

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 457 of 2014

Senthamarai Ammal

..Appellant / Defendant

Vs.

Gunasekaran

..Respondent/ Plaintiff

Prayer: Second Appeal filed against the judgment and decree made in A.S.No. 96 of 2011 on the file of the 1st Additional Sub-Court, Villupuram reversing the judgment and decree dated 08.11.2010 passed in O.S.No. 277 of 2007 on the file of the Additional District Munsif Court, Villupuram.

For Appellant : Mr.M.Devaraj

For Respondent : Mr. S.Srinath

J U D G M E N T

The defendant in O.S.No. 277 of 2007 who succeeded in convincing the Trial Court to dismiss the suit for declaration and recovery of possession filed by the plaintiff upon reversal of the said judgment and decree by the lower Appellate Court in A.S.No. 96 of 2011 has come up with this second appeal.

2. The respondent / plaintiff sought for declaration of his title and recovery of possession claiming that the suit properties were assigned by the Tamilnadu government to his father Manangatti Gounder, son of Ramasamy. According to him, even prior to the grant of Patta by the government, he had levelled the land and was cultivating the same. Taking into account his enjoyment, the government granted Patta in his name. After having obtained the Patta, his father, Mannangatti who was in possession and enjoyment of the property made a gift of the said property in favour of the plaintiff on 05.01.2007 under a registered settlement deed. Claiming title under the said settlement deed, the plaintiff come forward with the suit. It was also contended, the plaintiff's father had been in

possession for more than 30 years and has perfected title by adverse possession.

3. The suit was resisted by the defendant contending that the suit claim is false. According to the defendant, some of the suit properties originally belonged to Ellammal, the first wife of the Mannangatti, son of Govindasamy, she having purchased the same under sale deed dated 25.01.1974 and some of the properties were obtained by the husband of the defendant G.Mannangatti by way of assignment. The defendant is the 2nd wife of Mannangatti, S/o Govindaswamy. The defendant's husband had also executed a general power of attorney in favour of the defendant. The defendant had also obtained electricity service connection for the first item of the suit property on 26.04.1991. It is the case of the defendant that the plaintiff's father using the identity in the names got the Patta transferred in his name during UDR in 1985. Instead of showing that Mannangatti, son of Govindasamy during UDR survey, the Patta was entered in the name of Mannangatti, son of Ramasamy. Using the said deceptive entry, the plaintiff's father had executed a settlement in favour of the plaintiff in the year 2007 in an attempt to claim title over the properties. On the said contention, the defendants sought for dismissal of the suit.

4. At trial, the plaintiff was examined as P.W.1 and two other witnesses namely, one Balakrishnan and Ponnusamy were examined as P.W.2 and P.W.3. Exs.A1 to A20 were marked on the side of the plaintiff. On the side of the defendant, she was examined as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3. Exs.B1 to B24 were marked. Certain documents were summoned from the revenue department and marked as Exs.X1 and X2.

5. The Trial Court, upon a consideration of the evidence on record, concluded that the case of the defendant that there was a mistake at the time of UDR survey and revenue records that stood in the name of G.Mannangatti, son of Govindasamy were altered as R.Mannangatti, son of Ramasamy. This conclusion of the Trial Court is based on evidence of P.W.3, the Zonal Deputy Tahsildhar and the documents produced by him as Exs. X1 and X2, 'A' Register extract, chitta, adangal for the suit properties before the UDR survey and after the UDR survey and Ex. B24, order of the transfer of Patta at the instance of the defendant. The documents produced by the authorities revealed that some of the suit properties stood in the name of the Ellammal, in the 'A' register and the other properties stood in the name of

G.Mannangatti, son of Govindaswamy, who is the husband of the defendant also. The documents produced by the plaintiff were disbelieved on the ground that they were all after the UDR survey i.e. of the years 1996, 1997 and 2007. The Trial Court also adverted to the registered instruments namely, Exs.B1 and B2 which showed that the family of the defendant had dealt with the property in the year 1974 by way of registered instruments and concluded that the inclusion of the name of the plaintiff's father as the owner of the suit properties during UDR survey was a mistake. In fact, the Trial Court relied upon the deposition of the plaintiff before the revenue authorities during enquiry for Patta transfer, wherein, he had claimed that Mannangatti, son of Govindasamy was put in possession by his father as a tenant. This was also pointed out by the Trial Court to buttress its conclusion that the plaintiff has admitted the wrong entry in the revenue records during the UDR survey.

6. On the above findings, the Trial Court dismissed the suit concluding that the plaintiff has not made out the title pleaded by him. Aggrieved, the plaintiff preferred an appeal in A.S.No. 96 of 2001. The lower Appellate Court on a re-consideration of the evidence came to the conclusion that the revenue records standing in the name of the plaintiff's father alone would establish the title of the plaintiff's father. The lower Appellate Court also took note the evidence of P.W.3, the official witness, who had admitted that Mannangatti was not examined during the enquiry for transfer of Patta. The Appellate Court overlooked the fact that the plaintiff himself was examined during the enquiry and revenue authorities after detailed enquiry had concluded that the mistake occurred during the UDR survey and the properties actually belonged to Mannangatti, son of Govindasamy and not Mannangati, son of Ramasamy. Therefore, the Patta issued to the plaintiff on the strength settlement deed executed by his father on 05.01.2007 was cancelled and the revenue records restored in the name of the defendant. It is not in dispute that the said proceedings have not been implemented due to the pendency of the suit. The relevancy of the said proceedings cannot be overlooked. It is fundamental principal of law that revenue records alone cannot confer title. No doubt, the revenue records were transferred in the name of the plaintiff's father in the year 1985. When the defendant has produced title deeds even prior to that and is able to establish that the revenue records stood in the name of Mannangatti, son of Govindasamy prior to the UDR survey, the fact that the revenue records were mutated in the name of Mannangatti, son of Ramasamy during UDR survey will not confer title on plaintiff or his father. On the question of adverse possession, the lower Appellate did not return any finding. It however, went by the revenue records to conclude that the plaintiff had made out the title pleaded by him. On the said

conclusion, the lower Appellate Court allowed the appeal. Aggrieved, the defendants has come up with this second appeal. At the time of admission, the following substantial questions of law were framed for consideration:-

- "a) Whether the Appellate Court is right in decreeing the suit ignoring the second proviso to section 68 of Indian Evidence Act?
- b) Whether the Appellate Court is right in disbelieving Exs.B1 and B2 which are more than 30 years old and produced from proper custody as per section 90 of the Indian Evidence Act?
- c) Whether the First Appellate Court which happened to be the last Court of facts analyzed the oral and documentary evidence of both sides afresh and arrived at an independent conclusion in accordance with Order 41 Rule 31 of Civil Procedure Code?"

Though the plaintiff claims under the settlement deed executed by his father on 05.01.2007 and he also set up a plea of adverse possession, it is seen from the evidence that the settlement deed dated 05.01.2007 has not been proved in accordance with law and none of the persons, who had attested the said documents have been examined. The settlement deed dated 05.01.2007 has, therefore, not been proved in accordance with law. The first question of law is answered against the respondent. However, the plaintiff also pleads adverse possession. In the light of the said contention, the absence of proof of the settlement deed dated 05.01.2007 may not matter much.

7. As far as the second substantial question of law is concerned, both Exs.B1 and B2 are of the year 1974, which have been produced from proper custody. They would go to show that the defendant's husband Mannangatti, son of Govindasamy and his first wife Ellammal had absolute right over the property by way of a sale deed and exchange deed which were executed on the same day. These documents being more than 30 years are entitled to presumption under Section 90 of the Evidence Act. From Exs. X1 and X2, it is seen that revenue records prior to the UDR survey stood in the name of Ellammal and her husband Mannangatti, son of Govindaswamy. From the above documents, it is absolutely clear that the plaintiff and his father are trying to take advantage of the mistakes that occurred during UDR and claim title to the property. Therefore, I find that the lower Appellate Court was not right in ignoring these two documents of the year 1974 and coming to the conclusion that merely because, the revenue records stand in the name of the plaintiff's father,

the plaintiff has established his title. Hence, the second question of law answered in favour the appellant. Once the second of question of law is answered in favour of the appellant, the title set up by the plaintiff would automatically fail and suit by the plaintiff should be anyway dismissed. I also find that the first Appellate Court has not appreciated the evidence in the appropriate manner and it has only gone by the entries in the revenue records, which have been admitted to be wrong in B24. Therefore, the findings of the lower Appellate Court, in my opinion, are definitely perverse and are liable to be set aside. The Appellate Court has also not assigned any reason for its not agreeing with the findings of the Trial Court.

8. In the light of the above, answers to the questions of law and the conclusion that the findings of the lower Appellate Court are perverse the second appeal is allowed, the judgment and decree of the lower Appellate Court are set aside and that of the Trial Court are restored. Consequently, connected miscellaneous petitions, if any are closed. However, there will be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

1. The I - Additional Sub-Court,
Villupuram.
2. The Additional District Munsif Court,
Villupuram.

+1cc to Mr.M.Devaraj, Advocate, sr no.19476

S.A.No. 457 of 2014

AD(CO)
RMP(25/01/2021)