



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 10.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)No.127 of 2006

1.Marudamuthu (Died) ... Appellant/Respondent/Plaintiff
2.Bharvathi
3.Pandiselvi
4.Latha
5.Subramanian
6.Alagupandi
7.Vallimayil ... Appellants 2 to 7

(A2 to A7 are brought on record as LRS., of deceased sole appellant vide Court order dated 16.09.2019 made in C.M.P.(MD)Nos.4144 to 4146 of 2019 in S.A.(MD)No.127 of 2006)

Vs.

1.Ganesan (Died)
2.Murugan (Died) ... Respondents/Appellants/Defendants
3.Raja Mani (Died)
4.Pandi
5.Manimekalai
6.Subbulakshmi
7.Bhaskaran
8.Saravanan ... Respondents 3 to 8

(R3 to R7 are brought on record as LRS., of the deceased R2 and R8 is brought on record as LRS., of the deceased R1 vide Court Order dated 21.06.2017 made in M.P.(MD)Nos.1 to 4 of 2012 in S.A.(MD) No.127 of 2006)

(Memo in USR.No.4452 recorded as R3 died and R4 to R8, who were already on record and recorded as LRS., of the deceased R3, vide Court Order dated 14.10.2019)

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 11.08.2005 made in A.S.No.7 of 2004 on the file of the Subordinate Judge's Court Sivagangai reversing the judgment and decree dated 05.09.2003 made in O.S.No.293 of 1997 on the file of the District Munsif Court, Sivagangai.



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For Appellants : Mr.R.Sridharan
For R1 to R3 : Died
For R4 to R8 : Mr.S.Natarajan

JUDGMENT

This Second Appeal has been filed as against the judgment of the First Appellate Court, reversing the finding of the trial Court, granting declaration and injunction.

2.While admitting the Second Appeal, the following substantial questions of law have been framed:-

"(i)Whether the judgment of the Lower Appellate Court without framing relevant points for determination is sustainable? (Vide Or 41 R 31 C.PC.; 1997 (1) CTC 26).

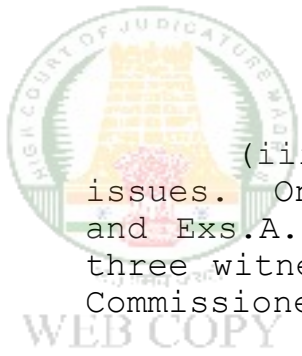
(ii)Whether the Lower Appellate Court has not committed an error in ignoring the Commissioner's report and two receipts?

(iii)Whether the Lower Appellate Court is not obtained itself from considering the documents independently as required by a final Court of fact?."

3.The brief fact, leading to file the Second Appeal, reads as follows:-

(i)It is the case of the plaintiff that the suit property is his ancestral property and he is in possession of property for more than 30 years and put up a hut in the suit property and he has also obtained patta. The plaintiff is paying house tax for the hut in Door No.3/100A. However, the patta granted to the plaintiff was objected by the defendants and the defendants had filed an appeal and the same was allowed on 06.08.1996. The patta was later cancelled. Against which, the appeal was filed by the plaintiff and the same was also dismissed. However, the plaintiff is in possession of the suit property for more than 30 years, hence, sought for declaration.

(ii)The defendants have denied the averments and contended that the suit property originally belonged to their grandfather, namely, Palaniyandi Servai and he put up a construction and residing there. Thereafter, the defendants' father was in possession of the property. As the defendants were working in other districts, the plaintiff has obtained patta wrongly, which is also objected and the patta was cancelled. The house tax receipts are no way connected to the suit property and the hut situated in the vacant land was demolished long back. Thereafter, the defendants have put up a hut in the suit property.



(iii)The trial Court based on the pleadings has framed four issues. On the side of the plaintiff, three witnesses were examined and Exs.A.1 to A.25 were marked. On the side of the defendants, three witnesses were examined and Exs.D1 to D.7 were marked and the Commissioner's report was also marked as Exs.C.1 and C.2.

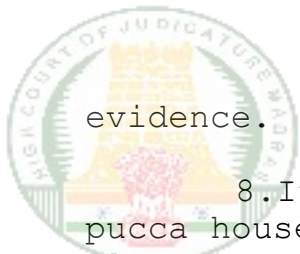
(iv)Based on the above materials, the trial Court has decreed the suit. However, the First Appellate Court has allowed the appeal, holding that the plaintiff has not established that the suit property is his ancestral property and he is in possession of the property. As against which, the present Second Appeal came to be filed.

4.Heard the learned counsel appearing for the appellants and he contended that the First Appellate Court has not considered the documents filed on the side of the plaintiff ie., tax receipts as well as patta issued in favour of him. Besides, the Commissioner's report has also not taken into consideration. Hence, the judgment of the First Appellate Court requires interference.

5.The learned counsel appearing for the respondents 4 to 8 submitted that he has filed a memo reporting no instructions.

6.However, this Court has perused the entire materials. The suit has been filed for seeking declaration in respect of the suit property. It is the contention of the plaintiff that the suit property is his ancestral property, he has put up a hut in the suit property. The plaintiff is paying house tax and has also obtained patta under the Natham Scheme. The very pleadings of the plaintiff clearly indicate that the patta granted in favour of the plaintiff was subsequently, cancelled by the revenue authorities and as against which the appeal was filed and the same was also dismissed. Therefore, the patta under Ex.A.14 relied upon by the plaintiff cannot confer any right on the plaintiff. Even otherwise, mere patta will not confer any title to the properties. Admittedly, the patta proceedings are the subject matter of the appeal and revision before the revenue authorities and the patta granted by the plaintiff was also cancelled. This fact is admitted by the plaintiff.

7.Now, what remains to be seen is house tax receipts. It is the contention of the plaintiff that the suit property is his ancestral property, but absolutely there is no evidence whatsoever available on record to show that how their ancestors have possession and how the property devolved on the plaintiff. A careful perusal of Exs.A.3 to A.10 house tax receipts clearly indicate that it is relate to some other Door Nos.77 and 79 and Ex.A.16 to A.18 is the house tax receipts for subsequent years. Only in few of that receipts, the Door Number is shown as 3/100A. How the Door Nos.77 and 79 are related to the Door No.3/100A. There is absolutely no



evidence.

8.It is an admitted fact that next to the suit property, a pucca house of the plaintiff is also available. The trial Court has also found that a pucca constructed house of the plaintiff is situated in the northern side of the suit property. The Commissioner's report is also taken note of the fact that there is no door number in the hut situated in the suit property and there was electrical connection taken from the plaintiff's land. However, there was no meter and in fact, oven has been fixed recently in the shed to make it appear, as if it is already available. The report of the Commissioner indicates that such arrangements have been made recently only for the purpose of creating evidence and the First Appellate Court, considering all the revenue records and certificates issued by the Panchayat President, has in fact found that the plaintiff has not established the fact that the suit property is his ancestral property. Though the point for consideration is not specifically framed by the First Appellate Court, the First Appellate Court has considered all the evidence and given finding.

9.P.W.1 also in his evidence admitted that he is residing in the pucca house situated near the suit property. This fact is also contrary to the plaintiff. At any event, the tax receipts and the alleged patta, which was granted by the revenue authorities, do not confer any title to the plaintiff. The burden lies on the plaintiff to establish the title on the property. Merely on the basis of the house tax receipts and patta, which was also cancelled by the revenue authorities, one cannot claim the title to the property. Accordingly, all the substantial questions of law have been answered against the appellants.

10.In the result, this Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Sivagangai.



2.The District Munsif, Sivagangai.

3.The Section Officer, Vernacular Records, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M/S.S.NATARAJAN, Advocate (SR-104280[F] dated
10/12/2019)

+1 CC to M/s.R.SRIDHARAN, Advocate (SR-104338[F] dated 11/12/2019)

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