appeal.

5. It is found that the suit property is a natham land. Now, according to the plaintiff, he and his predecessors in interest has been in the possession and enjoyment of the suit property for several decades and that the defendants are not entitled to disturb his possession and on the other hand, as the defendants had endeavoured to dispossess him from the suit property unlawfully, according to the plaintiff, he has been necessitated to lay the suit for declaration and permanent injunction.

6. To sustain that he has a valid title to the suit property and enjoying the same, the plaintiff has examined PWS 1 to 3 and marked three documents as Exs.A1 to A3.

7. Per contra, according to the defendants, it is only they who had been in the possession and enjoyment of the suit property and to sustain their case, they have examined DWs 1 to 3 and marked Exs.B1 to B31.

8. The plaintiff has filed the suit claiming the relief of declaration and permanent injunction before the Courts below. At the foremost, to sustain his case, the plaintiff has to adduce evidence by placing convincing materials. Though it is

claimed that he and his predecessors in interest are in the possession and enjoyment of the suit property for several years, other than Exs.A1 to A3, no other document had been produced by the plaintiff to sustain the abovesaid case put forth by him in the plaint. The plaintiff examined as PW1, during the course of his evidence, stated that he has been enjoying the suit property for 30 years by paying kist and the patta in respect of the suit property was in the name of his father and thereafter, changed in his name and that he has not produced the patta in the name of his father. Furthermore, he would also admit that he has put up a shed in the suit property and claimed that it is he who had been in the possession and enjoyment in the suit property by paying tax to panchayat and further stated that he has not filed any tax receipts in the Court. Furthermore, the plaintiff would also claim that he has obtained the patta in his name prior to 2007 and the same has been given to his Advocate and the said patta stands in his name, however, as put forth by the plaintiff during the course of his evidence, he has not endeavoured to produced the patta standing in the name of his father, the patta obtained by him and standing in his name and also not filed any kist receipts evidencing his possession and enjoyment of the suit property for several years and there is no evidence for the alleged possession and enjoyment of the shed said to have been put up by him in the suit property.

9. Considering the abovesaid factors and based on the oral evidence of the plaintiff's witnesses examined as PWs 2 and 3, it is found that we cannot accede to the plaintiff's case, particularly, when it is found that PWs 2 and 3 are found to be totally ignorant of the material particulars and have no knowledge about the facts and circumstances of the case. Hence, the Courts below have rightly not placed reliance upon the evidence of PWs 2 and 3 for accepting the plaintiff's case.

10. According to the defendants, the alleged patta produced by the plaintiff, marked as Ex.A1, has not been validly obtained. Furthermore, Exs.A1 to A3 are found to have been issued in favour of the plaintiff by the VAO. The plaintiff has not placed the original patta said to have been issued in his name and in his father's name and in such view of the matter, when the plaintiff has not placed any document of patta to sustain his claim of title to the suit property and when Exs.A1 to A3 are stoutly challenged by the defendants in toto and when the plaintiff has not placed any evidence as to how come Exs.A1 to A3 had been validly issued in his favour by the concerned VAO and the plaintiff has also not endeavoured to examine the VAO concerned, in such view of the matter, the Courts below are found to be wholly justified in not accepting the plaintiff's case, particularly when the plaintiff has miserably failed to establish his claim of valid possession and enjoyment of the

suit property.

11. The plaintiff's counsel mainly contended that the patta said to have been issued in his favour has not been cancelled by the defendants, however, as above discussed, the plaintiff has not established his case with acceptable materials to hold that the alleged patta said to have been granted in his favour had been validly issued and when the plaintiff has not even endeavoured to produce the alleged patta and prove its authenticity in any manner, in such view of the matter, it is found that the abovesaid grounds cannot be the basis for accepting the plaintiff's case ipso facto.

12. Considering the reasonings and conclusions of the Courts below in dismissing the plaintiff's suit and when the same are found to be based on the proper appreciation of the materials placed on record and the same are also not found to be suffering from any perversity or irrationality in any manner, in such view of the matter, no interference is warranted in the concurrent judgment and decree of the Courts below.

13. In conclusion, the second appeal is found to be devoid of merits and no substantial question of law is involved in the second appeal. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Court,
Villupuram.
2. The Principal District Munsif Court,
Villupuram.

S.A. No. 736 of 2019

VSN II(CO)
GMY(08/11/2019)