

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.841 OF 2008

AND

MP.NO.1 OF 2008

1.Neelakandan

2.Ramasamy

.... Appellants/Defendants 1 and 2

Vs

1. Jayaraman

2. The Tahsildar,
Taluk Office, Cusba Kallakurichi,
Kallakurichi Taluk.

3. The District Collector,
Villupuram District Collectorate,
Villupuram.

....Respondents/Plaintiff and
Defendants 3, 4

Prayer:

Second Appeal is filed under Section 100 of CPC praying to prefer this Memorandum of Grounds of Second Appeal in this Hon'ble Court against the Judgment and Decree dated 25.1.2008 passed in A.S.No.105 of 2005 on the file of the Sub Court, Kallakurichi, reversing the judgment and decree dated 18.04.2005 made in O.S.No.462 of 1999 on the file of the II Additional District Munsif, Kallakurichi.

For Appellants

Ms.V.Srimathi

For Respondents

: Mr.N.Manoharan for R1
Mr.Jagannathan,
Spl.Govt.Pleader (CS),
for R2 & R3

Judgment

The defendants 1 and 2 are the appellants before this Court and the suit is one for bare injunction.

2. The parties are referred to in the same array as in the suit.

3. The plaintiff had filed a suit O.S.No.462 of 1999 on the file of the II Additional District Munsif, Kallakurichi for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

4. The plaintiff would contend that the suit properties were assigned to him by the Government under DKT No. 420 of 91 on 27.03.1982. Patta in respect of the suit properties was issued in the name of the plaintiff bearing Patta No.792. The plaintiff would contend that from the date of allotment the plaintiff has been paying the kist and other revenue dues in respect of the suit property. The defendants are strangers to the suit property. All of a sudden, on 10.07.1999 the defendants had trespassed into the suit property and formed a cart-track to reach their lands. The 3rd and 4th defendants are the public authorities and therefore have been impleaded as parties in the said suit.

5. The second-defendant had filed a written statement, which has been adopted by the first-defendant, in which he would state that the suit properties were not assigned to the plaintiff. Had the suit properties been assigned to the plaintiff, he would have filed the original DKT order and would not have filed a certified copy of the same. It is their case that the property in question is a poromboke land belonging to the Government. The cart-track runs through the Survey Nos. 33/1, 33/4 and 33/5, which is a public road in existence for over 40 years and further 20 families were using the said pathway to reach their lands and the temple.

6. According to defendants 3 and 4, the plaintiff was never in possession of the suit property. They would contend that since the suit properties are uncultivable lands and the plaintiff was never in enjoyment of the suit property, the suit, being one simpliciter for a bare injunction, has to be dismissed.

7. The II Additional District Munsif had framed three issues which are as follows:

1. Whether the plaintiff is entitled to the permanent injunction as sought for in respect of the suit properties?
2. Whether the cause of action is true?
3. To what relief the plaintiff is entitled?

8. On considering the facts, oral and documentary evidence as also the Commissioner's Report and plan, the learned District Munsif held that the plaintiff was not entitled to the relief as claimed, as there was a cart-track in existence in the suit property particularly from the year 1991 as is evident from Ex.B1 cart-track agreement dated 22.02.1991. Even if the lands are assigned, such assignment is subject to the rights of others over the existing pathway and by reason of the assignment the plaintiff has not been given an exclusive right over the same. The learned District Munsif has also placed reliance upon Ex.B1, wherein the cart-track has been shown as the western side boundary of the subject property. The learned Judge therefore proceeded to hold that the cart-track was already in existence and that the plaintiff has also not proved the cause of action. As a consequence, the Court held that the plaintiff was not entitled to the decree as prayed for.

9. The said judgment and decree was taken on appeal by the plaintiff in A.S.No.105 of 2005 before the Subordinate Judge at Kallakurichi. The learned Subordinate Judge had reversed the judgment and decree of the learned District Munsif by holding that the assignment deed produced was a certified copy, which is a public document and therefore a valid one. That apart, the learned Judge held that once the assignment is held to be valid, the same can be set aside only in the manner known to law and in the instant case there is no such order to that effect. Therefore, the Appeal was allowed and the decree and judgment in O.S.No.462 of 1999 on the file of the II Additional District Munsif's Court, Kallakurichi was set aside. It is challenging this reverse judgment and decree, the defendants 1 and 2 are before this Court.

10. Ms.V.Srimathi arguing on behalf of the appellants would state that the plaintiff has failed to prove assignment since it was only a certified copy that was produced and the original was not produced. She would further argue that the cart-track has been in existence well over a very long time and Ex.B1 would confirm the same. She would further submit that the Patta No.792 was not standing in the name of the plaintiff. She would argue that the lower Appellate Court has failed to appreciate these facts and has gone on a tangent. She would also contend that the Appellate Court has failed to appreciate the Advocate Commissioner's Report which clearly proves the existence of the cart-track. She would therefore contend that judgment and decree of the learned Subordinate Judge has to be set aside and the judgment and decree of the II Additional District Munsif in O.S.No.462 of 1999 confirmed.

11. Per contra, Mr.N.Manoharan, leaned counsel appearing for the 1st-respondent would contend that the DKT assignment,

which was filed as Ex.A1 was a certified copy issued by the public authority. He would rely on the provisions of section 65 (e), 74, 76 and 79 of the Evidence Act to contend that Ex.A1 was a valid document and the lower Appellate Court has rightly considered the same. He would further argue that the lower Appellate Court had rightly reversed the finding of the learned District Munsif that even assuming that the lands were assigned to the plaintiff, in view of the existence of the cart-track, there is violation of condition No.7 in Ex.A1. The Government having assigned the entire lands to the plaintiff cannot now contend that the suit property is a cart-track. He would argue that the lower Appellate Court had taken note of the fact that the assignment in favour of the plaintiff had not been revoked or cancelled and when it is so, land cannot be assumed to be a public cart-track. He relied upon the judgment in Kesavan Vs. Muthu reported in 2012 (6) CTC 303 in support of his contentions that without there being proper cancellation in the manner known to law, the patta issued in respect of assigned lands would confer valid title on the assignee.

12. Heard the counsel and perused the papers.

13. The suit is one for an injunction in respect of the following properties:

- a) 32/1 measuring 0.43 cents
- b) 33/4 measuring 0.50 cents
- c) 33/5 measuring 1.30 cents
- d) 34/1 measuring 0.36 cents, totalling 2.59 cents in Thottapadi village limit, Kallakurichi Taluk comprising Patta No. 792.

14. The plaintiff has produced the assignment-patta in respect of the suit property. The document produced is a certified copy of the assignment deed issued by the public authority. The plaintiff has given reason as to why he could not produce the original viz. the same has been misplaced and therefore the certified copy of the deed has been obtained. The lands have been assigned to the plaintiff as early as in the year 1982. Section 65(e) of the Evidence Act describes the cases in which secondary evidence can be given, when the original is a public document within the meaning of section 74. Section 74 in turn describes as to what the public documents are. Section 76 talks about the certified copies of public documents and section 79 of the Evidence Act provides that certified copies of public documents being certified by any officer with due authority shall be presumed to be genuine.

15. In the instant case, the certified copy has been issued by the Deputy Tahsildar who is the public authority. Therefore, the document can safely be presumed to be genuine. Further, the

defendants have not let in any evidence whatsoever to disbelieve the said document, except stating that the document is only a certified copy and not the original. The patta and DKT number in Ex.A1 - Assignment deed is reiterated in the later documents Ex.A3 and A4 which also goes to show that Ex.A1 is a valid document under which the suit lands had been assigned. The survey number in Ex.B1 is different from the suit survey number.

16. Ex B1 has been relied on by the Trial Court to come to the conclusion that as early as in the year 1991, the cart track has been in existence. A perusal of Exs. C1 and C2 would indicate that the same do not relate to the suit survey numbers and therefore the reliance upon the said document appears to be misdirected. The judgment relied upon by the learned counsel for the plaintiff would apply on all fours to the facts of this case. The learned Judge has dealt with in extenso the evidentiary value that should be attached to the Patta and where patta is available whether it is sufficient evidence to establish ownership. The learned Judge has ultimately observed that when a property is assigned by the Government, Patta will be the only document conferring title. However, where the property is acquired by any of the modes provided under the Transfer of Property Act and in such circumstances, patta would only be a piece of evidence to show possession. In the case on hand, it is clear that the land has been assigned to the plaintiff under Ex.A1 and therefore it is a valid document to prove title. It is not the case of the defendants that this assignment has been cancelled by the authorities in the manner known to law. In these circumstances, the judgment and decree of the lower Appellate Court viz. the learned Subordinate Court, Kallakurichi, does not call for any interference. The questions of law 1 and 2 are therefore answered against the defendants/appellants and answered in favour of the plaintiff/first-respondent.

17. In fine, the Second Appeal is dismissed and the judgment and decree in A.S.No.105 of 2005 dated 25.01.2008 on the file of the Subordinate Judge, Kallakurichi are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY
Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrn

To

1.The Subordinate Judge,
Kallakurichi.

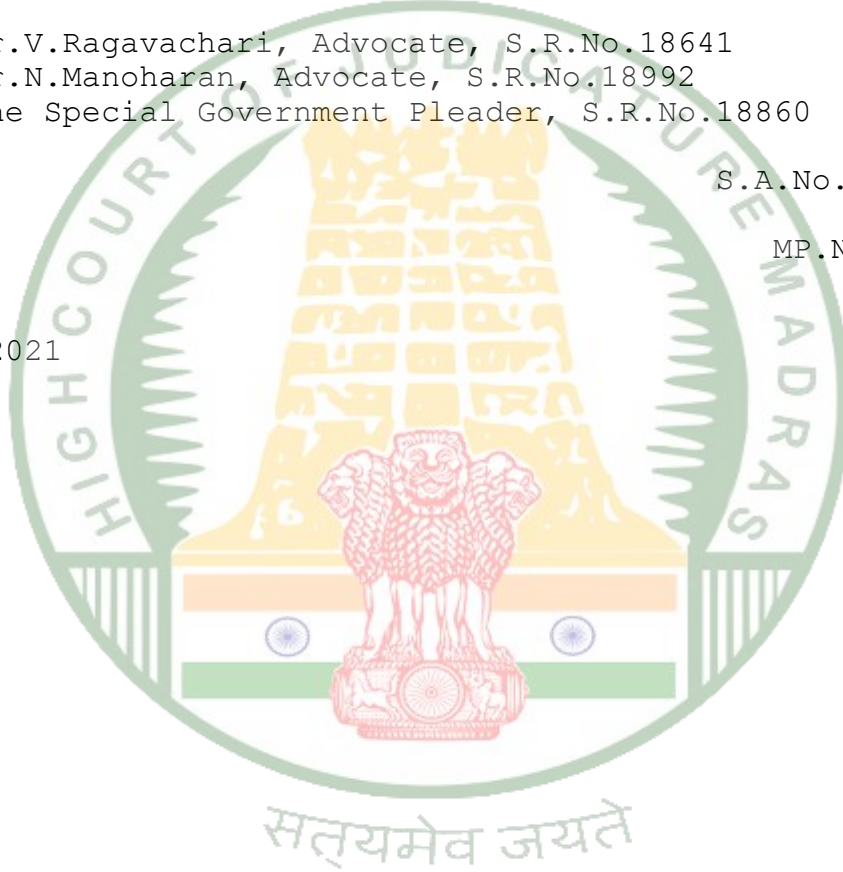
2.The II Additional District Munsif,
Kallakurichi.

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

+1cc to Mr.V.Ragavachari, Advocate, S.R.No.18641
+1cc to Mr.N.Manoharan, Advocate, S.R.No.18992
+1cc to the Special Government Pleader, S.R.No.18860

S.A.No.841 of 2008
and
MP.No.1 of 2008

LN (CO)
CS/01/02/2021



WEB COPY