

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE : 27.11.2019

PRONOUNCED DATE : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.NO.1407 OF 2003

Raman

... Appellant/Defendant/
Plaintiff

Vs.

1. K.G.Muthu (Died)
2. Raji (died)
3. Sundaram
4. Paranthaman

(RR1 & R2 died. RR3 and R4 are recorded as L.Rs of the deceased RR1 & R2 vide order of court dated 19.11.2019 as per memo dated 13.11.2019 in USR.No.34233/2019 are recorded)

(RR3 & 4 set exparte vide order dated 27.11.2019 in SA.No.1407 of 2003)

... Respondents/Appellants/
Defendants

PRAYER:

Second Appeal has been filed under Section 100 of Code of Civil Procedure to set aside the judgment and decree of Subordinate Judge, Dharmapuri, in AS.No.9 of 1998 dated 25.07.2002, modifying the judgment and decree of the District Munsif, Harur, in OS.No.168 of 1995 dated 13.01.1998.

For Appellant : Mr.K.Elango

For Respondents : R3 & R4 set exparte

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Dharmapuri in AS.No.9 of 1998 dated 25.07.2002 modifying the judgment and decree passed by the District Munsif, Harur in OS.No.168 of 1995 dated 13.01.1998.

2. The appellant herein had filed a suit in OS.No.168 of 1995 on the file of the District Munsif, Harur for declaration of his title over the suit properties and for permanent injunction restraining the defendants, their men, etc., from interfering with his peaceful possession and enjoyment of the suit properties. The learned District Munsif, by the judgment dated 13.01.1998 had decreed the suit as prayed for without costs. Aggrieved by the same, the defendants had filed an appeal in AS.No.9 of 1998 on the file of the Sub-Judge, Dharmapuri. The learned Sub-Judge, by the judgment dated 25.07.2002 had partly allowed the said appeal and set aside the judgment and decree of the trial court in respect of the property situated in S.No.12/8 and confirmed the judgment and decree of the trial court in respect of other survey numbers of the suit properties. Further, he directed the parties to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

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

The suit properties were originally poramboke lands for which patta was granted in favour of the plaintiff considering his long possession and enjoyment. The plaintiff had dug a well in the suit properties and installed an electric motor pumpset and got service connection. That being so, the defendants attempted to trespass into the suit properties and hence the plaintiff was constrained to file the suit for declaration and permanent injunction.

5. The defendants did not file a formal written statement. On the contrary, they filed a counter statement in IA.No.435 of 1995 in OS.No.168 of 1995 and filed a memo to treat the said counter statement as written statement in the suit.

6. The averments made in the said counter statement are in brief as follows:

The defendants 2 to 4 are the sons of the first defendant. The first defendant has been in possession and enjoyment of the land situated in S.No.12/8 measuring 0.48.5 hectare from the year 1962. He only cultivating the said land. He paid 2-A charges for the said land from the year 1962 onwards. Hence, the alleged attempt to trespass by the defendants is false. The plaintiff was in possession of the land situated in S.No.12/6 measuring 60 cents, but mistakenly patta was granted to the plaintiff in respect of S.No.12/8. The said fact came to the

knowledge of the first defendant only in the year 1992 and hence, objecting the same, he immediately submitted a petition on 23.11.1992 to the Tahsildar, Harur and the same is still pending. The plaintiff cannot claim any right based on the patta which was granted mistakenly. Therefore, the defendants prayed to dismiss the suit.

7. 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 one more witness as PW2. He had marked Exs.A1 to A8 as exhibits. On the side of the defendants, the first defendant was examined as DW1 and two more witnesses were examined as DWs 2 and 3. They had marked Exs.B1 to B9 as exhibits.

8. The learned District Munsif, after considering the materials placed before him, found that the plaintiff had proved title over the suit properties and also possession. Accordingly, he decreed the suit as prayed for, but without costs. Aggrieved by the same, the defendants had filed an appeal in AS.No.9 of 1998 on the file of the Sub-Judge, Dharmapuri. The learned Sub-Judge, had allowed the said appeal partly and set aside the judgment and decree of the trial court in respect of the land situated in S.No.12/8 alone, however, he confirmed the trial court's judgment and decree in respect of other survey numbers of the suit properties and also directed the parties to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present second appeal.

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

" A) Whether the lower appellate court is right in holding that the first defendant is in possession of the property, when he himself has admitted that the plaintiff is in the suit property for about 30 years?

B) Has not the lower Appellate Court erred in partly decreasing the appeal with regard to land in Survey No.12/8 when DW3 has categorically stated that the first defendant does not have by land in Survey No.12?

C) Is the lower Appellate Court right in partly decreeing the suit when the first defendant has not produced any proof to show that he is in possession of land in Survey No.12/8?

D) Is the lower Appellate Court right in relying upon Ex.B9 when that document came into being 2 years after the institution of the suit? Moreover, is the lower Appellate Court right in relying on Ex.B9 which has been made without any materials placed before the authority?"

10. During pendency of the second appeal, the learned counsel for the appellant/plaintiff has filed a memo stating that the respondent has filed a memo stating that the respondent Nos.1 and 2 died and their legal representatives are already on record as respondent Nos.3 and 4. The said memo has been recorded. Thereafter, the learned counsel for the respondent Nos.3 and 4 reported no instructions and hence the names of the respondent Nos.3 and 4 were printed in the cause list, but they did not appear and hence they were set exparte. Thereafter, after hearing the arguments of the learned counsel for the appellant ad perusing the records, judgment is being passed in this second appeal.

11. Substantial questions of law A to D :-

The plaintiff had filed the above suit for declaration of his title and permanent injunction in respect of the lands situated in 5 survey numbers viz., 12/7, 12/8, 13/13, 13/15 and 24/11. Out of which the dispute is only in respect of one survey number i.e., S.No.12/8 measuring 0.48.5 hectare. Admittedly all the aforesaid Survey Numbers were originally Government poramboke lands.

12. According to the plaintiff, he was in possession and enjoyment of all the aforesaid 5 S.Nos for a very long period and considering the same, the Government had issued patta in his favour in the year 1979 itself and subsequently during UDR also patta has been issued in his favour.

13. The case of the defendants is that since 1962 the first defendant has been in possession and enjoyment of the S.No.12/8, but the Government had mistakenly issued patta to the plaintiff and the said fact was known to the first defendant only in the year 1992 and immediately objecting the same, he gave an application to the Tahsildar, Harur, and though the Revenue Divisional Officer (RDO) had rejected his application, on appeal the District Revenue Officer (DRO) had set aside the order passed by the RDO and directed for conducting fresh enquiry and hence the plaintiff cannot rely upon the pattas which were issued in his favour.

14. A perusal of Ex.A1 (patta pass book) would show that a patta was granted in favour of the plaintiff on 04.03.1974 in

respect of 5 survey numbers which are mentioned in the plaint schedule. Patta Number for the said lands was 209. Ex.A4 would show a patta was granted in the year 1987, during UDR also. Ex.A5 series would show that the plaintiff has been paying kist for the lands covered under the patta No.209.

15. Ex.B5 shows that objecting to the granting of patta in respect of S.No.12/8, in favour of the plaintiff, the first defendant had submitted an application before the RDO and also made a request to assign the said land to him, but the RDO by the order dated 12.11.1995 had rejected the same. As against the said order, the first defendant had filed an appeal before the District Revenue Officer, Dharmapuri (DRO). Vide Ex.B7. A copy of the order passed by the DRO in the said appeal has been marked as Ex.B9. A perusal of Ex.B9 shows that the DRO had set aside the Ex.B5 order passed by the RDO dated 12.11.1995 and directed the Tahsildar, Harur, to conduct a proper enquiry and assign the said land to the person who is in actual possession. Though the said order was passed on 26.02.1997, so far the defendants have not produced any assignment order which has been issued in their favour.

16. It is pertinent to note that the DRO by the Ex.B9 order had set aside only the Ex.B5 order dated 12.11.1995. Under Ex.B5, the first defendant's request to assign patta to him alone was rejected. Under Ex.B5, patta was not granted to the plaintiff. Patta in favour of the plaintiff was granted in the year 1979 itself. The said order has not been set aside. It appears that the DRO had issued Ex.B9 order under the wrong impression that a patta was granted in favour of the plaintiff under Ex.B5. Through the said order no patta was granted to the plaintiff. Anyhow, as already pointed out that the defendants have not produced any patta to show the said land was assigned to them.

17. DW3 (Village Administrative Officer) has admitted in his evidence that a common patta No.209 has been issued in favour of the plaintiff and he has been paying kist for the said patta number. It shows that the plaintiff alone is in possession of the land suit situated in S.No.12/8. Admittedly, the defendants have not produced any documentary evidence to show that they got patta in their name or they are in possession of the said land. The trial court, taking into consideration of all the aforesaid facts had rightly decreed the suit, but the first appellate court erroneously interfered with the findings of the trial court and hence the findings of the first appellate court are liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellant/ plaintiff.

18. In the result, the second appeal is allowed. No costs.

The judgment and decree passed by the first appellate court are set aside and that the judgment and decree passed by the trial court are restored.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gv

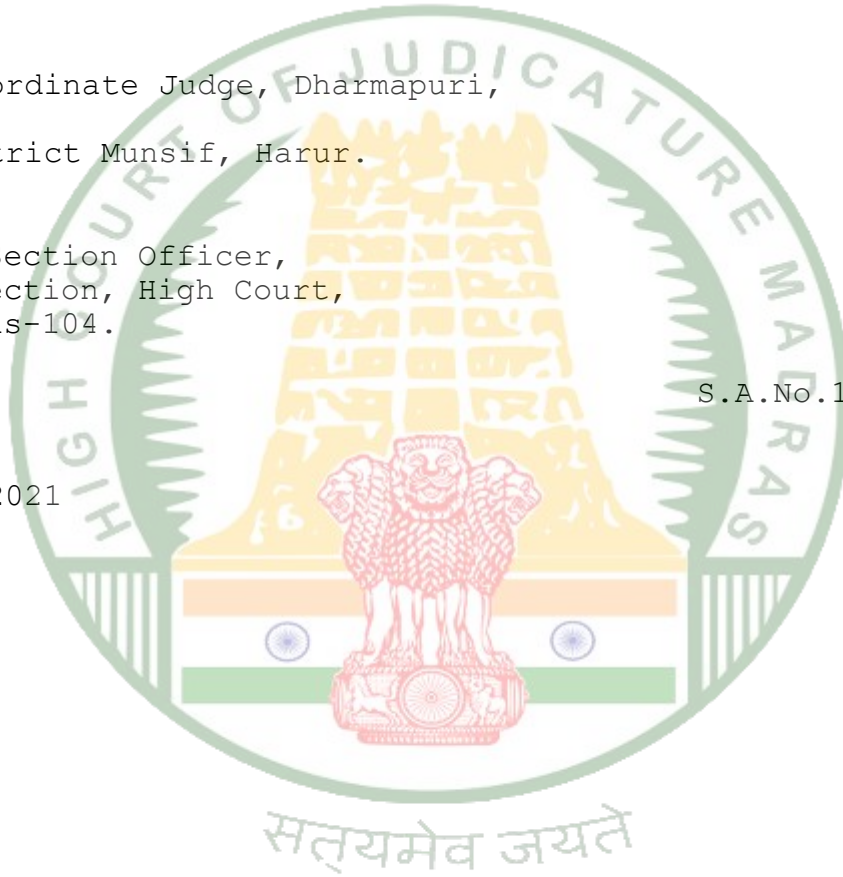
To

- 1.The Subordinate Judge, Dharmapuri,
- 2.The District Munsif, Harur.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

S.A.No.1407 of 2003

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