

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.891 of 2009

and

M.P.No.1 of 2009

1.P.Rajendran
2.P.Ramasamy
3.Sulochana
4.Poongavanam

.... Appellants

Vs.

1.Chellammal
2.The State
rep.by its
The Collector,
Cuddalore District,
Cuddalore.

.... Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 27.12.2007 in A.S.No.7 of 2007 on the file of the Additional District Judge (Fast Track Court-III), Vriddhachalam confirming the Judgment and Decree dated 04.07.2006 in O.S.No.84 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Thittakudi.

For Appellants : Ms.A.L.Ganthimathi

For Respondents : Mr.V.Anand for R1
Mr.N.Manikandan, Spl.GP for R2

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellants and the learned counsel for the respondents.

2. It is a case of the concurrent findings of the Courts below in respect of the suit property seeking relief of declaration and permanent injunction by the plaintiffs who are the appellants herein.

3. The short facts involved in this case is that the plaintiff was assigned house patta by the Government vide order dated 22.02.1990 in respect of site 85, house No.26/99 in Arasangudi Madhura, S.Pudur village, the plaintiff has taken possession of the assigned land and constructed a hut. While so, the defendants taking advantage of the cyclone and flood which damaged the house of the plaintiff trying to interfere with the possession and usurp the property. Hence the suit for declaration and possession.

4. The case was contested by the respondents 1 to 4 who are the private parties, the 5th respondent is the Government represented by the Collector remained exparte. As far as the contesting defendants, it is pleaded in the written statement that the suit property was not assigned to the plaintiff by the Government. In fact, the property being a Natham poramboke was in enjoyment of the defendants father Pachaiyappa Udayar since 1997. The Government later assigned Government Natham patta for the defendants. Since then the property is in possession and enjoyment of the defendants 1 to 4 based on the patta assigned to them.

5. Before the trial Court, the plaintiff examined two witnesses and marked 11 exhibits. The defendants examined three witnesses and marked 3 exhibits. The Court appointed a Commissioner and his report was marked as Ex.C-1 and Ex.C-2. Ex.X-1 and Ex.X-2 were produced at the instance of the Court and taken for consideration.

6. The Courts below taking note of the assignment order given in favour of the plaintiff, which was marked as Ex.A-1 for house site No.85, the tax receipts from the year 1992 to 1996 in the name of the plaintiff which are marked as Ex.A-2 to Ex.A-7 and the demand notice which was marked as Ex.A-8 has arrived at a conclusion that the assignment in favour of the plaintiff in the year 1990. Though not been proved by the back revenue records, the subsequent proceedings and the Commissioner's report support the case of the plaintiff that the subject suit property was assigned to the plaintiff and he has been enjoying the possession of the suit property. Contrarily the defendants plea that the Government Natham patta assigned to the defendants in the year 1995, which is marked as Ex.B-1 and the Adangal marked as Ex.B-2 and Ex.B.3 does not co-relate with the description of the suit property and on every probability the Natham patta issued to the defendants lie on the different location.

7. For the said conclusion, the Courts below has relied on the deposition of PW.2 the father of PW.1, who has traced how the defendants came into possession of the property which is in their possession and enjoyment. Certified copy of sale deed marked as Ex.X-1 through this witness the extent and boundaries of the suit property is fixed.

8. The contention of the defendants that the Natham land adjacent to East of the property they purchased is in their enjoyment even if accepted, the said encroached Natham land is on the East of the land purchased by the defendants. Whereas, the suit property is identified to be on the West of the defendants property. Therefore with the available material the Courts have tried to identify the location of the plaintiff property and having convinced that the assignment patta granted in favour of the plaintiff in the year 1992 is valid. Its genuinity has not been disputed. The Advocate Commissioner report and sketch indicates the property of the defendants is on the other side of the suit property.

9. The findings of the Courts below, on facts is conclusive and no ground to interfere. Hence, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rpl

To:-

1.The Additional District Judge
(Fast Track Court-III),
Vriddhachalam.

2.The District Munsif-cum-Judicial Magistrate,
Thittakudi.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+1cc to the Government Pleader Sr.34404
+1cc to M/s.A.L. Ganthimathi, Advocate Sr.34511

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