



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 30.01.2020

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
S.A.No.807 of 2005

G.Amsavalli Ammal
Rep. by her Power of Attorney
Agent G. Manickavel ...Appellant/Plaintiff

Vs.

1. K.Manikandan
2. Kunjammal ...Respondents/ Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 13.11.2002 made in A.S.No.61 of 2002 on the file of the Principal District Court, Nagapattinam, confirming the judgment and decree dated 28.06.2002 made in O.S.No.177 of 2000 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mr.K.Selvaraj
For Respondents
For R1 : Mr.R.Sunil Kumar
R2 : Dismissed vide Court order
dt. 16.12.2019

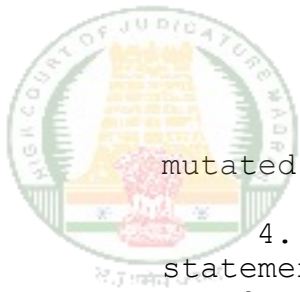
JUDGMENT

This second appeal has been filed as against the judgment and decree dated 13.11.2002 made in A.S.No.61 of 2002 on the file of the Principal District Court, Nagapattinam, confirming the judgment and decree dated 28.06.2002 made in O.S.No.177 of 2000 on the file of the District Munsif Court, Nagapattinam.

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 :-

3.1. The suit is filed for recovery of possession. The suit property is an ancestral property owned by the plaintiff. The special Tashildar also issued patta on 16.12.1994 to the suit property. While being so, the first defendant is being close relative of the plaintiff, was put in possession and enjoyment of the suit property 12 months before without paying any rent. While being so, the defendants transferred the electricity connection to the suit property from the house owned by the plaintiff. When the plaintiff objected the same, the first defendant assured that it will be again restored in the plaintiff's house. Now the defendants also trying to



mutated the revenue records in their name. Hence the suit.

4. Resisting the same the defendants filed written statement and contended that the suit property never belonged to the plaintiff and it is not an ancestral property of the plaintiff. The suit property belonged to Arulmigu Thiyagaraja Swamy Thirukovil and the grandfather of the first defendant was in possession and enjoyment of the suit property and thereafter by a registered paguthi deed dated 18.06.1940. After his demise, the first defendant's father was in possession and enjoyment of the suit property. After the demise of his father, the first defendant is in possession and enjoyment of the suit property. Because the tiled house was in dilapidated condition, the plaintiff was permitted to put up her paddy straw dump in the suit property. Without the knowledge of the first defendant, the plaintiff approached the special Tashildar and obtained patta in the year 1994. Thereafter, the first defendant applied for cancellation of patta and accordingly it was cancelled. Now in the suit property, the first defendant constructed house and his son residing there. Part of the property occupied by the second defendant and she constructed house. Both the houses are assessed the house tax in 2/122 and 2/124 respectively. After assessing their houses, they are paying the house taxes from the year 1990 and thereafter obtained electricity service connection in their name and they paying the electricity bill regularly. Thereafter, they also applied for patta and the revenue authority issued patta to the first and second defendants separately on 15.03.2000. Therefore, he prayed for dismissal of the suit.

5. On the side of the plaintiff, examined P.W.1 to P.W.7 and were marked Ex.A.1 to Ex.A.28. On the side of the defendants, they examined D.W.1 & D.W.2 and were marked Ex.B.1 to Ex.B.14. Witness documents were marked as Ex.C.1 to Ex.C.5. 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 preferred an appeal suit in A.S.No. 61 of 2002 and the first appellate Court dismissed the appeal by confirming 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 21.01.2006, the following substantial questions of law were formulated for consideration:-

"1. Whether the Court below erred in dismissing the suit having held that the appellant was in possession of the suit property on basis of the exhibits A.7,8,9 and 10?

2. Whether the Court below erred in



WEB COPY

dismissing the suit on the technical ground that suit for declaration was not filed though the Court below have gone into the title over the suit property and dismissed the suit holding that the defendant has title over the property?

3. Whether the Court below failed to see that the patta given to the appellant could not be cancelled by the Tahsildar, P.W.7 who had also categorically admitted that he had no right or authority to cancel a patta and it is only RDO can cancel the patta.

4. Whether the Court below failed to see that the suit property was Government Natham land and it is not the property of Arulmigu Thiyagaraja Swami Tirukoil, even according to the accountant of the temple, P.W.3?

5. Whether the Court below failed to consider the exhibit C.1 which is the document of the year 1972 against the provisions of Section 90 of the Indian Evidence Act, 1872?"

7. Heard Mr.K.Selvaraj, learned counsel appearing for the appellant/plaintiff and Mr.R.Sunil Kumar, learned counsel appearing for the respondents/defendants.

8. According to the plaintiff he obtained patta from the special Tashildar on 16.12.1994, in respect of the suit property, which was marked as Ex.A.5. The first defendant is being a close relative of the plaintiff, he was permitted to reside in the said property. Thereafter, the first defendant without the knowledge of the plaintiff obtained electricity connection and constructed houses. Whereas, the case of the first defendant is that the suit property originally purchased by his predecessor and the plaintiff was permitted to put up Paddy straw dump in the suit property. Utilizing the situation, the plaintiff obtained patta from the special Tashildar without the knowledge of the first defendant. Therefore, the first defendant filed appeal against the issuance of patta and the same was cancelled. Thereafter, the first defendant and the second defendant constructed their respective houses and assessed their houses for tax.

9. The house tax receipts were marked as Ex.B.2 to Ex.B.6. The electricity bill receipts were marked as Ex.B.7 to Ex.B.9. The proceedings of the Thashildhar, Thirukuvalai, was marked as Ex.A.10. Thereafter, the defendants also obtained patta for the houses constructed in the suit property, which were marked in Ex.B.11 & Ex.B.12. In fact, they also lodged complaints and the CSR were marked as Ex.B.13 and Ex.B.14. though, the plaintiff contended that against the order of



cancellation of patta, he filed an appeal before the revenue officers and the fact of the appeal is not known to the plaintiff. Therefore, the plaintiff failed to prove his case. Whereas, the defendants categorically proved their possession and enjoyment and also ownership of the suit property. Accordingly, the Courts below rightly decreed the suit in favour of the plaintiff.

10. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the first appellate Court for upholding the case of the defendants. As such, 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 are answered in favour of the plaintiff and as against the defendants.

11. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below. There is no order as to costs.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Principal District Judge,
Nagapattinam.
2. The District Munsif,
Nagapattinam.

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

+1cc to Mr.K.Selvaraj, Advocate SR.No. 7371

S.A.No.807 of 2005

A.SK(22/09/2020)