



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Verdict : 23.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1719 of 2001

1. M/s. Adhithanar Educational
Institution of a Public Nature
rep. by its Chairman
Sivanthi Adhithan
No.1, Rundall's Road,
Vepery, Chennai - 1

2. Murugaian
(2nd Defendant impleaded in the Appellate Court)
...Appellants/Respondent 1 & 3/
1st Defendant

Vs.

1. Karunakaran

2. Devarajan ...Respondents/Appellants 2 & 3/
Plaintiffs 2 & 3

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 13.12.2000 made in A.S.No.13 of 1991 on the file of the Subordinate Court, Kancheepuram, reversing the judgment and decree dated 06.08.1990 made in O.S.No.1119 of 1981 on the file of the District Munsif Court, Kancheepuram.

For Appellants : Ms.Mythili Suresh

For Respondents: Notice served

JUDGMENT

This second appeal is directed as against the judgment and decree dated 13.12.2000 made in A.S.No.13 of 1991 on the file of the Subordinate Court, Kancheepuram, reversing the judgment and decree dated 06.08.1990 made in O.S.No.1119 of 1981 on the file of the District Munsif Court, Kancheepuram.

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

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

3.1. The suit is filed for permanent injunction. The plaintiffs are the absolute owners of the suit property. The



first item of the suit property originally belonged to one Murugappa Naicker and others and they were registered land holders as per the land register and survey extract. In turn they sold out the same in favour of one Chandrabai Ammal by a registered sale deed dated 22.09.1959. The property was described in paimash numbers 814, 815 and 816 ad measuring 10 acres. In turn the said Chandrabai Ammal sold out the same to one Govindan on 11.05.1960. for the valid sale consideration. Again the said Govindan sold out the same to one Muniammal by a registered sale deed dated 22.11.1962.

3.2. Thereafter the said Muniammal has executed settlement deed in favour of the plaintiffs 2&3 on 22.11.1962 and the plaintiffs 2&3 dugged up two bore wells on the expenditure of Rs.6500/- in the first item of the suit schedule property. Unfortunately, the plaintiffs failed to obtain patta and in that circumstances, the government taken over the entire village No.27 Keelkadirpur and proceeded under the Raiyathvari patta. In fact there was no claimant in respect of the first item of the suit property and the same was as classified as Annadeenam.

3.3 The first defendant claimed title in respect of the first item of the suit property by way of filing suit in O.S.No.264 of 1969 on the file of the District Munsif Court, Kancheepuram, for declaration and recovery of possession along with damages and the said suit was dismissed on 29.04.1971. Aggrieved by the same the first defendant again preferred an appeal suit in A.S.No.113 of 1971 on the file of the Sub Court, Kancheepuram, and the same was allowed in favour of the defendant and decreed the suit on 08.01.1976. Against which, the plaintiffs 2 & 3 had filed a second appeal before this Court in S.A.No.1397 of 1976 and the same was dismissed with the direction, that the parties concerned shall apply for patta as per the provision of any one of the Abolition Act. If the patta granted that would conclude the rights of the parties. If any appeal as against the issuance of patta, the same will be decided independently without any influence by any of the observation made by this Court in the second appeal. Therefore, this Court negatived title for the defendants as well as the plaintiffs and directed them to approach authority concerned for issuance of patta.

3.4. Thereafter, the plaintiffs applied for patta. When the said proceedings were pending, the first defendant filed execution proceedings in E.P.No.33 of 1976 and ordered delivery by an order dated 29.06.1976. It was only simplicity possession and actual possession was never disturbed and the plaintiffs are continued in possession and enjoyment of the first item of the suit schedule property. In fact, the first defendant again instituted a suit in O.S.No.687 of 1980 in which, he categorically admitted the possession and enjoyment of the first item of the suit property by the plaintiffs.



3.5. In respect of the items 2 & 3 of the suit property, originally belonged to one Kandaswamy and others. The second and third plaintiffs purchased the same by registered sale deed dated 30.07.1968 and thereafter they are in possession and enjoyment of the suit property and all the revenue records are mutated in their names and they are regularly paying the kist. In respect of the item No.4 of the suit schedule property originally belonged to Raji Iyer and the first plaintiff purchased the same by a registered sale deed dated 26.11.1971 for the valid sale consideration and the first plaintiff has been put in possession and enjoyment of the same. Thereafter revenue records are mutated in his name and also regularly paying kist for the said property. The first plaintiff is the father and the second and third plaintiffs are sons. Therefore, they are looking after the property. Though the first defendant filed suit for damages, he engaged the second and third defendant and made a forcible enter in the suit property and it was timely prevented and filed the present suit.

4. Resisting the same the defendants filed written statement stating that all the sale transaction are false and totally denied by them. The first defendant is an institution represented by its Chairman. The first item of the suit property and adjacent eastern property with an extent of 20 acres out of 203.22 cents in old survey No. 3/3 of Kilkadirpur belongs to the first defendant. Originally it was belonged to one Sarangapani Mudaliar and the same was purchased by a registered sale deed dated 14.07.1966. Thereafter, he had also purchased 20 acres from one Kamatchi Ammal by a registered sale deed dated 03.08.1966 and other property ad measuring 9 acres from one Kuppusamy Naidu by registered sale deed dated 14.07.1966 and another 22 acres purchased from one Nagamani Ammal by a registered sale deed dated 18.11.1966 and finally another property ad measuring 20 acres from Subramani by a registered sale deed dated 12.08.1966. From the date of purchase the first defendant is in possession and enjoyment of the property.

4.1. It is true that the first defendant filed suit in O.S.No.264 of 1969 and ended in second appeal in S.A.No.1397 of 1976 before this Court. Thereafter, on 29.06.1976, the first defendant had taken actual physical delivery of the suit property in E.P.No.33 of 1976, through the third defendant, who is working as clerk. Now the patta proceedings is pending with the concerned authority. Even in the appeal suit in A.S.No.113 of 1971 the suit property declared in favour of the first defendant and accordingly physical possession also delivered in E.P.No.33 of 1976.

4.2. While pending the second appeal, the plaintiffs unlawfully trespassed into the property as such, the second defendant filed suit in O.S.No.687 of 1980 for damages. The



first defendant is in possession and enjoyment of the property and also paying kist and other incidental charges to the authorities concerned. The adangal and chitta extract are stand in the name of the first defendant. Therefore he prayed for dismissal of the suit.

5. On the side of the plaintiff, they examined P.W.1 and were marked Ex.A.1 to Ex.A.28. On the side of the defendants, they examined D.W.1 and were marked Ex.B.1 to Ex.B.13. The Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit insofar as the first item of the suit property and decreed insofar as the items 2 to 4 of the suit property in favour of the plaintiffs. Aggrieved by the same, the plaintiffs preferred an appeal suit in A.S.No. 13 of 1991 and the first appellate Court allowed the appeal and decreed the suit filed by the plaintiffs in respect of all the items in the suit property. Aggrieved by the same, the defendants 1 & 3 preferred this present second appeal.

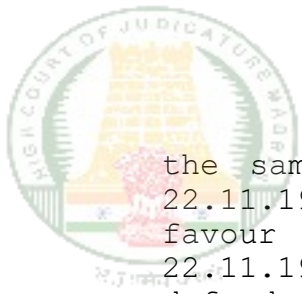
6. At the time of admission of this second appeal on 13.12.2001, the following substantial questions of law were formulated for consideration:-

"1. Whether the lower appellate Court is correct in law in decree the suit especially when the same is barred by res judicata?

2. Whether the lower Appellate Court is correct in law in decreeing the suit for injunction especially when the respondents had not proved their possession of the suit property as on the date of the suit and that the appellants had attempted to disturb their alleged possession of the suit property?"

7. Heard Ms. Mythili Suresh, learned counsel appearing for the appellants/defendants and no one appeared on behalf of the respondents. The learned counsel appearing for the appellants/defendants restricted the appeal only in respect of the first item in the suit property and they are not concerning about the items 2 to 4 of the suit property.

8. The plaintiffs filed the suit for permanent injunction. According to them, the first item of the suit schedule property originally belonged to one Murugappa Naicker and others and it is situated in the Keelkadirpur Village. They sold out the same in favour of one Chandrabai Ammal to the extent of 10 acres comprised in paimash numbers 814, 815 and 816, by a registered sale deed dated 29.02.1959. In turn, she sold out the same in favour of one Govindan by a registered sale deed dated 11.05.1960. Again the said Govindan sold out



the same to one Muniammal by a registered sale deed dated 22.11.1962 and the said Muniammal settled the property in favour of the plaintiffs 2 and 3 by a settlement deed dated 22.11.1962, which was marked as Ex.A.1. According to the defendants the first item of the suit schedule property and the adjacent eastern side properties to an extent of 20 acres out of 203.22 cents in old survey No.3/3 of Kilkadirpur, comprised in new survey No.220 belonged to the first defendant. Originally it was belonged to one Sarangapani and the same was purchased by the first defendant by a registered sale deed dated 14.07.1966 for valid sale consideration, which was marked as Ex.B.1. Subsequently, so many properties were purchased by the first defendant by the registered sale deeds, which were marked as Ex.B.2 to Ex.B.5.

9. While being so, the plaintiffs have taken unlawful possession of about 10 acres on the western side of the first item of the suit property. Therefore, the first defendant filed suit in O.S.No.264 of 1969 and the same was dismissed. However the first appellate Court in A.S.113 of 1971 allowed the said suit filed by the first defendant for declaration and possession and the first item of the suit property and also ordered means profits. Against which the plaintiffs preferred an appeal before this Court in S.A.No.1397 of 1976 and this Court dismissed the appeal by an judgment and decree dated 20.07.1979 and observed as follows :-

"..... the proper course appears to be to allow the parties to agitate their rights in the proceedings for the grant of patta taken as per the provisions of any one the Abolition Act mentioned above. if the patta has already been granted, that would conclude the rights of the parties. But the patta is yet to be granted or if against the grant of patta an appeal or revision is pending, those proceedings will be decided independently uninfluenced by any of the observations made by either of the Courts below in the suit or appeal out of which the secon appeal arises. In those patta proceedings, the parties will be at liberty to produce such oral or documentary evidence as they deem fit. In view of the above, the second appeal will stand dismissed relegating the rights of the parties to the patta proceedings above referred to. No costs."

10. The above judgment was marked as Ex.A.13 and decree in S.A.No.1397 of 1976 was marked as Ex.B.6. Accordingly, this Court dismissed the second appeal and confirmed the judgment and decree passed by the first appellate Court in A.S.No.113 of 1971 on the file of the Subordinate Court, Kancheepuram, in



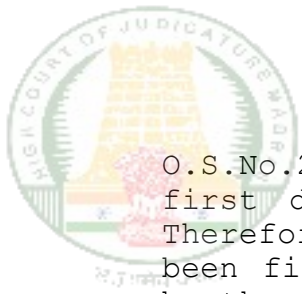
WEB COPY

respect of the first item of the suit schedule property. Thereafter, the first defendant had also taken possession of the first item of the suit property in execution proceedings in E.P.No.33 of 1976 by an order dated 29.06.1976, which was marked as Ex.B.7.

11. The first defendant also filed a suit in O.S.No.687 of 1980 for damages, in respect of the very same property viz., the first item of the suit schedule property herein as against the plaintiffs. Therefore, it is clearly proved that already the first item of the suit property declared in favour of the first defendant and the possession had also been taken over by the first defendant from the plaintiffs. The plaint in O.S.No.687 of 1980 was marked as Ex.A.27. Though the said suit was dismissed by the judgment dated 18.06.1982, which was marked as Ex.A.28, the trial Court held that though the defendants handed over the possession of the first item of the suit schedule property in favour of the plaintiff therein viz, first defendant herein, they were not approached the revenue authority to obtain patta. When both the plaintiffs as well as the first defendant herein failed to approach the revenue authorities concerned for applying patta, the said suit was dismissed.

12. Admittedly, the first item of the suit property was already declared in favour of the first defendant. In execution proceeding in E.P.No.33 of 1976, the possession was also had taken by the first defendant in respect of the first item of the suit schedule property. Therefore, the trial Court rightly dismissed the suit in respect of the first item of the suit property and decree the suit in respect of the other items in 2 to 5 of the suit schedule property. The first appellate Court reversing the findings of the trial Court, concluded that the boundaries mentioned in the sale deed in respect of the first item of the suit schedule property are differed and further Ex.B.8 & Ex.B.9, kist receipts produced by the defendants were subsequent to the suit. Therefore, the defendants failed to prove their possession and enjoyment of the first item of the suit schedule property. Further held that the plaintiffs as well as the defendants did not apply for patta as directed by this Court in S.A.No.1397 of 1976. Therefore, the first appellate Court considered that the plaintiffs 2 & 3 are in possession and enjoyment of the first item of the suit property and allowed the appeal suit, in respect of the first item of the suit schedule property in favour of the plaintiffs. Only on assumption and presumption, the first appellate Court concluded that first defendant is not in possession and enjoyment of the property without any piece of evidence.

13. In fact, the plaintiffs have to prove their case, when the suit for declaration and injunction. Further, in respect of the very same first item of the suit schedule property, already the first defendant filed a suit in



O.S.No.264 of 1969 and the same was allowed in favour of the first defendant in the appeal suit in A.S.No.113 of 1971. Therefore, for the very same property the present suit has been filed by the plaintiffs and as such the suit itself hit by the principles of resjudicata, insofar as the first item of the suit schedule property. Further this Court dismissed the second appeal in S.A.No.1397 of 1976 and confirmed the judgment and decree passed by the first appellate Court, decreeing the suit in favour of the first defendant. Though this Court directed the parties to apply for patta, it would not disturb the title of the first item of the suit schedule property, granted in favour of the first defendant. Accordingly, the execution Court also delivered the possession of the first item of the suit property to the first defendant.

14. Therefore the findings of the first appellate Court are perverse and against the evidence on record, as such this Court necessarily has to interfere with the findings rendered by the first appellate Court. Accordingly, all the substantial questions of law formulated in this appeal are answered in favour of the first defendant insofar as the first item of the suit schedule property is concerned and as against the plaintiffs.

15. In fine, the second appeal stands partly allowed and the judgment and decree dated passed in A.S.No.13 of 1991 on the file of the Subordinate Court, Kancheepuram, is hereby set aside and subsequently restored the judgment and decree dated 06.08.1990 made in O.S.No.1119 of 1981 on the file of the District Munsif Court, Kancheepuram, insofar as the first item of the suit property alone. There is no order as to costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

rts

To

1. The Subordinate Judge, Kancheepuram.
2. The District Munsif, Kancheepuram.

Copy To

The Section Officer,
V.R.Section, Madras High Court, Chennai.

+1cc to Mr.Sarvabhauman Associates, Advocate SR.No.4846

S.A.No.1719 of 2001

PPA (CO)