

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1695 of 2001

G.Kandaswamy Gounder ...Appellant/Plaintiff in Trial Court
Vs.

- 1.Thaiyanagayi (deceased)
- 2.The Collector of Cuddalore
District, Cuddalore-1
- 3.The Tahsildar,
Vriddhachalam Taluk Office,
Vriddhachalam
- 4.Sambandhapathar,
Vijayalakshmi Lathe Work
- 5.Sakthivelu
- 6.Rajasekar
- 7.Balu @ Subramaniam
- 8.Susila
- 9.Jaya

...Respondents 1 to 3/
Defendants 1 to 3 in Trial Court

(The second appeal is abated as against
the first respondent vide order of court
dated 08.10.2015 made in memo
dated 05.10.2015 in SR.No.84710
in SA.No.1695 of 2001)

(RR4 to 9 brought on record as LR's
of the deceased R1 vide order of
court dated 18.11.2015 made in
CMP.No.519 to 521 in SA.No.1695
of 2001)

Prayer :- This Second Appeal is filed under Section 100 of
Civil Procedure Code against the judgment and decree dated
27.11.2000, in A.S.No.7 of 2000 on the file of the Principal
Subordinate Judge, Vriddhachalam confirming the decree and
judgment dated 28.10.1999 in O.S.No.511 of 1988 on the file of
the Additional District Munsif Court, Vriddhachalam.

For Appellant : Mr.T.Dhanasekaran

For Respondents

R1 : Died

R2 & R3 : Mr.S.Jagannathan,
Government Advocate(CS)

R4 : Not ready notice - No appearance

R5 to R9 : Mr.T.Sivagnanasambandan

JUDGMENT

This second appeal is directed as against the judgment and decree dated 27.11.2000, in A.S.No.7 of 2000 on the file of the Principal Subordinate Judge, Vriddhachalam confirming the decree and judgment dated 28.10.1999 in O.S.No.511 of 1988 on the file of the Additional District Munsif Court, Vriddhachalam.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and recovery of possession. The suit property belonged to one, Thiyagaraja Pathar and his two sons, namely Palaniappan and Bala Gurunathan. After demise of the said Thiyagaraja Pathar, his two sons were in possession and enjoyment of the suit property. They filed insolvency petition in IP.No.24 of 1973 on the file of the Subordinate Court, Chidambaram to adjudge them as insolvents. They were adjudged as insolvents and the properties including the suit property were vested with the official receiver of South Arcot District, Cuddalore for administration. The official receiver of Cuddalore put up for sale of the suit property along with the other properties in pursuant to the order passed in IP.No.24 of 1973. In the auction, one Hukkam Chand, son of Mangilal of Ulundurpet was the highest bidder and the properties were purchased by him and the official receiver also executed sale deed in his favour on 27.04.1976. Thereafter, he was put in possession and enjoyment of the property. Later, the plaintiff purchased the suit property from the said Hukkam Chand by the registered sale deed dated 26.12.1985. While being so, the first defendant trespassed into the property and had built up small hut admeasuring 50 feet towards east to west and 20 feet south to north and he is residing there. The first defendant also sets up false and untenable claim over the suit property. Therefore, the plaintiff caused legal notice to the second and third defendants under Section 80 of CPC are being the Government. After receipt of the same, they did not reply and they did not vacate the premises. Hence, the suit.

4. The first defendant resisted the plaintiff's case by filing separate written statement stating that she denies all the averments made in the plaint as false and frivolous. The suit property was never in the possession of the said Thiyagaraja Pathar and his two sons. The suit property was never vested with the official receiver and no sale took place as alleged in the plaint. The suit property is classified as Grama Natham and ever before her marriage, her husband was residing there. After her marriage along with her husband she is residing there. In fact, during the floods, the thatched house fell down and thereafter they raised walls about 20

years ago and put up pucca thatched house. Later they also raised brick walls with cement and put up country tiles. Therefore, the first defendant's possession has been open hostile and adverse to the interest of all. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. The second and third defendants filed separate written statement and stated that they also denied all the allegations and averments made in the plaint as false and frivolous. The suit property is classified as Village Natham. The total extent is 4.50 acres. The owner of the suit property is the State. The State is using the land for public welfare namely for conducting school, nutritious centers, etc are being constructed by the respective department and they are in exclusive possession and enjoyment of the entire 4.50 acres, which is comprised in R.S.No.97A/1A situated at Manalore Village. Therefore, the suit filed by the plaintiff is not all maintainable and prayed for dismissal of the suit. Further stated that the entire averments are nowhere connected with these defendants 2 and 3 and as such the plaintiff has no right to purchase the said property as his vendor had no title over the suit property. The plaintiff has purchased the suit property from the person who has no right, title or interest in the suit property, the sale deed is null and void and prayed for dismissal of the suit.

6. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and three documents were marked as Ex.A.1 to Ex.A.13. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.16 were marked. The Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.7 of 2000 on the file of the Principal Subordinate Judge, Vriddhachalam. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

7. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the Courts below are legally right in rejecting the title of the appellant to the suit property obtained by the appellant by operation of law?

b) Whether the courts below are legally correct in not noticing that there was no prayer to set aside the sale which was obtained by operation of law and as such the suit cannot be dismissed?

8. The learned counsel appearing for the plaintiff and the defendants are present and they reiterated the averments set out in the plaint as well as the written statements.

9. Heard Mr.T.Dhanasekaran, learned counsel appearing for the plaintiff, Mr.S.Jagannathan, Government Advocate(CS) appearing for the defendants 2 and 3 and Mr.T.Sivagnanasambandan, learned counsel appearing for the first defendant.

10. According to the plaintiff, the property originally belonged to one, Thiyagaraja Pathar. After demise of the said Thiyagaraja Pathar, his sons were in possession and enjoyment of the suit property. Thereafter they filed insolvency petition in I.P.No.24 of 1973, in which they were declared as insolvents and the suit property along with other properties were taken possession by the official receiver and the suit property was brought for sale. On auction, one, Hukkam Chand purchased the property and sale certificate was also issued in his favour. Thereafter, the very same property was purchased by the plaintiff by registered sale deed dated 26.12.1985. While being so, the first defendant trespassed into the suit property and put up a hut. In respect of other portions of the suit property, the second and third defendants have encroached the property and constructed buildings.

11. Per contra, the first defendant submitted that for the past several years she is in possession and enjoyment of the suit property by putting up a hut, and not constructed permanent structure and with tiled roof. After her marriage along with her husband they are living there. In respect of the second and third defendants are concerned, they are Government Authorities and the land originally belonged to Government comprised in S.No.97A/1A situated at Manalore Village. Thereafter, they constructed buildings belong to Government and as such the suit property is not at all auctioned by sale in I.P. proceedings in I.P.No.24 of 1973.

12. The plaintiff did not mark any document to show that the suit property originally belonged to one, Thiyagaraja Pathar. Further, the plaintiff also failed to mark any document to show that the property which was sold out on the auction by the official receiver to Hukkum Chand and thereafter it was sold out by the said Hukkum Chand in favour of the plaintiff. Even according to the plaintiff, the first defendant encroached part of the suit property even before the year 1983. When it being so, Ex.A.8 to Ex.A.13 house tax receipts marked by the plaintiff are not at all believable one. Further those receipts are also not belonging to the suit property. Whereas, the sale deeds marked by the plaintiff are Ex.A.1 to Ex.A.3, the land is classified as Grama Natham. When it belongs to Government, it should not have shown in IP insolvency proceedings as owned by them. Therefore, whatever the auction conducted under the insolvency

proceedings, when the property belongs to the Government, it would not affect the right of the Government with regards to the ownership of the land. Further, the plaintiff also failed to prove the encroachment of the first defendant in the suit property and except the evidence of P.W.1, there is no other material to show that the first defendant is also trying to get patta for the portion which they occupied.

13. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

14. Accordingly, this Second Appeal is dismissed by confirming the judgment and decree of the courts below. No order as to costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Vriddhachalam
2. The Additional District Munsif Court,
Vriddhachalam.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.T.Dhana sekar , Advocate SR.No. 10159

+1cc to Mr.T.Sivagnansambandam , Advocate SR.No. 9664

+1 cc to Spl Government Pleader Sr.No. 9464

S.A.No.1695 of 2001

A.SK(22/09/2020)