



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.06.2019
DELIVERED ON : 12.07.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.903 of 2009

Velusamy ... Appellant/Appellant/Defendant

Vs.

1.The State of Tamil Nadu,
Rep by the District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Sub Collector,
Paramakudi Revenue Division,
Paramakudi,
Ramanathapuram District.

3.The Tahsildar,
Paramakudi Taluk,
Paramakudi,
Ramanathapuram District. ... Respondents/Respondents/Plaintiffs

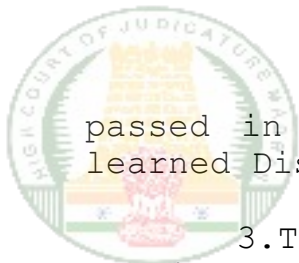
Prayer :Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 24.10.2007 made in A.S.No.87 of 2006 and IA.No.1 of 2007 on the file of the learned Subordinate Judge, Paramakudi reversing the Judgment and decree dated 12.10.2000 made in O.S.No.53 of 1998 on the file of the learned District Munsif, Paramakudi.

For Appellants : Mr.S.Siva Thilakar
For Respondents : Mr.S.Gunaseelan Muthaiah,
Additional Government Pleader

JUDGMENT

Heard Mr.S.Siva Thilakar, learned counsel appearing for the appellant and Mr.G.Gunaseelan Muthaiah, learned Additional Government Pleader appearing for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>
2. This appeal is filed against the Judgment and Decree passed in A.S.No.87 of 2006 dated 24.10.2007 on the file of the learned Subordinate Judge, Paramakudi reversing the Judgment and decree



passed in O.S.No.53 of 1998 dated 12.10.2000 on the file of the learned District Munsif, Paramakudi.

3.The appellant herein is the plaintiff and the respondents herein are the defendants in the suit. The appellant herein has filed a suit in O.S.No.53 of 1998 before the learned District Munsif, Paramakudi for declaring the order passed by the first defendant dated 21.03.1998 and the order passed by the second defendant dated 06.06.1996 as null and void and for an order of injunction not to disturb the peaceful possession of the plaintiff. After the trial, the learned District Munsif partly allowed the suit in respect of the plaintiff's house situated in three cents of land and dismissed the suit in respect of other suit properties. Against that Judgment and decree, the respondents have preferred an appeal in A.S.No.87 of 2006 before the learned Sub Judge, Paramakudi. The learned Sub Judge set aside the Judgment and decree passed by the trial Court. Against which, the appellant has come forward with this second appeal.

4.The case of the plaintiff is that a portion of the suit property with an extent of 11 cents is an ancestral property of one Govindasamy. The plaintiff purchased the property on 18.11.1986 for a valuable consideration. The plaintiff mortgaged the property with the Co-operative Housing Society, Sivagangai on 03.08.1987 and constructed a house and also dug a well. During the year 1989, when the plaintiff tried to transfer the patta in his name, he was informed that the property was belonged to the Government and on the advice of the third defendant, the plaintiff filed a petition for assignment of land in his favour and on 09.01.1990 an extend of 17 cents was assigned to him. The second defendant issued a show cause notice stating that the plaintiff constructed a house which is against the conditions of the assignment order and threatened to cancel the assignment order. Though the house was constructed even before the date of assignment, the second defendant without considering the same has cancelled the assignment order. The appellant filed an appeal before the District Revenue Officer, Ramanathapuram but the District Revenue Officer dismissed the appeal. The defendants threatened the plaintiff to demolish the house and to cut down the trees.

5.The averments of the defendants is that the suit property never belonged to the said Govindasamy and the purchase from Govindasamy is not valid and that mortgaging the suit property in Co-operative Housing Society, Sivagangai is illegal. The suit property belonged to the Government and the property was assigned to the plaintiff on condition that the property should be used only for agricultural purpose and not for any construction. As the plaintiff constructed the house in the suit property, the assignment order was cancelled.

6.On the above said pleadings, the following issues were framed:



- (i) தாவாச் சொத்துக்கள் வாதிக்குப் பாத்தியமாணை சொத்துக்கள் என்பது சரியா?
- (ii) 06.06.1996 மற்றும் 19.02.1998 தேதியிட்ட உத்திரவுகள் சட்டப்படி செல்லத்தக்கதா?
- (iii) வாதி கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
- (iv) வாதிக்குக் கிடைக்கக்கூடிய பரிகாரங்கள் என்ன ?

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7.The plaintiff himself was examined as P.W.1 and another witness was examined as P.W.2 and 14 documents were marked as Exs.A1 to A14 on the side of the plaintiff and one witness was examined as D.W.1 and 5 documents were marked as Exs.B1 to B5 on the side of the defendants. After considering both sides, the trial Court came to the conclusion that the plaintiff obtained an assignment order for cultivation in the suit property and that the appellant violated the condition imposed in the order and that the house in the suit property was constructed even before to the assignment and partly allowed the suit with regard to the house which was constructed in 3 cents and dismissed the suit in respect of the other areas of the suit property.

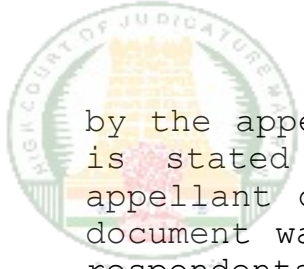
8.The respondents herein has filed an appeal. In the grounds of appeal, it is stated that the trial Court failed to see that Exs.A1 and A2 are null and void and that the plaintiff obtained the assignment order, Ex.A9 illegally. The lower Court failed to see that the lands in which the plaintiff constructed a house was given by the Government for cultivation. The trial Court failed to dismiss the suit by not accepting the arguments put forth by the defendants that the plaintiff constructed a house against the assignment order. The trial Court is erred in allowing the suit by stating that the defendants have not marked any documents or examined witness and did not consider that the plaintiff has illegally obtained the assignment order, Ex.A9. After hearing both sides, the appeal was allowed and the Judgment and decree of the trial Court was set aside. Against which, the appellant herein has come forward with this appeal.

9.The first Appellate Court has framed the following issues:

(a) பரமக்குடி மாவட்ட உரிமையியல் நீதிமன்ற மு.வ.எண்.53 98 வழக்கில் கடந்த 12.10.2000ம் தேதி ஏற்பட்ட தீர்ப்புரை மற்றும் தீர்ப்பாணை சரியா? அதை ஊர்ஜிதம் செய்ய வேண்டுமா ? அல்லது ரத்து செய்ய வேண்டுமா ?

(b) வேறு என்ன பரிகாரம் வழங்கப்படவேண்டும் ?

10.In the grounds of second appeal, it is stated that the appellant is entitled to the relief sought for by him with regard to the house property. But the lower Appellate Court failed to consider that Ex.A1, agreement is dated 18.11.1986 and that the house was subjected to tax-assessment even prior to 1998 and the order passed by the respondents dated 06.06.1995 and 19.01.1998 stating that the assignment patta which was granted to the appellant was cancelled on the ground that the appellant has violated the conditions of the assignment by construction. While applying for assignment of patta



by the appellant, there was a house existing from the year 1987. It is stated that the allegation of the respondents is that the appellant did not disclose the construction in his petition and no document was filed by the respondents to prove this contention. The respondents are well aware of the fact that there was a house in the suit property and they had granted assignment patta and that the appellant has title by acquisition. The Tahsildar never comes to depose before the Court and though the then Village Administrative Officer has been examined, his evidence was not acceptable and only on technical grounds, the lower Appellate Court allowed the appeal.

11. This Court by its order dated 14.10.2009, has admitted the second appeal and has framed the following substantial questions of law, which are as follows:

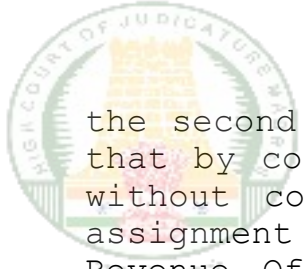
"(1) Whether the lower appellate Court is correct in law in reversing well considered judgment and decree of the trial Court with regard to house property when it is the specific case of the appellant that he had put up the house in the year 1987 which is much prior to applying for the assignment patta?"

"(2) Whether the lower appellate Court is correct in law in dismissing the suit on the ground that the appellant has wrongly mentioned the year in the plaint about the order passed by the third respondent, when there is not specific plea of objection made by respondents and the learned Judge ought to have considered the case on merits instead of harping of the technical aspect of the case?"

Issue Nos.1 and 2:

12. On the side of the appellant, it is stated that the lower appellate Court is not correct in law in reversing the judgment and decree of the trial Court with regard to the house property when it is the specific case of the appellant that he had put up the house in the year 1987 which is much prior to the assignment of patta.

13. On the side of the appellant, it is stated that the appellant purchased the property on 18.11.1986 from Govindasamy who claim the property as an ancestral property. It is stated that the appellant mortgaged the suit property with the Co-operative Housing Society and obtained a loan and has constructed the house. He was paying house tax from the year 1988. It is stated that during the year 1989, the appellant approached the respondents for transferring the patta in his name and at that time, he came to know that the land is recorded as Government land in the Government records. Only on the advice of the third respondent, the appellant has filed a petition for assignment of the land. The third respondent gave an assignment order in favour of the appellant. Afterwards the appellant received a show cause notice from the second respondent calling upon him to explain as to why the assignment order is not to be cancelled. Irrespective of the document filed by the appellant,

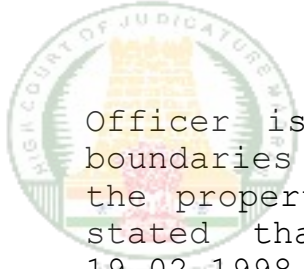


the second defendant cancelled the assignment on 06.06.1995 stating that by constructing a house, the appellant has violated the rules without considering that the construction was done prior to the assignment order. The appellant filed an appeal before the District Revenue Officer and the same was dismissed on 19.02.1998. It is stated that the appellant filed documents Exs.A2 to A18 to show that he has purchased the suit property and constructed a house prior to the assignment order and he was paying the house tax from the year 1988.

14.It is stated that the trial Court after considering the documents had come to a conclusion that the house of the plaintiff in 3 cents of land was constructed prior to the date of assignment. There is no violation of the assignment order regarding the building as the building was constructed prior to the assignment order. The first Appellate Court without considering these facts has allowed the appeal on technical grounds. The order passed by the District Revenue Officer dated 19.02.1998 and the order passed by the Sub Collector dated 06.06.1996 are to be declared null and void. On the side of the appellant, it is stated that the first appellate Court allowed the appeal only on a technical grounds stating that the plaintiff failed to mention the proceedings number and without mentioning the proceedings number, the prayer sought for by the plaintiff could not be granted.

15.On the side of the appellant, it is stated that the appellant has wrongly mentioned the year in the plaint. When there is no specific objections raised by the third respondent, the first appellate Court instead of considering the case on merits passed an order on technical ground. On the side of the appellant, it is stated that the first appellate Court failed to frame suitable issues had come to a wrong conclusion that the order was passed by the Sub Collector was dated 06.06.1996 and that the complainant has stated that order was passed on 06.06.1995 and had decided to allow the appeal. The first appellate Court failed to consider that when a person is seeking for a prayer for cancellation of a particular order, it is the duty of the Government to give the correct proceedings number and date and non mentioning of the same is fatal to the case of the Government.

16.On the side of the respondents, it is stated that the property belongs to the Government. The plaintiff is not having any right over the property. The property was assigned to the plaintiff for cultivation and not for construction of a house. Whereas the plaintiff has constructed the house in violation of the assignment order. It is stated that the plaintiff constructed the house only after the assignment order and patta is cancelled for the violation of the assignment condition and the trial Court dismissed the claim except the house property which is situated in 6 cents of land. The Sub Court correctly allowed the appeal by setting aside the judgment and decree passed by the trial Court. The appellant failed to mark the copy of the order dated 06.06.1995 and the District Revenue



Officer is not impleaded as a party to the suit and that the boundaries are not stated in the suit and that the description of the property is not correct. On the side of the appellant, it is stated that the order of the District Revenue Officer dated 19.02.1998 is filed by the appellant and in that order, the order passed by the Sub Collector is mentioned. It is stated that from 1989 onwards, the appellant is paying the house tax, Ex.A3. The assignment order was granted only on 09.01.1990, It is seen that the first Appellate did not frame any issues regarding the facts of the case. The only two points as to why the first appellate Court allowed the appeal is that one such point is that the mentioning the year of the order and the another point is that the plaintiff failed to mention the number of the proceedings in the plaint. Only on the basis of these two facts, the first appellate Court allowed the appeal and that no other points are discussed by the first Appellate Court.

17.A perusal of the records reveals that the plaintiff constructed the house even prior to the date of assignment on 09.01.1990. Exs.A1 to A4 clearly reveals that the house was constructed prior to the date of assignment and the findings of the trial Court is correct.

18.For the aforesaid reasons, it is decided that the Judgment and decree of the first Appellate Court is set aside and the Judgment and decree passed by the trial Court is to be confirmed.

19.Hence, this appeal is allowed by setting aside the Judgment and decree passed in A.S.No.87 of 2006 and I.A.No.1 of 2007 dated 24.10.2007 on the file of the learned Subordinate Judge, Paramakudi and the Judgment and decree passed in O.S.No.53 of 1998 dated 12.10.2000 on the file of the learned District Munsif, Paramakudi is confirmed. No costs.

Sd/-

Assistant Registrar (CS-II)

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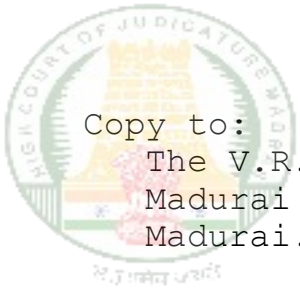
Sub Assistant Registrar(CS)

Encl.:Xerox Copy of Schedule of Property

To

1.The Subordinate Judge,
Paramakudi

2.The District Munsif,
Paramakudi.



Copy to:
The V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SIVA THILAKAR, Advocate (SR-75155[F] dated
15/07/2019)

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