

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2019  
PRONOUNCED ON : 24.09.2019

CORAM  
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.208 of 2016

E.Sathyannarayana

...Appellant/Plaintiff

Vs.

1.Government of Tamil Nadu  
Rep.by the District Collector,  
Coimbatore.

2.The Authorized Officer,  
Land Reforms, Coimbatore.

3.The Special Deputy Tahsildar,  
Land Reforms, Coimbatore.

...Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.01.2015 passed in A.S.No.113 of 2012 on the file of the III Additional Subordinate Court, Coimbatore, confirming the Judgment and Decree dated 29.09.2011 passed in O.S.No.827 of 2004 on the file of the II Additional District Munsif Court, Coimbatore.

For Appellant : Mr.N.Sridhar  
for Mr.R.Bharath Kumar

Respondents : S.T.S.Murthy (AAG)  
Assisted by Mr.N.Manikandan  
Govt. Advocate (CC)

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.01.2015 passed in A.S.No.113 of 2012 on the file of the III Additional Subordinate Court, Coimbatore, confirming the Judgment and Decree dated 29.09.2011 passed in O.S.No.827 of 2004 on the file of the II Additional District Munsif Court, Coimbatore.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for Declaration, Mandatory Injunction and Permanent Injunction.

4.The case of the plaintiff in brief is that the plaintiff's father R.Ethirajulu Naidu purchased an extent of 85.60 acres described in the plaint "A" Schedule by way of a registered sale deed dated 02.02.1953 and the abovesaid sale deed had been executed on behalf of the President of India by the Secretary to the Government of India, Ministry of Defence. The abovesaid property had been conveyed to the plaintiff's father for a consideration of Rs.17,400/- and pursuant to the abovesaid sale deed, the plaintiff's father had been conveyed the property described therein free from encumbrances and thus, a valid transfer had been effected in favour of the plaintiff's father and following the same, the plaintiff's father had been exercising the rights of ownership over the abovesaid property and the plaintiff's father has been enjoying the said property by putting up a live fence and cultivating the same and the plaintiff's father had been repeatedly requesting the Government to effect the transfer of patta in respect of the suit property. However, the officials concerned had been not responding to the request of the plaintiff's father and the authorities concerned had been acting against the tenor of the document dated 02.02.1953 and contrary to the tenor of the document, the B memos had been issued wrongly and patta is yet to be transferred in favour of the purchaser and the plaintiff and his father were obliged to pay the tax as demanded by the Government by way of the issuance of B memo and the enjoyment of the said property by the plaintiff's father and the plaintiff can never be construed as unauthorised enjoyment as above stated. The plaintiff has become the owner of the suit properties by virtue of the partition deed dated 03.12.1958 effected between him, his father and his brother. The suit property was also the subject matter of an exchange deed between R.Ethirajulu Naidu and his brother R.Krishnaswami Naidu on 30.11.1958 by way of which an extent of 47.11 acres was given to the share of R.Krishnaswami in exchange of some other land and the balance extent continued to be in the possession of the plaintiff's father R.Ethirajulu Naidu. The plaintiff has been exercising right of ownership over the suit property and the Government is also aware of the same and the same could also be gathered from the fact that an extent of 3 acres 42 cents had been acquired by the Government of India and the rights of the plaintiff were recognised and compensation was duly paid to him under the Land Ceiling Act. The plaintiff's possession has thus been recognised by the Government, hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs as the request for the issuance of patta had been turned down by the authorities concerned and hence, the suit.

5.The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiff has to establish that the extent of 85.60 acres described in the plaint "A" schedule had been purchased by his father R.Ethirajulu Naidu on 02.02.1953 as put forth in the plaint. The defendants denied the case of the plaintiff that the plaintiff's father had been repeatedly requesting for the issuance of patta in respect of the suit properties. The "B" memo had been issued with respect to the property under the unauthorised occupation of the plaintiff and therefore, it cannot be stated that the "B" memos had been issued wrongly. The defendants denied the claim of the plaintiff that he has been exercising the right of ownership over the suit properties and before him, his father has been exercising the right of ownership and the same had been vehemently disputed by the defendants. The plaintiff's father filed an application before the Tahsildar, Coimbatore for the issuance of patta and the same was rejected by the Tahsildar vide order dated 18.07.1999, against which the plaintiff's father filed an appeal before the Revenue Divisional Officer on 17.08.1999 and the appeal was also dismissed by the Revenue Divisional Officer on 16.02.2000 and against which, R.Ethirajulu Naidu filed a revision which was also dismissed since no supporting documents were produced by him for the issuance of patta as claimed. The plaintiff himself filed a return before the Authorised Officer, Land Reforms in the year 1973 declaring that the entire "B" schedule properties are excess lands and on the basis of the said return, an order was passed by the authorities and also a notification had been issued under Section 18 (1) of the Land Reforms Act and published in the Tamil Nadu Government Gazette on 24.07.1974. As per the said notification, the entire "B" schedule properties are the surplus lands, which was ultimately declared as the Government Land and the Authorised Officer, Land Reforms, on 29.08.1974, sent a notice to the plaintiff demanding him to handover the possession of the surplus lands and hence, the plaintiff is not entitled to ask for the grant of patta with respect to the plaint "B" schedule properties. The plaintiff has not filed any application for the grant of patta with respect to the plaint "B" schedule properties before the authorities concerned and therefore, he cannot claim the right of issuance of patta in his favour by way of the present suit. The plaintiff cannot lay the suit in enforcing the statutory remedies provided under a special statute and on that ground alone, the suit laid by the plaintiff is liable to be dismissed. Therefore, according to the defendants, the plaintiff has no cause of action to institute the suit and the suit is liable to be dismissed.

6.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A8 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(a). Whether the findings of the Courts below that the plaintiff is not entitled for the suit property as he did not prove the title, are perverse, when particularly under Ex.A7, the Gazette Notification dated 24.07.1974 issued under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the defendants acquired the surplus land from the plaintiff, which forms part of suit "B" schedule property and thereby recognizing the title and possession of the plaintiff?

(b). Whether the reasonings of the Courts below that as per dictionary meaning Ex.A1, Indenture dated 02.02.1953 is only an agreement and not a Sale Deed conveying the immovable property, are correct and justified in law?

(c). Whether the judgment and decree of the Courts below are sustainable, overlooking the categorical admission of DW1 as contemplated under Section 17 of the Indian Evidence Act, 1872, that the land holding which forms part of suit "B" schedule property which was declared as surplus land and was taken over by the Government from the plaintiff under Ex.A7 and the same was allotted to one Kondasamy and he was issued with Patta?

(d). Whether the findings of the Courts below that original of Ex.A1, Indenture was not produced and the certified copy of the same alone was produced and no credence can be given to Ex.A1 are correct and justified, when certified copy of Ex.A1 is defined as a public document as contemplated under Sections 74(2) & 76 of the Indian Evidence Act, 1872, which is admissible in

evidence?"

9. The suit has come to be laid by the plaintiff for the relief of declaration of his title to the plaint "B" schedule properties. The plaintiff claims title to the plaint "B" schedule properties based upon the sale deed dated 02.02.1953 said to have been executed in favour of his father R.Ethirajulu Naidu on behalf of the President of India, by the Secretary to the Government of India, Ministry of Defence. The defendants have in toto disputed the truth and validity of the abovesaid sale transaction projected by the plaintiff. Despite the above position, the plaintiff has not produced the original sale deed dated 02.02.1953 in support of his case. He had only chosen to mark the certified copy of the abovesaid sale deed Ex.A1. When as above pointed out, the defendants have not admitted the truth and validity of Ex.A1 sale transaction and when according to the plaintiff, his father had been conveyed the plaint "A" schedule property by way of the abovesaid sale deed and furthermore, when according to the defendants, the abovesaid sale deed had not come into force and not acted upon in any manner, it is for the plaintiff, who has based his claim of title to the suit property upon the abovesaid sale transaction, who should establish as to under what circumstances, the plaint "A" schedule property had come to be conveyed in favour of his father on behalf of the President of India, by the Secretary to the Government of India, Ministry of Defence. In the light of the abovesaid factors, when the very execution of Ex.A1 sale deed has been put at issue by the defendants on behalf of the President of India as sought to be projected by the plaintiff, it is for the plaintiff to establish the circumstances under which, the plaint "A" schedule property had come to be conveyed in favour of his father R.Ethirajulu Naidu by way of Ex.A1 sale transaction. As rightly contended by the defendants, if really Ex.A1 sale deed had been indeed executed in favour of the plaintiff's father by the Ministry of Defence on behalf of the President of India, definitely the files pertaining to the same would be available with the Ministry concerned and in such view of the matter, the plaintiff being the suitor and basing his claim only upon the abovesaid sale transaction, when as above pointed out, the abovesaid sale transaction has been put in challenge in toto by the defendants, it is for the plaintiff to summon the relevant records from the concerned Ministry and sustain his case that as put forth by him, the plaint "A" schedule property had been conveyed in favour of his father by the Ministry concerned on behalf of the President of India. The plaintiff has not whispered as to for what reasons, the Government of India had chosen to convey the plaint "A" schedule properties in favour of the plaintiff's father and if really the abovesaid transaction is intended to be acted upon, definitely, the back papers pertaining to the same would be available with the Ministry

concerned and the plaintiff to sustain his case should have endeavoured to summon the said records and produce the same before the Court and also endeavoured to examine the official of the concerned Ministry to explain and prove as to under what circumstances, the abovesaid sale transaction had come to be executed and whether the same had been acted upon.

10. Other than marking the copy of the sale deed dated 02.02.1953, there is no piece of evidence on the part of the plaintiff worth acceptance evidencing that following the said sale transaction, his father R.Ethirajulu Naidu had taken the possession of the plaint "A" schedule property and enjoying the same. With reference to his case that his father had taken the possession of the plaint "A" schedule property and enjoying the same, absolutely, there is no material forthcoming on the part of the plaintiff. Equally, there is no material on the part of the plaintiff evidencing that he had been exercising any rights of ownership over the plaint "A" schedule property, after the demise of his father based on Ex.A1 sale transaction. The plaintiff would put forth the case that an exchange deed had come to be effected between his father R.Ethirajulu Naidu and his brother R.Krishnaswami Naidu, whereunder, an extent of 47.11 acres was given to the share of R.Krishnaswami and his father had been given some other land and as held by the Courts below, there is no reference about Ex.A1 sale deed in the alleged exchange transaction said to have been effected between the plaintiff's father and his brother Krishnaswami and be that as it may, there is no proof on the part of the plaintiff worth acceptance evidencing that following the abovesaid exchange transaction, his paternal uncle Krishnaswami had been in the possession and enjoyment of the extent of 47.11 acres as sought to be put forth by him. As to what is the land that had been conveyed in favour of the plaintiff's father in terms of the exchange, there is no clear pleas on the part of the plaintiff and also no proof has been placed with reference to the same by the plaintiff. Similarly, the alleged partition deed dated 03.12.1958 said to have been effected amongst the family members of the plaintiff by itself would not lead to the conclusion that the plaintiff has acquired a valid claim of title to the plaint "B" schedule properties and even in the alleged partition deed marked as Ex.A3, there is no reference about the sale transaction dated 02.02.1953. Therefore, the Courts below are found to be justified in holding that the internal family transaction effected amongst the members of the plaintiff's family by way of Exs.A2 & A3 and when the abovesaid transactions do not refer to about the sale transaction covered under Ex.A1 and furthermore, when the plaintiff has miserably failed to establish that either his father or he had at any point of time exercised any ownership over the plaint "A" schedule property following Ex.A1 sale transaction, in such view of the matter and

as above pointed out when the plaintiff has miserably failed to establish that Ex.A1 sale transaction had been indeed effected in favour of his father by the Ministry concerned and the same had been acted upon, in all, it is found that merely from the copy of the sale deed dated 02.02.1953 ipso facto, we cannot conclude that the plaintiff's father had acquired a valid claim of title to the plaint "A" schedule property as put forth in the plaint.

11. That the sale transaction dated 02.02.1953 has not been put into action or acted upon could also be gathered from the pleas set out by the plaintiff in the plaint. Though the plaintiff would claim that his father had been conveyed the plaint "A" schedule property by way of Ex.A1 sale transaction, however, the plaintiff clearly has also pleaded that in respect of the plaint "A" schedule property, the Government had collected "B" memo charges from him and his father and the abovesaid factor would only lead to the conclusion that Ex.A1 sale transaction had not been put into action or acted upon and the Government had been continuing to exercise its ownership over the plaint "A" schedule property wholly, accordingly, noting the encroachment committed by the plaintiff's father and the plaintiff in respect of the said property, accordingly, it is found that the Government had started issuing "B" memos in respect of the said property and the plaintiff also without any demur had been paying the "B" memo charges to the Government and therefore, the claim of the plaintiff that the payment of "B" memo charges to the Government could not be construed as their acceptance of the right of the Government over the plaint "A" schedule property cannot at all be countenanced in any manner. If really as put forth by the plaintiff, his father had been validly conveyed the plaint "A" schedule property by way of Ex.A1 sale transaction and despite the same, the Government had endeavoured to collect "B" memo charges from the plaintiff or his father, the plaintiff's father or the plaintiff would have resisted the same and contended that there is no need on the part of the plaintiff to pay "B" memo charges to the Government and that the plaint "A" schedule property had been validly conveyed in their favour. On the other hand, noting the position that Ex.A1 sale transaction was not intended to be acted upon and accordingly, when the Government had endeavoured to enforce their right over the same by collecting "B" memo charges from the plaintiff and his father, meekly and without resistance, they had proceeded to pay the charges claimed by the Government and in such view of the matter, it is found that the plaintiff has accepted the title of the Government in respect of the plaint "A" schedule property and accordingly, been paying the "B" memo charges with reference to the same as demanded by the Government.

12.The plaintiff by way of this suit would claim that he is entitled to obtain patta in respect of "B" schedule properties and the Government had been turning a deaf ear to his requests and hence the need for the appropriate relief by way of the present suit. The defendants have taken the specific stand in the written statement that the efforts taken by R.Ethirajulu Naidu to obtain the patta in respect of the plaint "A" schedule property had been turned down and his appeal and revision, challenging the same, had also been dismissed as no supporting documents had been placed for consideration by R.Ethirajulu Naidu and the abovesaid factors would only go to show that inasmuch as R.Ethirajulu Naidu himself had not endeavoured to project the sale transaction Ex.A1 for sustaining his claim of title to the suit property knowing fully well that the same had not been acted upon and given effect to, accordingly, it is found that he was unable to sustain his claim of the obtainment of patta in respect of the plaint "A" schedule property and resultantly, his request for the issuance of patta had been rightly turned down by the authorities concerned. Therefore, the claim of the plaintiff that the authorities concerned had been blindly turning down his requests made for the issuance of patta without any basis, as such, cannot be believed and accepted in any manner.

13.The only trump card, which, the plaintiff placed reliance for seeking the reliefs prayed for is the proceedings or the Gazette notification dated 24.07.1974 marked as Ex.A7. From the materials placed on record, it is found that based on the returns submitted by the plaintiff before the Authorised Officer, Land Reforms during 1973 declaring the excess lands in his possession, it is found that an order had come to be passed by the authority concerned under the Land Reforms Act under Section 18 (1) of the said Act and following the same, the Gazette notification Ex.A7 had come to be issued, pursuant to which, the plaint "B" schedule properties are declared as surplus lands and ultimately taken by the Government and in such view of the matter, merely because, the proceedings under the Land Reforms Act had been laid against the plaintiff qua the plaint "B" schedule properties, on that basis the plaintiff cannot be allowed to contend that the Government had by way of the same indirectly acceded to his claim of title to the said properties one way or the other. Even in the proceedings issued under the abovesaid G.O., there is no reference at all about the sale transaction dated 02.02.1953, on the basis of which, the plaintiff seeks the claim of title to the properties concerned and in such view of the matter, on the whole, the Gazette notification marked as Ex.A7 would not in any manner tilt the case in favour of the plaintiff for claiming title to the properties in dispute.

14. Considering the materials placed on record both by the plaintiff as well as the defendants, when it is found that the Government records projected by the defendants marked as Exs.B2 & B3 reflect that the plaint "B" schedule properties are only belonging to the Government and classified as the Government properties, the abovesaid factors also would only lead to the conclusion that inasmuch as the Government had not given up its right or conveyed its rights over the plaint "B" schedule properties in favour of the plaintiff's father as put forth by the plaintiff and on the other hand, had been continuing to exercise their ownership over the same and accordingly, been claiming "B" memo charges from the plaintiff and his father and when the plaintiff has also been paying the same to the Government without any demur and the Government records projected reflect that the properties in dispute are belonging to the Government only and not to the plaintiff or his father and as abovesaid, when the initiatives made by the Government under the Land Reforms Act do not in any manner advance the plaintiff's case ipso facto, in all, it is found that the Courts below are found to be justified in not granting the reliefs prayed for by the plaintiff.

15. The plaintiff's counsel in support of his contentions contended that merely because the request of the plaintiff for the issuance of patta had been turned down by the authorities concerned, on that score alone, the plaintiff cannot be held to be not entitled to maintain the suit for sustaining his claim of title to the properties in dispute and according to him, even other wise he is entitled to maintain the suit for claiming the reliefs prayed for. No doubt the plaintiff would be entitled to maintain the civil action for sustaining his claim of title to the properties in dispute. However, when as above pointed out, the plaintiff has miserably failed to establish his claim of title to the properties in dispute i.e. the plaint "B" schedule properties and when he has failed to establish that the sale transaction dated 02.02.1953 had been indeed given effect to and acted upon and on the other hand, when the materials placed on record go to show that the Government had not ceased to exercise its right of ownership over the plaint "B" schedule properties in any manner and on the other hand, found to be continuously exercising its ownership over the same throughout to the knowledge of the plaintiff and his father and the same had also been acceded to by the plaintiff, as above discussed and pointed out, in all, it is found that the plaintiff's suit is found to be totally misconceived and accordingly, I do not find any valid reason to interfere with the concurrent judgment and decree of the Courts below for declining the reliefs prayed for by the plaintiff.

16.In support of his contentions, the plaintiff's counsel placed reliance upon the decisions reported in AIR 2003 SUPREME COURT 4548 (R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple and another), AIR 2006 SUPREME COURT 2965 (Bishwanath Prasad Singh Vs.Rajendra Prasad), AIR 1986 SUPREME COURT 872 (Express Newspapers Pvt. Ltd. And others Vs. Union of India and others), MANU/TN/3589/2011 (C.Sabesan Chettiar and Ors Vs. The District Revenue Officer and Ors), MANU/TN/0279/1996 (Commissioner of Income Tax Vs. Pallavan Transport Corporation Ltd.,) and MANU/TN/3235/2011 (Vishwas Footwear Company Ltd., Vs. The District Collector and Ors) and the defendants' counsel, in support of his contentions, placed reliance upon the decision reported in AIR 1973 SUPREME COURT 2520 (The State of U.P. Vs. Zahoor Ahmad and another). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17.For the reasons aforesated, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

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 VIII)

True Copy

Sub-Assistant Registrar

sms

To

- 1.The III Additional Subordinate Court, Coimbatore.
- 2.The II Additional District Munsif Court, Coimbatore.

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The Section Officer, V.R.Section, High Court, Madras.  
+1 CC to Mr.R.Bharath Kumar, Advocate sr 82867  
+1 CC to Govt. Pleader sr 82015.

S.A.No.208 of 2016

RSI (CO)

SP(10/03/2020)