IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved : 03.11.2020
Pronounced on :06.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1261 of 2009

Kanagasabai .. Appellant /Appellant/Plaintiff

/versus/

1.The State of Tamil Nadu
rep.by the District Collector,
Office of the Collectorate,
Cuddalore District,
Cuddalore.

2.The District Revenue Officer,
Cuddalore District,
Cuddalore.

3.The Tahsildar,
Office of the Tahsildar,
Panruti Taluk,
Cuddalore District. .. Respondents/Respondents/Defendant

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.06.2009 made in A.S.No.16 of 2008 on the file of the learned Subordinate Judge, Neyveli confirming the judgment and decree dated 02.02.2008made in O.S.No.146 of 2004 on the file of the learned District Munsif-cum-Judicial Magistrate, Neyveli.

For Appellant :Mr.S.Krishnasamy for
Mr.P.Madhan

For Respondents:Mr.N.Manikandan
Spl.G.P.(CS) for R1 to R3

J U D G M E N T
(The case has been heard through Video Conferencing)

The Second Appeal is directed against the concurrent finding of the Courts below, dismissing the suit filed by the appellant for Mandatory Injunction to direct the respondents herein to issue patta for the suit property in his name by reclassifying the land in question as Ayan Punjai .

2.The case of the appellant is that, 1.24.5 Hectares of land in new S.No. 113/11 at Thenkuthu village, Kurinjipadi Panjayat Union, Cuddalore District originally belonged to Arunachala Samuttiyar, which he got it under an Exchange Deed on 29/08/1929 from one Thalayari by name Venkatachala Samban. Arunachala Samuttiyar sold the suit property to one Ramalinga Padaiyatchi on 12/10/1932 who in turn re-sold the property to Arunachala Samuttiyar on 06/09/1948. From Arunachala Samuttiyar, the suit property was purchased by Kumarasamy Padaiyatchi on 05/12/1953. The said property was sold to Vairakkannu Chettiar on 11/02/1958 and sold to Ranganatha Samuttiyar, S/O Arunachala Samuttiyar on 10/09/1960. From Ranganatha Samuttiyar and his brothers Dhanabakiyammal purchased the property on 11/07/1974 and sold it to the appellant on 31/12/2002. Since then the appellant is in possession and enjoyment of the suit property, having raised cashew crops in the said land.

3.Relying upon the sale deeds reflecting the above said transactions and the patta in the name of Ranganatha Samuttiyar, chitta and adangal for intermittent periods and on the basis of tax receipts, the appellant had contended that, the respondents, who the Revenue Authorities erred in classifying the land as prombokku instead of Punjai and had mentioned it as “Nilavilyal Kalanguthu” in the 'A' register. On coming to know about the error in the 'A' register, the appellant gave a representation on 06/11/2003 for rectification of the error. The said representation was rejected by the second respondent (Revenue Divisional Officer, Cuddalore).Hence, after issuance of pre-suit notice under Section 80 of the Civil Procedure Code, suit laid.

4.The respondents through the third respondent contested the suit filing written statement wherein they contended that the land in question was classified as “Nilaviyal Kalanguthu” during the resurvey held in the year 1975. For more than thirty years, there was no objection and no claim for issuance of patta by the appellant or his predecessor in title. The receipts relied by the appellants are B memo issued for occupying the government land and penalty collected for the said occupation. This will not confer any right or title over the property. Without preferring appeal against the order of the District Revenue Office, the appellant had filed suit which is not maintainable.

5.The Courts below on considering the oral evidence of PW-1, PW-2 and DW-1 along with the documentary evidences Exs.A-1 to A-25 have concurrently held that, the land in question at new

S.No.113/11 was classified as " Nilaviyal Kalanguthu" in the year 1975. As per the appellant's case, at that time the property was held by Dhanabakiyam Ammal. She had purchased the property from the sons of Arunachalam Samuttiyar. She did not sought for patta transfer till she sold the property to the appellant in the year 2003. Further, the land in question is within the zone of Neyveli Lignite Corporation. The Government had issued G.O Ms.No.41, Revenue, datd 20/01/1987 restraining assignment of patta for suit survey land.

6.The Ex.A-1 which is the Exchange Deed dated 29/08/1979 in favour of Arunachala Samuttiyar is the source document. Subsequent sale transactions are Ex.A-2 to Ex.A-7. The vendor of the appellant Dhanbakkiyam ammal had purchased the property from Ranganatha Samuttiyar, S/o of Arunachalam Samuttiyar and Ex.A-9 is the patta issued in the name of Rangantha Samuttiyar. All these documents are prior to 1975 land resurvey. Thereafter, the exhibits relied by the appellants does not prove that the suit property is a private patta land or kist collected for the said patta land.

7.Sections 7 and 14 of the Patta Pass Book Act, 1983 are extracted as below:

> 7.Acquisition of rights to be reported: (1)Any person acquiring by succession, survivorship, inheritance, partition, purchase or otherwise, or by decree or order of a Court or by order of the Government or other authority any right in or over any land as owner shall report in writing his acquisition of such right to the Tahsildar within three months from the date of such acqusition or within such further period, as may be prescribed and the said offer shall give a written acknowledgement of the receipt of the report to the person making it.
>
> Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Tahsildar:
>
> Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the Tahsildar.
>
> 14. Bar of suits---No suit shall lie against the Government or any officer of the

Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or intrested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration.

8.The appellant predecessor-in-title Dhanabakiyam ought to have questioned the classification within the time prescribed. She had never attempted to get rectification of the revenue record for nearly 27 years. Without proper verification of the revenue records, the appellant had purchased the property under Ex.A-8 dated 31/12/2002. Against the rejection of his request to issue patta by reclassifying the land, the appellant ought to have preferred appeal before the Revenue Court.

9.The learned counsel for the appellant submitted that, the appellant had raised cashew trees and been in possession and enjoyment for more than 17 years. Now, the respondents cannot deny patta taking advantage of their own wrong in reclassifying the land as “Nilaviyal Kalanguthu”.

10.This Court finds no merit in the said submission. The classification of the land has taken place in the year 1975. For nearly 30 years no objection raised for the said classification. In fact, the appellant and his predecessor had knowledge about the classification and had paid penalty for their occupation. While so, if the appellant had any grievance in the order of the second respondent (Revenue Divisional Officer, Cuddalore) dated 06/11/2003, he should have approached the Revenue Court. Since the appellant had sought for Mandatory Injunction and not Declaration of Title, when there is cloud over the title, the Courts below had declined to grant the relief sought.

11.Under Section 14 of the Patta Pass Book Act, 1983, which is extracted above, it is clear that any person aggrevied of his right may institute a suit against any person denying the interest or denying the title for his declaration of right. In the present case, the appellant has not sought for declaration of title or exhausted his appeal remedy as contemplated under the Patta Pass Book Act. Hence, this Court finds no reason to interefere the judgments of the Courts below.

12. Hence, this Second Appeal is dismissed. With liberty to the appellant to approach the Revenue Authorities afresh for issurance of patta in accordance with the Patta Pass Book Act and pursue his remedy. No order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Sub-Judge,
The Subordinate Court,
Neyveli.

2.The Munsif Judge,
The District Munsif cum Judicial Magistrate,
Neyveli.

+2cc to Mr.P.Madhan, Advocate, S.R.No. 36186
+1cc to the Additional Government Pleader(C.S), S.R.No. 36212

S.A.No.1261 of 2009

VG II(CO)
GN(09/07/2021)