

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.11.2019
CORAM:
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.138 of 2014
and MP No.1 of 2014 and CMP No.23097 of 2019

Selvaraj

..Appellant/Plaintiff

Vs.

1. Natarajan

2. Ilayaraja

3. Muruganandam

..Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.10 of 2012, on the file of the Sub Court, Ariyalur dated 27.11.2013 reversing the judgment and decree in OS. No.380 of 2005 on the file of the Principal District Munsif Court, Ariyalur dated 29.11.2011.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.M.V.Krishnan

J U D G M E N T

The plaintiff in OS No.380 of 2005 who succeeded in getting a decree for declaration and injunction before the Trial Court, upon its reversal by the Lower Appellate Court, has come up with this Second Appeal.

2. The case of the plaintiff before the Trial Court was that the suit property is in enjoyment of the family of the plaintiff since 1935 onwards. The Plaintiff's father Arunachalam was rendering service of poojari in the temples in and around Kattupringiyam which is his native place. The elders of Walajanagaram Village, invited him to perform poojas at the Marriyamman Temple situate therein, when the plaintiff's father was about 13 years old. Accepting the request, the plaintiff's father was doing Poojari service to the Marriyamman temple. The temple does not possess any landed property. The suit property measuring about 0.38.5 hectares was gifted by the then Zamindar to the plaintiff's father and the plaintiff's father was in possession of the property and was performing Poojas in the

Marriyamman Temple. When the village was notified under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1963, notice was issued to the plaintiff's father and after enquiry, Ryotwari Patta was also granted. Upon grant of the Ryotwari patta, Revenue records were mutated in the name of the plaintiff's father and the regular Revenue patta was also issued to him.

3. Even during the life-time of the plaintiff's father, the defendants, particularly, the defendants 1 and 2 attempted to interfere with his possession, which resulted in the plaintiff's father lodging a police complaint before the Superintendent of Police. The plaintiff's father eventually died in the year 2003. The plaintiff filed a suit in OS No.173 of 2001 for permanent injunction. Mistakenly, a plea was taken in the said suit to the effect that the property ancestrally belonged to the plaintiff and his family.

4. The defendants upon entering appearance in the said suit, filed a counter claim, setting up a title in the deity. The suit as well as the counter claim were dismissed for non prosecution. Claiming that the plaintiff is the absolute owner of the property by virtue of the Inam Patta granted to his father under Act 30 of 1963 and that the defendants who have no manner of right over the property, are attempting to interfere with his possession of the property the plaintiff came forward with the above suit.

5. The suit was resisted by the defendants contending that the plaintiff was not doing any poojari service in the temple and he is not in possession of the property. It is the further contention of the defendants that nobody dedicated the suit property to the Mariamman Temple, as it is to be enjoyed by the person, who performs poojari service to the temple. The defendants would therefore contend that the plaintiff's father had stopped doing Poojari service in the temple in question, even during his life-time and thus, he lost his right to be in possession of the property. Since the Plaintiff attempted to alienate the property, the defendants raised objection for transfer of patta in the name of the plaintiff, which resulted in the plaintiff filing the present suit. The defendant would also contend that one Palanimuthu, is performing pooja service in the temple and he is in possession of the property in the capacity of poojari.

6. At trial, the plaintiff was examined as P.W.1 and one Gunasekaran was examined as P.W.2, and Exhibits A1 to A10 were marked. The first defendant was examined as D.W.1 and Exhibits B1 to B3 were marked.

7. On the consideration of the evidence on record, the Trial Court concluded that the patta having been granted in the name of the plaintiff's father, the plaintiff's father is entitled to the property. The Trial Court rejected Exs.B2 and B3 on the ground that no person connected with those documents have been examined. In fact, Exhibits B2 and B3, which are 'A' Registers of the Village, showed that the property stands in the name of Arulmighu Mariamman Temple and its burdened with the condition of performance of service. On the above findings, the learned Trial Judge decreed the suit as prayed for. Aggrieved, the defendants preferred an Appeal in AS No.10 of 2012 on the file of the Sub Court, Ariyalur.

8. The learned Subordinate Judge, upon a reconsideration of evidence on record, concluded that the property was granted to the plaintiff's father subject to the condition of performance of pooja service in the Mariyamman Temple. Admittedly, the plaintiff's father had stopped the service even during his life-time and the plaintiff has not been continuing the said service thereafter. The Lower Appellate Court also took note of Exs.B2 and B3, which clearly show that the property stood in the name of the temple and its burdened with the service condition. On the said finding, the Lower Appellate Court allowed the Appeal and dismissed the suit. Aggrieved, the plaintiff is on appeal before this Court.

9. Pending appeal, appellant/plaintiff has filed CMP No.23097 of 2019 seeking to produce a copy of the order passed by the Settlement Tahsildar on 24.02.1970 granting patta in favour of the plaintiff's father under Act 30 of 1963. The respondents/defendants have filed a counter disputing the genuineness of the document and contending that the plaintiff/appellant had not made out a case for receipt of additional documents in this Appeal.

10. The following substantial questions of law were framed in this appeal on 12.02.2014 at the time of admission.

1. Whether the appellant had produced documents, including inam patta, to establish the ownership over the suit property, is the lower Appellate Court right in dismissing the suit?

2. Is the lower Appellate Court justified in ignoring the statements made by the D.W.1 during cross examination wherein he had admitted the title and nature of possession of the appellant's father?

3. Is the lower Appellate Court right in denying title to the plaintiff when the Government of Tamil Nadu through the settlement authorities have recognised possession and title of the appellant's father?

11. I have heard Mr.V.Raghavachari, learned counsel appearing for the appellant and Mr.M.V.Krishnan, learned counsel appearing for the respondents.

12. Elaborating on the questions of law, Mr.V.Raghavachari would contend that even assuming that the grant of patta is subject to a service condition, the defendants, who have no manner of right over the property of the temple and the temple as such, cannot interfere with the possession of the plaintiff. Accepting the fact that the property was subject to a condition of performance of service, Mr.V.Raghavachari would contend that the plaintiff was prevented from performing the service and therefore, the defendants who have nothing to do with the temple, cannot grab the property from the plaintiff. Therefore, according to Mr.Rahgavachari, Patta has been granted to the plaintiff's father as a service holder, in the event of his failure to perform service, the property must be resumed by Competent Authority, and it is not open to the defendants to trespass into the property and prevent the plaintiff from enjoying the property. He would also further contend that the plaintiff was prevented from performing the pooja service in the Marriammal Temple at Walajanagaram.

13. Mr.V.Raghavachari would also contend that the order passed by the Settlement Tahsildar on 24.02.1970, has been produced as additional evidence to show that the patta was granted in favour of the plaintiff's father and therefore, the Lower Appellate Court was not right in dismissing the suit. He would also submit that the plaintiff has made out sufficient cause for non production of the order of the Settlement

Tahsildar dated 24.02.1970 in the Courts below. According to him, the said document is the vital document and it will have a bearing on the result of the appeal, and hence, the same should be received as the additional document.

14. Contending contra, Mr.M.V.Krishnan, learned counsel appearing for the respondents/defendants would submit that the plaintiff/appellant has not made out sufficient cause for non-production of the document viz., the order dated 24.02.1970 passed by the Settlement Tahsildar earlier in point of time. The reasons assigned in the affidavit are thoroughly insufficient to enable this Court to entertain the additional document at the second appeal stage. Mr.M.V.Krishnan would also further contend that on a person alone, the patta was conferred by the Settlement Tahsildar by order dated 24.02.1970 and he had proved the same

15. I have considered the rival submissions.

16. As regards the petition for reception of additional evidence, what is sought to be produced is the order passed by the Settlement Tahsildar dated 24.02.1970, conferring the patta on the plaintiff's father viz. Arunachala Vathiar, subject to the condition of performance of pooja service in the Mariamman Temple. The respondents/defendants are seriously disputing the genuineness of the said patta. The Revenue Pattas granted to the Plaintiff's father has been marked as Exs.A5 and A7. In those documents, the name of the plaintiff's grandfather has been shown as Periyasami. Even in the order that is now sought to be produced, dated 24.02.1970, the plaintiff's father has been described as Arunachala Vathiar, son of Periyasami and therefore, the contention of the learned counsel for the respondents regarding the identity of the person in whose name the order has been issued, does not merit acceptance. I, therefore conclude that the order dated 24.02.1970 granting the patta under Section 8(2)(ii) of the Act 30 of 1963, was subject to a condition of performance of service in the Mariyamman Temple.

17. I also find that the appellant has made out sufficient cause for non production of the document earlier. Though the plaintiff has produced the notice issued for the enquiry, he did not produce the final order passed by the Settlement Tahsildar, pursuant to the said notice. The fact that notice issued to the plaintiff's father for the settlement enquiry has been filed as

Ex.A4, would itself probabalise the case of the plaintiff that the patta was granted under Act 30 of 963, in favour of the plaintiff. I therefore see no prejudice that would be caused to the respondents in receiving the order dated 24.02.1970 as the additional evidence in this appeal. Hence the order dated 24.02.1970 passed by the Settlement Tahsildar is received as additional evidence and marked as Ex.A11.

18. Coming to the questions of law framed in the appeal, a perusal of the order of the Settlement Tahsildar dated 24.02.1970 makes it clear that patta has been granted under Section 8(2)(ii) of The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1963, subject to the condition of performing poojas at the Mariammal Temple. Ex.B2 and B3, viz. the copies of the Village 'A' Register produced by the respondents would show that the suit properties are described as land burdened with service of performance of poojas. The Trial Court had disbelieved Exs.B2 and B3, but the Lower Appellate Court has rightly taken the contents of Exs.B2 and B3 and concluded that the property was given to the plaintiff's father, subject to the condition that he performs poojari service in the temple.

19. It is not the case of the plaintiff that he is continuing the performance of poojari service in the temple. Though the plaintiff would at one of point of time claim that he has been prevented from performing the poojari service, at a later point of time in his evidence, admitted that he has been working in Ariyalur and he is not doing any poojari service in Mariamman Temple at Walaja Nagaram. Cross-examination of D.W.1 by the plaintiff's counsel would make it clear that the plaintiff has not been performing the poojari service for the suit temple. The grant being one, subject to a condition made under Section 8(2)(ii) of The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1963, I do not think that it will confer an absolute right on the plaintiff so as to enable him to seek declaration of his title.

20. Admittedly, the plaintiff's father died in the year 2003. Even during his life-time, according to the defendants, he had stopped doing poojari service in the Mariamman Temple. There is nothing on record to show that the plaintiff has been doing poojari service in the temple, on the other hand, there is a clear admission that he has not been doing poojari service at the temple. Once the plaintiff ceases to do poojari service in

the temple, I do not think that he can take the benefit of the order dated 24.02.1970 and claim that he is entitled to the property and he is entitled to deal with the property. In fact in the police complaint that was given by the plaintiff's father marked as Ex.A3, the plaintiff's father had stated that he attempted to sell the property treating it as his own.

21. During cross-examination of D.W.1, it has been suggested to him that D.W.1 did not invite the plaintiff to do poojari service in the temple, to which D.W.1 has answered that the plaintiff wanted permission to sell the land as a pre-condition to do poojari service. This cross-examination by the counsel for plaintiff in my considered opinion, would show that the plaintiff has not been doing poojari service in the suit temple. Therefore, the irresistible conclusion is that the plaintiff has not made out a case for declaration of title and injunction. No doubt, the Inam Patta has been produced as additional evidence, but that being the patta burdened with an obligation to do service and the plaintiff is unable to establish that he has been doing the service, he is not entitled to any benefit under the said patta. Hence, the first question of law is answered against the appellant.

22. I have gone through the evidence of D.W.1. D.W.1 has not admitted the title and nature of possession of the appellant/plaintiff. It is the consistent case of the defendants that the appellant's father was put in possession of the property only because he was doing pooja service in the Temple. After he had ceased to do pooja service, the property was resumed and let out to others. Therefore, the second question of law is also answered against the appellant.

23. As regards the third question of law, the Government has recognised the title of the plaintiff's father subject to the condition he does poojari service. It is the 'service Inam' granted on condition of performing poojari service and it is always open to the authorities to resume it. In fact, the plaintiff's father himself under Ex.A2 has admitted that he has been excluded from possession of the property. The plaintiff has failed to produce the addangal extract to show that he has been cultivating the property after the death of his father. Hence, the third question of law is also answered against the plaintiff.

24. In view of the answers to the questions of law, the Second Appeal fails and is dismissed. No Costs. Consequently,

the connected miscellaneous petitions is closed. However taking note of the fact that the property has been granted as 'service Inam', I direct the Registry to forward a copy of this order to the Assistant Commissioner, HR & CE, Ariyalur as well as the Commissioner of HR & CE, Chennai 34. I direct the Authorities concerned to take suitable action to recover the property from the person in possession and to see that it is put in enjoyment of the poojari of the temple.

List of Additional document received as evidence under Order XVI Rule 27 of the Code of Civil Procedure.:

Exhibits	Description
Ex.A11	Copy of the order of the Settlement Thasildar III, Trichirapalli in ARI.TK.397/70 dated 24.02.1970

jv
To

1. The Subordinate Judge,
Ariyalur.
2. The Principal District Munsif,
Ariyalur.

Copy to
The Section Officer,
V.R.Section,
High Court of Madras.

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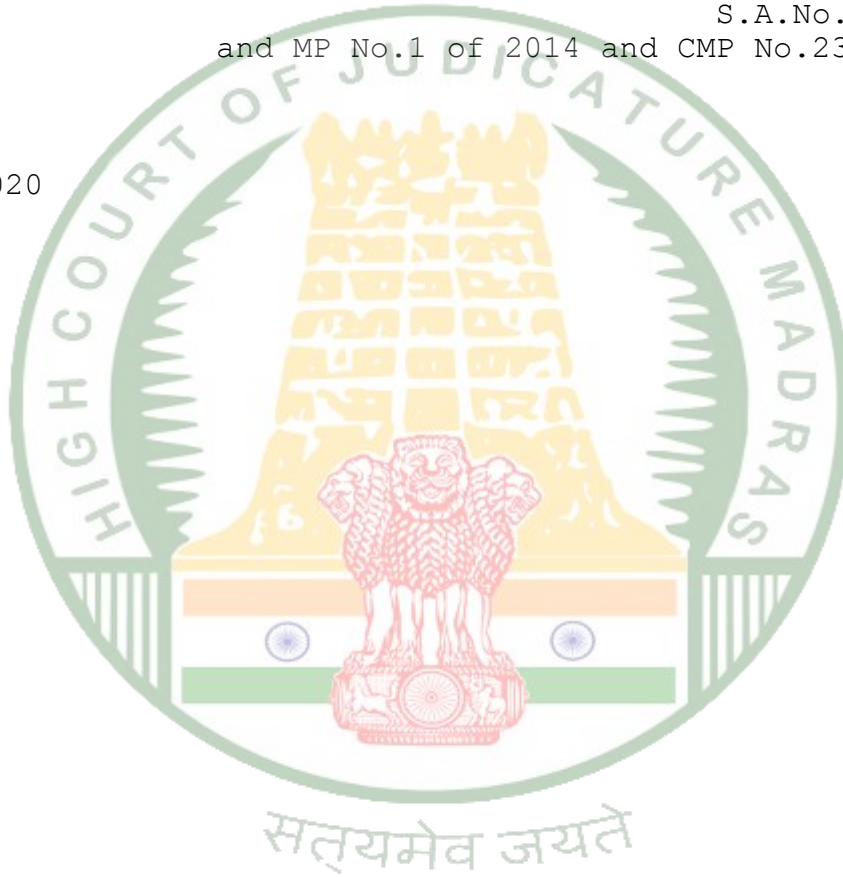
Copy to
The Assistant Commissioner
HR & CE
Ariyalur

2.The Commissioner
HR & CE
Chennai-34

+1 cc to M/s.M.V.Krishnan Advocate sr97428

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