IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

S.A.No.412 of 2020
and
CMP.No.8413 of 2020

1.Anthoniyammal
2.Magimaidass
3.Rend Rustin
4.Stephen Raj
5.Ratchagar ... Appellants / Appellants / Defendants 1 to 5

Vs.

1.Anbalagan .... 1st Respondent / 1st Respondent / Plaintiff

2.The District Collector
Cuddalore Collectorate
Cuddalore District.

3.The District Revenue Officer
Cuddalore Collectorate
Cuddalore District.

4.The Tahsildar
Kattumannarkoil Taluk Office
Srimushna Taluk Office

... Respondents 2 to 4 / Respondents 2 to 4 / Defendants 6 to 8

Prayer : Second Appeal filed under Section 100 of Cr.P.C., against the judgement and decree dated 26.08.2019 in A.S.No.40 of 2018 on the file of the I Additional Subordinate Court, Cuddalore, confirming the judgment and decree dated 12.10.2017 in O.S.No.113 of 2016 on the file of the Principal District Munsif Court, Cuddalore.

For Appellants : Mr.R.Siddharth

For Respondents: Mr.Y.T.Aravind Gosh
Government Advocate [R2 to R4]

ORDER

The above second appeal is at the instance of the defendants in O.S.No. 113 of 2016. The suit was filed by the first respondent/plaintiff seeking cancellation of the decree in O.S.No.233/2014 on the file of the Additional Sub Court, Cuddalore and for costs.

2. The factual background which gave raise to this litigation is as follows :

- The property is the subject matter of the suit measuring about 1.88.0 hectares, classified as Government auctionable dry lands was sold in an auction to the first respondent/first defendant on 20.03.1982 for a sum of Rs.700/-. Before the confirmation of the auction, one Pappu, daughter of Susai made an application for re-auction offering Rs.3,150/- for the said land. The Revenue Divisional Officer, Chidambaram, by an order dated 20.09.1983 directed re-auction to be conducted. Upon the said order, Pappu deposited a sum of Rs,3,150/-, but no re-auction was held. While things stood thus, on 22.03.1988, the Revenue Divisional Officer, Chidambaram, confirmed the auction in favour of the first appellant. This order of confirmation was challenged by Pappu, who had offered to pay more for the property. In the appeal by Pappu, the District Revenue Officer, Cuddalore, by order dated 08.03.1990, cancelled the order of the Revenue Divisional Officer, Chidambaram, dated 22.03.1988 and directed re-auction.
  Challenging the order directing re-auction dated 08.03.1990, the first appellant filed a writ petition in WP.No.4409/1990 before this Court. This Court, by an order dated 14.09.1998, dismissed the writ petition, confirming the order directing the re-auction.

- A Review Application in Rev.Appl.No.8/2000 was filed by Pappu against the order in writ petition and the same was also dismissed on 21.07.2000. Despite that, there was no re-auction. Suppressing the order in W.P.No.4409/1990, the first appellant filed a suit in O.S.No.45/2006 before Sub Court, Chidambaram, against the District Collector, Cuddalore and others. Even during the pendency of the said suit, the Tahsildar, Kattumannarkoil, by an order dated 29.03.2007, ignoring the order of this Court in W.P.No:4409 of 1998, confirmed the auction in favour of the first appellant and also directed mutation of the revenue records. In view the said development the first appellant withdrew the suit in O.S.No.45/2006 and the same was dismissed as not pressed.

- Subsequently, Pappu, daughter of Susai, who had offered a sum of Rs.3,150/- for the property in the year 1982, made an application for cancellation of patta granted in favour of the first appellant, and for taking action as per the order of this Court directing re-auction in WP.No.4409/1990. In the said application, the Tahsildar, Kattumannarkoil, cancelled the patta and directed re-auction by an order dated 22.11.2007.

- Thereafter, the first appellant filed a suit in O.S.No.267/2010 against the plaintiff seeking an order of injunction. That suit came to be dismissed on 26.06.2012 and in the said judgment, the Court has pointed out that the plaintiff is guilty of suppression of material facts.

- Again the Sub Collector, Chidambaram passed on order on 24.02.2014, on the petition filed by Pappu seeking cancellation of patta, rejecting her claim and holding that the auction in favour of the first appellant need not be canceled. In the said order, the Sub Collector had referred to the proceedings taken by Pappu before the Civil Court, which ended in S.A.No.565/2010. Nowhere in the said proceedings the Court had acknowledged the title of the appellants herein. The rejection of the claim of Pappu was alone was confirmed by this Court in S.A.No.565/2010.

- Thereafter, challenging the order of the District Revenue Officer, Chidambaram dated 24.02.2014, the plaintiff/first respondent preferred a review petition before the District Revenue Officer, Cuddalore. The District Revenue Officer, Cuddalore allowed the revision and directed cancellation of the patta issued to the appellants herein by order dated 13.09.2014.

- This order dated 13.09.2014 was challenged by the appellants/defendants 1 to 5 in O.S.No.233/2014. As it usually happens in the cases where Government officials are made defendants, such Government officials viz., the District Collector, Cuddalore, the District Revenue Officer, the Tahsildar and Kattumannarkoil Taluk Office remained exparte. The suit was decreed exparte on 09.07.2015. This demonstrates the exemplary manner in which the Revenue officials safeguard the property of the Government. Armed with the decree setting aside the order dated 13.09.2014, the appellants started cutting and removing the trees in the suit property. At this juncture, the plaintiff/first respondent filed a suit in O.S.113/2016, to declare that the judgment and decree dated 09.07.2015 in O.S.No.233/2014, as null and void. This suit is the subject matter of the present second appeal.

3. At trial, the plaintiff was examined as P.W.1 and the second defendant was examined as D.W.1. Exhibits A1 to A14 were marked on the side of the plaintiff. Exhibits B1 to B32 were marked on the side of the defendants.

4. It is very disheartening to see that the Government officials who were made parties as defendants 6,7 and 8 in the present suit, did not let in any evidence in support of their claim and shockingly, they remained exparte. Fortunately, the evidence was let in by plaintiff and the trial Court decreed the suit. Aggrieved, the defendants 1 to 5 preferred an appeal in A.S.No.40/2018 on the file of the I Additional Sub Court, Cuddalore. The learned Appellate Judge concurred with the findings of the trial Court and held that the appellants suppressed material facts and decree in O.S.No.233/2014 has been obtained by playing fraud. In the light of the said findings, the learned Appellate Judge dismissed the appeal. Aggrieved, the defendants 1 to 5 have filed this second appeal.

5. The fact that there was an auction in 1982 and in 1983, the Government decided to cancel the auction and directed re-auction is not in dispute.The order directing re-auction was the subject matter of the writ petition before this Court, and this Court directed re-auction to be conducted. Despite that, the first appellant herein was able to obtain patta from the Revenue officials. However, an order was passed canceling the patta granted and directing re-auction in 2014. The suit in O.S.No.233/2014 was filed by the appellants against the Government officials viz., the District Collector, District Revenue Officer, Tahsildar, Kattumannarkoil Taluk Office, questioning the said order dated 13.09.2014. The Government officials remained exparte and aided the appellants in setting aside the order directing the re-auction. The proceedings in the writ petition were conveniently suppressed before the Civil Court and an exparte decree was obtained. To add insult to the injury when the plaintiff sued for a declaration that the decree in O.S.No:233 of 2014 is null ans void on the ground that it has been obtained fradulently, the Government officials did not even support the claim and they have again remained exparte.

6. Heard Mr.Siddharth, the learned counsel for the appellants. He would vehemently contend that the plaintiff has no locus to maintain the suit. The order of the District Revenue Officer, Chidambaram, passed on 13-09-2014 was made in a Revision filed by the present plaintiff who had nothing to do with the property and hence not maintainable. Therefore,

according to him, the Courts below are not right in setting aside the decree.

7. I have considered the submissions of the learned counsel for the appellants. The trial Court and the appellate Court have categorically found that the appellants are guilty of suppression of material facts and the decree dated 13.09.2014 in O.S.No:233 of 2014 was obtained by playing fraud on Court. This itself is sufficient to dismiss the second appeal. The facts narrated above would show that the appellants have considerable clout either financial or political over the Revenue officials.

8. In view of the categorical findings that the appellants are guilty of playing fraud on Court, I think that I should entertain this second appeal. I do not find any question of law, much less, the substantial questions of law arising in this appeal. Hence, the appeal is dismissed without being admitted. The judgement and decree dated 26.08.2019 made in A.S.No.40 of 2018 on the file of the I Additional Subordinate Court, Cuddalore, confirming the judgment and decree dated 12.10.2017 in O.S.No.113 of 2016 on the file of the Principal District Munsif Court, Cuddalore, are hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ds

To:

1.The I Additional Sub Judge
Cuddalore.

2.The Principal District Munsif
Cuddalore.

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

Copy To

1.The Advocate General,
High Court, Madras - 104. (With Covering letter)

2.The Chief Secretary to Government of Tamilnadu,
Fort.ST.George, Chennai-9. (With Covering Letter)

+1cc to Mr. R.Siddharth, Advocate, S.R.No. 26619

S.A.No.412 of 2020

RSK(CO)
GN(01/09/2020)