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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.822 of 2000

1.Ramu (died)
2.Kaliyaperumal ...1 & 2 Appellants/Appellants/
Plaintiffs 1 & 2
3.Nagammal
4.Rajkumar
5.Manikandan
6.Karmegavanan ...3 to 6 Appellants/
LRs of 1st Appellant

(Appellants 3 to 6 brought on record as LRs of the deceased 1st Appellant viz., Ramu vide order of court dated 25.02.2020, made in CMP.No.3240, 3241 and 3245 of 2020 in S.A.No.822 of 2000)

Vs.

1.Kuppusamy
2.Pannerselvam ... 1 & 2 Respondents/
Respondents 1 & 2/
Defendants 1 & 2
3.Ramalingam ... 3rd Respondent/
3rd Respondent/
3rd Plaintiff

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree of the learned II Additional District Munsif, Ulundurpet, dated 22.01.1997, in O.S.No.623 of 1995 and as confirmed by the learned Additional District Judge, Villupuram District, Villupuram, dated 23.02.1999 in A.S.No.27 of 1997.

For Appellants : Mr.R.Rajarajan
for Mr. R.Balakrishnan
For R1 : Died
For R2 : Mr.V.Pandiyan
for Mr.T.Sundaravadanam
For R3 : Given up

JUDGMENT

This Second Appeal is not admitted and it is only in the notice of motion stage only.



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

3. The plaintiffs have filed a suit in O.S.No.623 of 1995, before the II Additional District Munsif, Ulundurpet, for declaration of title and for permanent injunction. The plaintiffs have come forward with the specific case that they have prescribed title to the property based upon Exs.A1, A21 & A22 and also relied upon the revenue records, which were marked as Exs.A2 to A20. The first defendant has filed a written statement and the same was adopted by the second defendant, inter alia contended that in respect of the suit property, neither the father of the plaintiffs viz., Krishnasamy, nor the Rangasamy was in enjoyment and possession of the suit property. Since the first defendant is working in Bombay, taking advantage of his absence, the plaintiffs have entered their names in the patta and obtained the same regarding suit property. Thereafter, on coming to know about the act committed by the plaintiffs, both the plaintiffs and the defendants have approached the Revenue Authority, resulted in cancellation of the Patta, dated 27.08.1993 and it was marked as Ex.B3, and hence, sought for dismissal.

4. Before the lower Court, necessary issues have been framed and on behalf of the plaintiffs one Ramu was examined as PW1 and one Govindasamy was examined as PW2 and marked Exs.P1 to P24 and on behalf of the Respondents RW1, RW2 & RW3 were examined and marked Exs.B1 to B11.

5. Both the Trial Court as well as the Lower Appellate Court has held that the plaintiffs have not proved their title over the property and though they have produced certain documents subsequently, the same has been cancelled by the due procedure as per the Deputy Tasildhar's Patta Transfer proceedings and rejected the claim.

6. Heard the learned counsel for the appellants and reply by the learned counsel for the second respondent herein.

7. After going through the documents and also discussion by both the Courts below, it is seen that under Ex.A1, 33 cents were said to have been claimed by the plaintiffs' father viz., Krishnasamy, and both the Courts below have concurrently held that Ex.A1 and the lis between the parties have not been proved in the manner known to law and accordingly rejected the claim of title to the suit property. It is also seen from the discussion of the Lower Appellate Court that Ex.A1, A21 & A22, does not connect the parties and trace the title thereon.

8. On the contrary, there is specific finding given by the Lower Appellate Court that the defendants have filed the documents in Exs.B1, B2, B4 to B8, to prove the predecessor's title of the defendants. Hence, both the Courts below have concurrently and rightly held that the defendants have proved



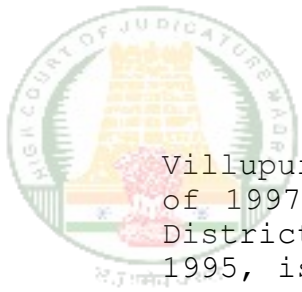
the title through documentary evidence as narrated above and the plaintiffs have failed to prove their title.

9. Next point that was advanced by the learned counsel for the appellants herein is that the plaintiffs have prescribed title to the suit property by adverse possession and hence, he has also sought for permanent injunction in respect of the suit property which is measuring to an extent of 0.62.5 acres that is 56 cents in survey No.90/2B in Nagar Village, Ulunduper Taluk. To show the possession, the plaintiffs have marked Exs.A3 to A20 as stated supra, and that documents would not support that plaintiffs to prove their possession adverse to that of the defendants and the very same document has been cancelled through the settlement proceedings under Ex.B3, dated 27.08.1993, wherein, after going through enquiry, Deputy Tasildar, Ulunduper has cancelled entry in the Patta and thereafter, necessary receipts have been received from the defendant.

10. The Lower Appellate Court has rightly come to the conclusion that "taking advantage of the absence of the the defendants in the village, the plaintiffs have obtained pattas in their name. The above factor is supported by Ex.B.3/proceedings of the Deputy Tahsildar, dated 27.08.1993. The said officer, after due enquiry had held that the plaintiffs have obtained patta in their name without any basis or title and based on that patta, the other documents like chitta, adangal had been registered in their names and directed the patta to be transferred in the defendants' name. Based on that order, patta had been transferred in the defendants name and adangal had been registered in the first defendant's name for fasli 1403 to 1405 in Ex.B.11 and Chitta for the said period is marked as Ex.B.10. These factors would show that the plaintiffs possession could not be held as adverse to that of the defendants and there was no animus to held it so. Hence for all the above reasons, I held that the plaintiffs have failed to prove that they have prescribed title by adverse possession and the Appellants/Plaintiffs are not entitled for declaration and permanent injunction as prayed for by them."

11. After perusing Exs.A3, A4 & A8 and also taking note of the proceedings of the Deputy Tasildar, this Court finds that the finding rendered by the Lower Appellate Court does not suffer from any illegality or irregularity, warranting interference at the second appeal stage. It is need less to say that when there is a concurrent finding by the Courts below unless it is demonstrated to be adverse or arbitrary, the scope of under Section 100 of CPC does not arise and hence I find that the plaintiffs have failed to prove that they have prescribed title by adverse possession.

12. Accordingly, the Second Appeal stands Dismissed and the order passed by the learned Additional District Judge,



Villupuram District, Villupuram, dated 23.02.1999 in A.S.No.27 of 1997 by confirming the order of the learned II Additional District Munsif, Ulundurpet, dated 22.01.1997, in O.S.No.623 of 1995, is hereby confirmed. No costs.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Munsif,
Ulundurpet.
2. The Additional District Judge,
Villupuram District, Villupuram.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras-104

+1CC to Mr.D.Rajasekar, Advocate, Sr.No.8940

+1CC to Mr.T.Sundaravadanam, Advocate, Sr.No.9004

S.A.No.822 of 2000

SSD (CO)

K.RK. (07.09.2021)