

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2019

Delivered on: 10.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1070 of 2002

Thiruthaleeswarar Thirukoil
Aranvoyal Rep.by its
Hereditary Trustee K.Boopalan
Aranvoyal Village
Tiruvallur Taluk & District.

...Plaintiff/Appellant/Appellant

Vs.

1. The District Collector
Tiruvallur District
Office of the Collectorate
Tiruvallur.

2.V.Ramamoorthy

3.K.Chellappa Reddy (deceased)

4.C.Sundaraj

5.C.Narayanaswamy

6.C.Sigamani

...Defendants/Respondents/Respondents

(RR4 to 6 brought on record as LRs
of the deceased R3 vide order of
Court dated 30.10.2018 made in
CMP.No.818 to 820 of 2011 in
S.A.No.1070/2002)

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set
aside the judgment and decree dated 07.09.2001 made in
A.S.No.18 of 2000 on the file of the Sub-Court, Tiruvallur
confirming the judgment and decree dated 09.06.2000 made in
O.S.No.419 of 1990 on the file of the District Munsif Court,
Tiruvallur.

For Appellant : Mr.K.V.Ananthakrushnan

For Respondents: Mr.S.Jaganathan, for R1
Government Advocate (Civil side)

: Mr.V.Sudhakar for R4 to R6

: R2- set exparte

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Tiruvallur in A.S.No.18 of 2000, dated 07.09.2001, confirming the judgment and decree passed by the District Munsif, Tiruvallur in O.S.No.419 of 1990, dated 09.06.2000.

2. The appellant herein had filed a suit in O.S.No.419 of 1990, on the file of the District Munsif, Tiruvallur for the relief of declaration of title over the suit property and for the issue of patta in its favour. The learned District Munsif, Tiruvallur, by the judgment dated 09.06.2000 had dismissed the said suit, however, he directed the parties to bear their respective costs.

3. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.18 of 2000, on the file of the Sub-Judge, Tiruvallur. The learned Sub-Judge, Tiruvallur by the judgment and decree dated 07.09.2001 had dismissed the said appeal with costs and thereby confirmed the judgment and decree passed by the trial Court. Feeling further aggrieved, the plaintiff had filed the present Second Appeal.

4. For the sake of convenience, the parties are referred to as described before the trial Court.

5. The averments made in the plaint are, in brief, as follows:-

The suit properties belong to the plaintiff Devasthanam. The plaintiff's ancestors gifted the suit property to the temple long back. The plaintiff's ancestors are the hereditary trustees and they were in possession and management of the suit property on behalf of the temple along with other lands. The suit property was leased out to various parties. The suit village was a Zamin Village. The suit property is a "ryoti land". During 1956, the survey and settlement operations were held and during the said period, it was wrongly classified as "Anadeenam" land. That being so, the Government had classified item No.1 of the suit property for constructing a community hall. The Government has no right to acquire the said land. Item No.2 was leased out to one Chellappa Reddi. Taking advantage of the same, the said Chellappa Reddi had created fraudulent and fictitious documents in favour of one Ramamoorthy and the same will not bind upon the plaintiff. Hence, the said Ramamoorthy and Chellappa Reddi have been impleaded as defendants 2 and 3. Since the suit properties belong to the plaintiff's temple, the title of the plaintiff has to be declared and consequently, a patta has to be issued in favour of the plaintiff.

6. The averments made in the written statement filed by the first defendant, are, in brief, as follows:-

The suit properties do not belong to the plaintiff's Devasthanam as alleged. Neither the plaintiff's ancestors gifted the suit properties to the temple nor they were managing the affairs of the temple and in possession of the suit properties on behalf of the temple as alleged. The alleged lease in favour of the third defendant is denied. The suit properties are classified as 'Punjai Anadheenam' land in the Revenue Registers. During the survey and settlement operations in the year 1951, the suit property was classified as 'Anadheenam'. The allegation that the Government had classified item No.1 of the suit property for constructing a community hall is false. There is no such proposal to acquire the suit items for constructing community hall as alleged. In fact, the entire extent mentioned in the suit schedule is in occupation of the plaintiff temple and 'B' memo charges are collected for the same. The plaintiff is not the owner of the suit properties and as such, he cannot claim any compensation, even if it is acquired for any specific purpose. The alleged deed to the third defendant is denied. The plaintiff has no right to lease out the suit property. The plaintiff has not submitted any regular application for the issue of patta in favour of the plaintiff temple as alleged. Further, the suit properties are situated within Chennai City limit. The Government banned issuing patta for the land which are situated within Chennai limit for cultivation purpose. Therefore, the first defendant prayed to dismiss the suit.

7. The averments made in the written statement filed by the third defendant, are, in brief, as follows:-

It is false to state that the suit properties belong to the plaintiff's Devasthanam. It is also false to state that the plaintiff's ancestors gifted the suit properties to the temple. The third defendant is in possession and enjoyment of item No.2 of the suit properties for more than 45 years and he is paying necessary charges to the Government. The plaintiff has no right or title to the item No.2 of the suit properties. Therefore, the third defendant prayed to dismiss the suit.

8. Based on the aforesaid pleadings, the learned District Munsif, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and also examined three more witnesses as PWs 2 to 4. On the side of the plaintiff, Exs.A1 to A43 were marked. On the side of the defendants, one witness was examined as DW1 and no exhibits were marked on the side of the defendants.

9. The learned District Munsif, Tiruvallur, after considering the materials placed before him, found that the plaintiff failed to prove that the suit properties originally belonged to his ancestors and they gifted the said properties to the suit temple. He further found that the plaintiff failed to prove that he applied for patta before the Competent Authority. He further found that admittedly, in the revenue records, the suit properties were classified as "Anatheenam" land, but the plaintiff has not produced any evidence to show that the suit properties belong to the temple. He further submitted that the Civil Court has no jurisdiction to grant patta. Accordingly, he dismissed the suit. As against the same, the plaintiff had filed an appeal in A.S.No.18 of 2000 on the file of the Sub-Judge, Tiruallur. The learned Sub-Judge, Tiruvallur had dismissed the said appeal and thereby confirmed the judgment and decree passed by the trial Court. The plaintiff, further aggrieved has filed the present second appeal.

10. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1. Whether the Courts below are right in holding that the parties are not entitled to approach the Civil Court for issue of patta in respect of immovable properties without approaching the Revenue Authorities for the same?

2. Are the Courts below right in holding that the Civil Court has no jurisdiction to grant patta unless the grant of patta was declined or rejected by the Revenue Authorities?

3. The suit for declaration was resisted by the first respondent on the ground that it is owned by the State since it was classified as "Anatheenam" in Revenue Records and in such circumstances, is not the duty of the first respondent to prove the same?

4. Mere oral evidence is sufficient to prove that the plaint schedule properties are classified as "Anatheenam" in the absence of Revenue Records"?

11. Heard Mr.K.V.Ananthakrushnan, the learned counsel for the appellant, Mr.S.Jaganathan, learned Government Advocate

(Civil Side) for the first respondent and Mr.V.Sudhakar, the learned counsel for the respondents 4 to 6.

12. Substantial Questions of law Nos.1 to 4 :

The learned counsel for the appellant/plaintiff has submitted that the Courts below erred in holding that the plaintiff ought to have approached the Revenue Authorities for the reliefs asked for in the plaint. He further submitted that the Courts below erred in holding that the Civil Court has no jurisdiction to grant reliefs asked for in the plaint. He further submitted that the Courts below failed to appreciate that the Civil Court has to adjudicate the question as to whether the person claiming patta is the title holder of the land. He further submitted that the Courts below failed to appreciate that there is no provision in the standing orders of the Board of Revenue or in any other enactments taking away the jurisdiction of the Civil Court to adjudicate upon the question of title relating to immovable property.

13. He further submitted that the Courts below failed to appreciate that the suit properties were originally situated in Zamin Village and only in the year 1951, during survey and settlement period, the lands were wrongly mentioned as "Anatheenam" in Revenue Records and the appellant had approached the appropriate Authorities including the first respondent to correct the wrong entry and issue patta and there was no response from them though the said representations were received by them. He further submitted that the Courts below failed to appreciate that already the plaintiff temple has filed a suit in O.S.No.1008 of 1981, on the file of the District Munsif, Tiruvallur in which it has been declared as the ownership of the plaint schedule properties were vested with the temple. He further submitted that the Courts below failed to consider that the plaintiff has been in possession and enjoyment of the suit properties by leasing out the same to the third defendant. He further submitted that the Courts below erred in holding that Exs.A21 to A33 and 35 are only 'B' memos and not kist receipts and therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the Courts below and decree the suit as prayed for.

14. The learned counsel for the appellant/plaintiff in support of his contentions relied upon the following decisions:-

1) Dhulipalla Ramayya and another Vs. Kota Brahmayya and others, 1958 AIR (A.P.) 100.

2) State of Tamil Nadu Vs. Ramalinga Samigal Madam, (1985)
4 SCC 10 = AIR 1986 (SC) 794.

3) Mandala Jaya Syamala Rao Vs. Sri Radhakanthaswami Varu of Madugula, a diety represented by the Executive Officer, Inspectors Hindu Religious and Charitable Endwments, Analcapali, 1984(1) ALT 286= 1984(1) APLJ 113.

4) Palaniswamy Gounder and Ors. Vs. Varadharaja Perumal Templd and Ors., MANU/TN/1038/1996 = 1997-2-LW 343.

15. Per contra, Mr.S.Jaganathan, learned Government Advocate (Civil Side) appearing for the first respondent has submitted that admittedly in the year 1951 itself, during survey and settlement, the suit properties were classified as "Anatheenam" and in such a case, the plaintiff should have filed a petition before the concerned Settlement Officer to cancel the said classification and grant patta in favour of the plaintiff temple but he has not submitted any application before the concerned Authorities. He further submitted that Exs.A21 to A33 and A35 would clearly show that the plaintiff has paid only B-memo charges, it has not paid any kist to the Government claiming that the temple is the owner of the suit properties.

16. He further submitted that since the plaintiff has paid only B-memo charges, it has to be presumed that the properties do not belong to the plaintiff temple. He further submitted that the suit in O.S.No.1008 of 1981 was filed against the third parties for the relief of permanent injunction only and the judgment and the decree passed in the said suit will not bind upon the first defendant. The plaintiff has not produced any documentary evidence to show that he applied for cancelling the classification as "Anatheenam" and grant patta in favour of the plaintiff temple. He further submitted that the Civil Court has no jurisdiction to decide the issue as to whether the classification made by the Settlement Officer as "Anatheenam" is right or not. He further submitted that the trial Court taking into consideration of the aforesaid evidence, has rightly dismissed the plaintiff's suit and the same has been confirmed by the first Appellate Court and in the said factual concurrent findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

17. In Dhulipalla Ramayya and another Vs. Kota Brahmayya and others, (cited supra), the Andhra Pradesh High Court has held that the expression 'anadhinam' does not imply that it is domain or home-farm land of the landholder and therefore private land. It merely means unoccupied land. Further, it was held as follows:-

"But this cannot be construed to mean that everybody can dispossess him meanwhile and that he is deprived of all his rights flowing from possession, until he obtains a ryotwari patta; of course the right to obtain a ryotwari patta can be enforced only before the special forums set up under the Act and that relief cannot directly or indirectly be sought elsewhere. But there is nothing in the Act to show that until the ryotwari patta is obtained, all reliefs in respect of other rights flowing from possession are taken away and cannot be claimed in the ordinary Civil Courts."

18. From the aforesaid decision, it is clear that the right to obtain a ryotwari patta can be enforced only before the special forums set up under the Madras Estates (Abolition and conversion into Ryotwari) Act, 1948 and that relief cannot directly or indirectly be sought elsewhere. If there is any threat to the possession, to protect the said possession, the person can approach the Civil Court and seek the relief of injunction.

19. But, in this case, the plaintiff has not asked any relief of injunction to protect his possession. On the contrary, he has asked the relief of declaration of title and also to grant patta. In view of the aforesaid decision, the plaintiff has to apply for grant of patta before the concerned Authorities. He cannot approach the Civil Court seeking patta.

20. In State of Tamil Nadu Vs. Ramalinga Samigal Madam, (cited supra), the Hon'ble Supreme Court in para No.14 held as follows:-

"14. Thirdly, having regard to the principle stated by this Court while enunciating the first proposition in Dhulabhai case it is clear that even where the statute has given finality to the orders of the special tribunal the civil court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the

civil court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which civil court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of civil court's jurisdiction. Now take the case of an applicant who has applied for a ryotwari patta under Section 11 staking his claim thereto on the basis of his long and uninterrupted possession of the ryoti land but the Settlement Officer on materials before him is not satisfied that the land in question is ryoti land; in that case he will refuse the patta to the applicant. But can he, even after the refusal of the patta, protect the applicant's long and uninterrupted possession against the Government interference? Obviously, he cannot, for it lies within his power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But such a person even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely before granting such relief the civil court may have to adjudicate upon the real nature or character of the land if the same is put in issue. In other words since the Settlement Officer has no power to do what civil court would normally do in a suit it is difficult to imply ouster of civil court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under Section 64-C of the Act.

21. From the aforesaid decision, it is clear that even after the refusal of the ryotwari patta by the Settlement Officer, to protect his possession, the plaintiff can file a suit before the Civil Court. In this case, admittedly the plaintiff has not filed any application before the Settlement Officer to grant Rayot patta. If any such application is submitted before the Settlement Officer and the said Settlement Officer refused to grant patta, and if there is any threat to his possession, he can approach the Civil Court to protect his possession to grant injunction.

22. In this case, as already pointed out that the plaintiff has not asked any injunction. On the contrary, he has asked declaration of title and also patta from the Civil Court. Therefore, the aforesaid decision also will not help the plaintiff.

23. In Mandala Jaya Syamala Rao Vs. Sri Radhakanthaswami Varu of Madugula, (cited supra), the Andhra Pradesh High Court has held that "a lawful ryot is entitled to a patta. When a question arises whether a person is a lawful ryot or not, that question falls to be decided by the special Tribunal created by the Act." Further, it has held that the suit is not maintainable for the relief of declaration. Therefore, the aforesaid decision is against the case of the plaintiff.

24. In Palaniswamy Gounder and Ors. Vs. Varadharaja Perumal Temple and Ors. (cited supra), this Court has held that notwithstanding the adjudication by the authorities under the Act, it is always open to the aggrieved persons to approach the competent Civil Court to establish their claim of title and their entitlement to patta by getting appropriate declaration of their title.

25. In this case, as already pointed out that the plaintiff has not approached the competent authority seeking patta and under the said circumstances, he cannot directly approach the Civil Court to grant patta. Therefore, the aforesaid decision also will not help the plaintiff's case.

26. For the aforesaid reasons, this Court does not find any merit in this Second Appeal. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

27. In the result, this Second Appeal is dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge, Tiruvallur.

2.The District Munsif , Tiruvallur.

3.The District Collector
Tiruvallur District
Office of the Collectorate
Tiruvallur.

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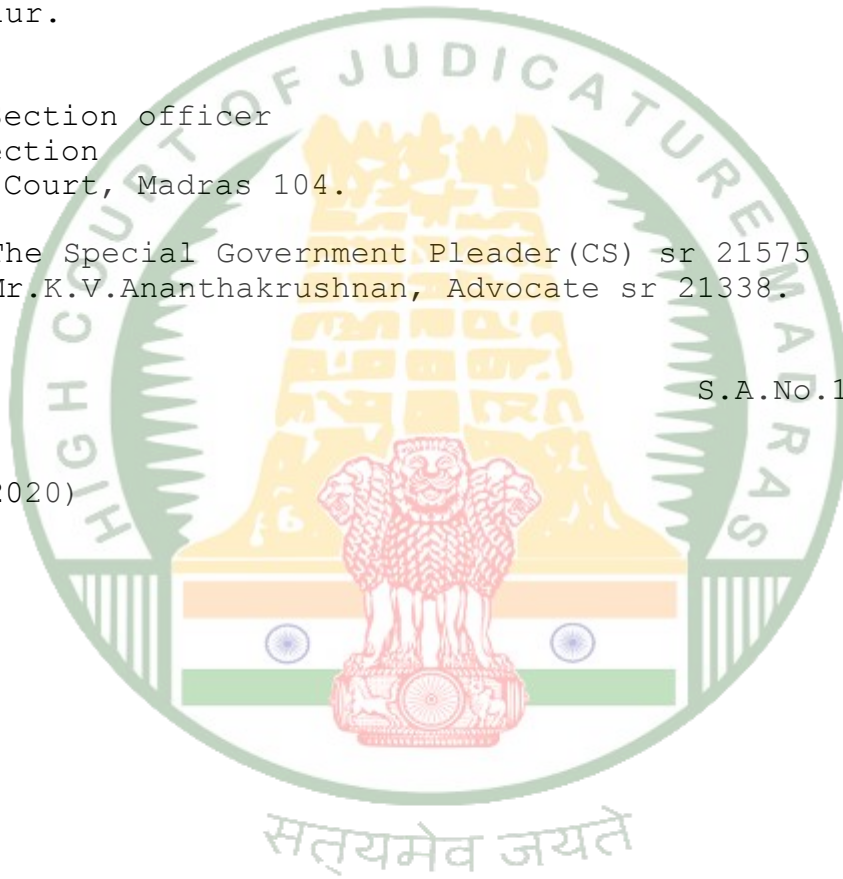
The Section officer
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+1 CC to The Special Government Pleader(CS) sr 21575

+1 CC to Mr.K.V.Ananthakrushnan, Advocate sr 21338.

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