

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1050 of 2005
and C.M.P.No.14334 of 2005

K.N.Veeraiyan
S/o.Nanjappa Chettiar ...Appellant/Appellant/Plaintiff
Vs.

1. The State of Tamil Nadu
rep by the District Collector,
Sathuvachari,
Vellore District.
2. The Special Tasildhar,
Natham Up-dating system,
Office of the Tasildhar,
Tiruppattur, Vellore.
...Respondents/Respondents/Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.03.2005 made in A.S.No.27 of 2004 on the file of the Subordinate Court, Tiruppattur, Vellore District, confirming the judgment and decree dated 20.02.2004 made in O.S.No.729 of 1993 on the file of the District Munsif Court, Tiruppattur, Vellore District.

For Appellant : Mrs.V.Srimathi

For Respondents: Mr.S.Jaganathan
Government Advocate (CS)

JUDGMENT

This second appeal is arising out of the judgment and decree dated 31.03.2005 passed in A.S.No.27 of 2004 by the learned Subordinate Judge, Tiruppattur, Vellore District, confirming the judgment and decree dated 20.02.2004 made in O.S.No.729 of 1993 on the file of the learned District Munsif, Tiruppattur.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

<https://hcservices.ecourts.gov.in/hcservices/>
3.1. The suit is filed for declaration. The suit property

is in possession and enjoyment of the plaintiff. The second defendant issued patta in favour of the plaintiff in respect of the suit property. While being so, without any notice to the plaintiff, on the representation dated 08.02.1993 submitted by one K.P.Venu Udaiyar and four others, the second defendant by an order dated 25.02.1993, classified the suit property as sandu porambokku and cancelled the patta issued in favour of the plaintiff. The plaintiff further stated that the said impugned order passed by the second defendant is violation of principal of natural justice and without even hearing the plaintiff, the impugned order was passed. Therefore, it is against the law and illegal. Further the second defendant has no jurisdiction to pass such order to classify the suit property as sandu porambokku, since it is a patta land belonging to the plaintiff. Immediately, the plaintiff caused notice under Section 80 of C.P.C., to the defendant on 18.05.1993. Because of the emergency, the plaintiff filed the suit for declaration.

4. Resisting the same, the defendants filed written statement and stated that the land comprised in Survey No.252/8 ad measuring 0.01.1 hectare has been classified as santhu porambokku. On 11.12.1992, the plaintiff made a representation to the Special Tashildar, Natham Land Up-dating system, Tiruppattur, and also made submissions before the Special Tashildar on 21.12.1992. In the said statement, he mentioned that, he has no pathway to reach his house and as such he sought for pathway to reach his house through Natham Porambokku and seeks for patta. Accepting the same, the second defendant on 20.01.1993 issued patta in favour of the plaintiff.

4.1. One K.P.Venu Udaiyar and four others objected the issuance of patta in favour of the plaintiff and filed representation dated 08.02.1993, to cancel the patta issued in favour of the plaintiff, on the ground that the said pathway used as common pathway for all for the past 30 years, as such it cannot be issued exclusively in favour of the plaintiff. Further in the document registered as No.2922/1964 dated 19.06.1964, categorically mentioned that the suit property used for public pathway and it cannot be used for other purpose. On the representation, the second respondent inspected the property and also conducted domestic enquiry and by order dated 25.02.1993 cancelled the patta issued in favour of the plaintiff and changed the classification as santhu porambokku. Therefore, the suit property is never in exclusive possession and enjoyment of the plaintiff.

4.2 Further stated that only after proper notice to the plaintiff and after conducting enquiry, the order was passed. Further only on the petition submitted by one K.P.Venu Udaiyar and four others enquiry was conducted and order was passed, as such they are necessary parties to the suit proceedings. Even then, the plaintiff did not implead them as parties in the

suit as such, the suit has to be dismissed in-limine for non joinder of necessary party. Therefore, the defendants prayed to dismiss the suit.

5. On the side of the plaintiff, examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.4. On the side of the defendants, they examined D.W.1 & D.W.2 and were marked Ex.B.1 to Ex.B.4. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff filed appeal suit in A.S.No.27 of 2004 and the first appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Aggrieved by the same, the plaintiff preferred this present second appeal.

6. At the time of admission of this second appeal on 07.10.2005, the following substantial question of law were formulated for consideration:-

"1. Whether the Courts below are right in dismissing the suit, when the admitted facts itself disclose that the cancellation of patta had not been preceded with any enquiry?

2. Whether the Courts below are right in assuming that the plaintiff has no title to the property, when it is not even the case of the objectors before it?

3. Whether the Courts below are justified in holding that the suit before the Civil Court is not maintainable, especially when there is no outsting provision under any statute?

4. Whether the Courts below ought not to have held that cancellation proceedings without a hearing gives a justifiable cause for annulling the document under Ex.A.1?

5. Whether the Courts below are right in ignoring the documents of title of the year 1940 and 1964 on whose basis patta had been granted and whether the rejection of the documents by the lower appellate Court is justified especially when the trial Court had observed that the non-production disabled the Court from considering the point in issue?

6. Whether the lower appellate Court was justified in not advertng to the documents produced before it and whether the reasons adduced by it for rejecting

the case of the appellant is proper?

7. Whether the Courts below have not misplaced the burden of proof on the appellant, when it is the obligation of the defendants to prove that the patta had been issued by mistake of fact? Even otherwise, whether there could be a cancellation proceedings without an enquiry preceding it?

8. Whether the finding of the lower appellate Court in paragraph 8 of the judgment itself would not establish that the appellant is the absolute owner of the property and whether its finding to the contrary is not perverse and totally unjustified?

9. Whether the objectors to the grant of patta are not estopped from denying the title of the appellant, when they are derivative title holders?

10. Whether the lower appellate Court had not misdirected itself and rendered finding that are wholly beyond the scope of the Civil Court?

11. Whether the finding of the lower appellate Court as regards the non-production of the document granting patta in the name of the appellant constitutes suppression of fact, is justified and warranted on the facts of the case?

12. Whether the finding of the lower appellate Court would not constitute a special pleading for the defendants and should it not have known that the non-production of the document granting patta in the name of the appellant is no material in adjudicating the issue of cancellation of patta without notice and hearing?

13. Whether the lower appellate Court is justified in rendering a finding that the 2nd defendant would have heard the appellant, when that is not even their case and is it proper on the part of a civil Court to base its decisions on mere surmises and whether a reasoning bereft of materials would not constitute perversity?"

7. Heard Mrs.V.Srimathi, learned counsel appearing for the appellant/plaintiff and Mr.S.Jaganathan, learned Government Advocate (CS) appearing for the respondents/defendants.

8. The plaintiff filed the suit for declaration, declaring that the order passed by the second defendant as null and void and it is against the principles of natural justice. The suit property comprised in Survey No.252/8 old Survey No.171/1 ad measuring 0.01.1 hectare situated at Kanthili Village, Tiruppattur Taluk. According to the plaintiff, the second defendant passed the order dated 25.02.1993, thereby classified the suit property as Santhu Porambokku and cancelled the patta issued in favour of the plaintiff without issuing any notice to the plaintiff and also without conducting any enquiry before passing the order.

9. The learned counsel appearing for the appellant/plaintiff submitted that the suit property is the only property to reach his land as such he made representation to the second defendant on 11.12.1992. He also appeared before the second defendant and after recording his statement on 21.12.1992, the plaintiff was granted patta in respect of the suit property by an order dated 20.01.1993. Thereafter, some of the villagers objected the same and filed objection petition before the second defendant. On the said objection, the second defendant without issuing any notice to the plaintiff and without conducting any enquiry, behind his back, cancelled the patta issued in favour of the plaintiff and classified the suit property as Santhu Porambokku, by an order dated 25.02.1993, which was marked as Ex.A.1.

10. On perusal of the said order, it is seen that the second defendant categorically mentioned that during the enquiry, the plaintiff did not produce any document to establish his title, right over the suit property. Therefore, the second defendant conducted enquiry on the objection raised by one K.P.Venu Udaiyar and four others and passed the said order. In fact, the said order also duly marked to the said K.P.Venu Udaiyar and the plaintiff. Therefore, there was no violation of principles of natural justice. Only after due notice to the plaintiff and after conducting the enquiry with the plaintiff, the order has been passed by the second defendant.

11. The second defendant categorically deposed that one K.P.Venu Udaiyar and four others filed objection petition to cancel the patta issued in favour of the plaintiff. On the said objection, notice was issued to the plaintiff and after conducting due enquiry, the order was passed. During enquiry, the said K.P.Venu Udaiyar made submission that as per the registered document No.2922/1964 date 19.06.1964, the suit property can be used as common pathway for all and there is absolutely no exclusive right or title to anybody. Suppressing the said fact, the plaintiff applied for exclusive patta in his favour. Without verifying those records, earlier officer of the second defendant issued patta in favour of the plaintiff. After enquiry and on perusal of revenue records, the second defendant found that the suit property is a Natham Porambokku land and it cannot be used for exclusively by the

plaintiff and cancelled the patta issued in favour of the plaintiff and also changed the classification as Santhu Porambokku. In fact, the revenue records reveals that the suit property originally classified as Santhu Porambokku and its old Survey No.171/1 and new Survey No. 252/8.

12. Further the plaintiff categorically stated in his plaint that only on the objection raised by one K.P.Venu Udaiyar and four others, the second defendant passed the order. When it being so, the plaintiff has to implead the said K.P.Venu Udaiyar and four other as parties to the proceedings. But the plaintiff wantonly did not implead them as parties to the suit as such, the suit cannot be maintainable, only on the ground of non joinder of necessary parties. The order dated 25.02.1993 is duly marked to the said K.P.Venu Udaiyar and the plaintiff. Therefore, the plaintiff cleverly without adding the said K.P.Venu Udaiyar and others as parties, filed the present suit.

13. Further the earlier officer of the second defendant issued patta in favour of the plaintiff and subsequently on the objection raised by one K.P.Venu Udaiyar, the then officer of the second defendant verified the records and after recording the statement from the parties, concluded that the earlier officer wrongly issued patta in favour of the plaintiff and subsequently cancelled the patta. Therefore, the officer who passed the said order has power and jurisdiction to pass the order.

14. Hence, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

15. In fine, the Second Appeal stands dismissed with costs by confirming the judgment and decree of the Courts below. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

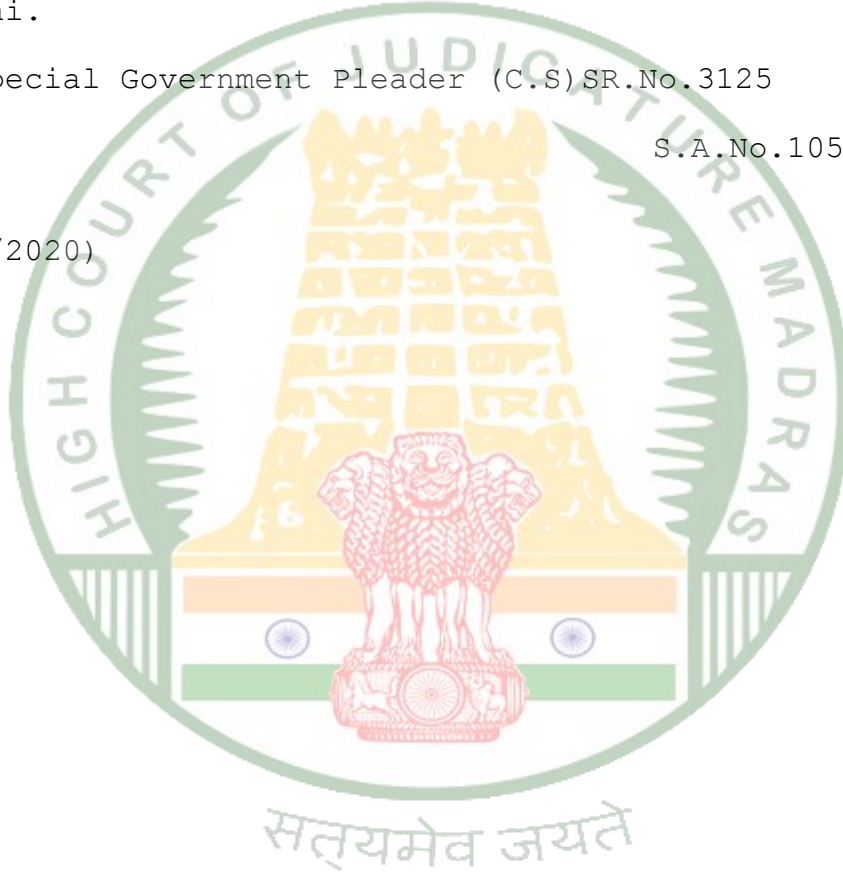
To

1. Subordinate Judge,
Tiruppattur, Vellore District.
2. District Munsif,
Tiruppattur, Vellore District.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Special Government Pleader (C.S)SR.No.3125

S.A.No.1050 of 2005

CP (CO)
GMY (19/08/2020)



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