

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.10.2020

PRONOUNCED ON: 22.10.2020

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.NO.1072 OF 2010

&

M.P.NO.1 OF 2010

Ramakka,
W/o.Periyasamy,
Kakkalur Village & Post,
Pallipattu Taluk,
Trivellore District.

... Appellant/Plaintiff

/versus/

Sagadevan (dead)

1. Aasami,
S/o.Sagadevan.

2. Arumugam,
S/o.Sagadevan.

3. Jayamma,
W/o.Sagadevan.

4. R.Mala,
W/o.Ravichandran.

... Respondents/
Defendants 2 to 4 & 6 to 9

5. Minor Surya,
S/o.Ravichandran.

6. Minor Muthu,
S/o.Ravichandran.

(Minor 5 & 6 represented by their Mother &
Next Friend, the 4th Respondent herein)

7. Rani,
D/o.K.Ravichandran.
All are residing at Kakkalur Colony,
Kakkalur Village & Post, Pallipattu Taluk,
Trivellore District.

... Respondents/
Defendants

Prayer:

Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 21.01.2010 in A.S.No.34 of 2006 on the file of the Subordinate Judge, Tiruvallur, confirming the judgment and decree dated 31.01.2006 in O.S.No.189 of 2001, on the file of the District Munsif Court, Pallipattu.

For Appellant : Mr.R.Selvakumar.

For R4 to R7 : Mr.K.A.Ramakrishnan,

For R1 to R3 : Not ready notice.

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the plaintiff against the concurrent findings of the Courts below. The Appellant herein has preferred the suit in O.S.No.189 of 2001 before the District Munsif Court, Pallipattu, for declaration and permanent injunction in respect of the suit property, which is morefully described in the schedule as below:-

In Thiruvellur District, Pallipet Taluk, 10, Kakkalur Village accounts:-

S.F.No.28/9, Plot No.25A, site measuring east to West 18 meters and North to South 5.8 Meters to an extent of 0.01.0 Hectares, bounded on the

East by the Nochili Road.

West by the Public Wall.

North by house of Krishnan, Ponnusamy and Chinnadurai.

South by the Path Way.

2. According to the Appellant, the said suit property was allotted to her under DKT Patta dated 30.09.1989 issued by Tashildar, Pallipattu. She had taken possession of the same and enjoying by putting up hut. Due to heavy rain, 7 years ago, the mud wall of the thatched hut collapsed. However, she is regularly paying the kist for the property. While so, the respondents/defendants herein, without any right, attempted to trespass into the suit property and has removed 'Velikathan'

tree standing in the property. Hence, suit for declaration of right, title and interest to the suit schedule property and for permanent injunction.

3. The suit was contested by the defendants/respondents herein on the premise that the plaintiff was not allotted the suit property under the DKT Patta. She did not put up any structure in the said property and it never collapsed later, as averred in the plaint. The alleged payment of Kist not in respect of the suit property. The property mentioned in the suit schedule is an ancestral property of the 1st defendant/Sagadevan. He and his family is in possession and enjoying of the suit property along with other property lying on the west, for more than 100 years. In the year 1989, the Tashildar, Pallipattu, had issued D.K.T Patta in the name of Tmt.Jayamma wife of Sagadevan. The property falls in S.No.28/9, Plot No.54. Later, under the Natham patta scheme, the Tashildar has issued patta No.125 in the name of the 1st defendant/Sagadevan, for an extent of 98 sq.mts, in S.No.337/5 (new), old S.No.28/9. The suit property is part of his house site. In the year 1997, Sagadevan and his brother had sold the property to the 5th defendant/Ravichandran, for a sale consideration of Rs.9,120/- since then, the 5th defendant is in possession and enjoyment of the suit property. While so, there is no necessity for the respondent to trespass into the suit property since, it is their absolute property.

4. Based on the pleadings, the following issues were framed.

1. Whether the plaintiff got in suit property by way of house site D.K.T. Patta dated 30.09.1989 issued by the Tashildar?

2. Whether the plaintiff is in possession and enjoyment of the suit property?

3. Whether the suit property is the ancestral property of the 1st defendant?

4. Whether the defendants 1 to 3 and 5 have got right over the suit property?

5. Whether the 5th defendant and his vendors and their predecessors have perfected their title by adverse possession?

6. To what relief the plaintiff is entitled for?

5. The Appellant herein as plaintiff in the suit deposed and Two Exhibits (Ex.A.1 to Ex.A.2) were marked. To corroborate her case, One chinnadurai was examined as P.W.2.

6. Pending suit, the 5th defendant/Ravichandran, died and his LR's were brought on record. The 9th defendant/Rani, who is daughter of Ravichandran and 7th respondent in the present Second Appeal was examined as D.W.1. Ex.B.1 to Ex.B.9 were marked through her. Two other witnesses in support of the defendant's were examined as D.W.2 & D.W.3.

7. After analysing the exhibits marked by the respective parties, the Trial Court has concluded that the plaintiff miserably failed to establish her right, title and possession over the suit property. Ex.A.1, D.K.T Patta in the name of the plaintiff is inadmissible in evidence due to manipulation and corrections made in the said document.

8. On appeal, the 1st Appellate Court confirmed the Trial Court Judgment and decree. It is observed that, both the plaintiff as well as the defendants were not able to establish their title over the property. While the plaintiff having failed to prove the possession, the relief of declaration as well as permanent injunction cannot be granted.

9. In the appeal, the Learned Counsel for the appellant/plaintiff would submit that when the Courts below have found that the defendants document is not sufficient to prove their case of title and possession over the suit property, particularly, the D.K.T patta relied by them is in respect of different Plot number No.54, whereas the suit property is plot No.25. Therefore, the relief sought by the plaintiff ought to have granted. Further, the Learned Counsel contended that the Courts below have erroneously rejected Ex.A.1 D.K.T Patta issued in the name of the Appellant as inadmissible, merely on scrutinizing the documents with naked eye, to conclude it as a manipulated document. Before giving such findings, the Courts ought to have send the documents for scientific expert examination.

10. Heard the submissions of the Learned Counsels and records perused.

11. In Ex.A.1 D.K.T Patta, on perusal the errasion of No.2 before 5 written in red ink in the measurement sketch is obviously seen. Similarly, in the Tabular column, the Plot No.25 is overwritten with different ink to correct the number. To find the said manipulations and corrections, no special expertise is required since, the said corrections and manipulations could be obviously seen. The fulcrum of the

plaintiff case is that in Ex.A.1 D.K.T Patta. When the said document is found to be manipulated and no Revenue Officials been examined to authenticate the genuineness of the document, the rejection of the plaintiff's case by the Courts below cannot be faulted.

12. The attempt of the plaintiff to take advantage of the flaws in the defendant's case particularly, in case of declaration of title and injunction cannot be countenance.

13. The Courts below have fairly considered the documents placed on either side and has not accepted the case of the defendants, regarding their claim upon the Plot No.25. It does not mean that the Courts should grant declaratory relief to the plaintiff. She has to stand or fall on her own merits. When the evidence placed by the plaintiff is insufficient and does not probabilities their case, dismissal of the suit can be the only result.

14. For the reasons stated above, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1. The Subordinate Judge, Tiruvallur
2. The District Munsif, Pallipattu.
3. The Section Officer,
V.R.Section, High Court, Madras.

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& M.P.No.1 of 2010

MP(CO)
CS/10/05/2021

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