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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

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THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1016 of 2008
and
M.P.No.1 of 2008

1. Subbarama Raju
2. Gajendiran ... Appellants

Vs.

1. Maruthi
2. Chandran
3. Vadivelu
4. Elumalai
5. Desan
6. Subramani
7. Nagarathinam ... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S. No.46/2005 dated 26.10.2007 on the file of the Additional District Judge, Fast Track Court No.V. Thiruvallur, confirming the judgment and decree in O.S. No.276/96 dated 30.01.2004 on the file of the District Munsif Judge, Tiruthani.

For Appellants : Mr. R. Vijayaraghavan

For Respondents : No appearance.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 26.10.2007 passed in A.S. No.46/2005 on the file of the Additional District Judge, Fast Track Court No.V. Thiruvallur, confirming the judgment and decree dated 30.01.2004 passed in O.S. No.276/96 on the file of the District Munsif Court, Tiruthani.



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

3. The plaintiff in O.S. No.276/96 is the appellant in the second appeal.

4. Suit for declaration and permanent injunction.

5. The case of the plaintiff, in brief, is that the suit properties described in the plaint schedule had been purchased by him by way of the sale deed dated 15.11.1974 from its lawful owner, since then it is only the plaintiff, who has been in the possession and enjoyment of the suit properties by planting the mango trees and enjoying the same. The patta, chitta, adangal and 'A' register stand in the name of the plaintiff and the plaintiff is also paying kists and excepting the plaintiff, no one is entitled to the suit properties. While so, the defendants, who are the utter strangers to the suit properties, without any manner of right, tittle or interest over the same attempted to interfere with the plaintiff's possession and enjoyment of the suit properties for the past three months and hence, according to the plaintiff, he has been necessitated to levy the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and put forth the case that the suit property is a burial ground and poromboke land and used as the burial ground from time immemorial. Till date, there is no alternative burial ground for the village people and the Government had put up the burial ground road from Mambakkam village to the suit property and the plaintiff, on a false representation, had obtained the patta in his name and the concerned officer also, without verifying the facts, had issued the patta to the plaintiff and also in the village map and also in the village account, the suit property is mentioned as burial ground and there is no question of trespass into the suit property as alleged by the plaintiff and therefore, prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws.1 and 2 were examined and Exs. A1 to A3 were marked. On the side of the defendants D.Ws.1 to 3 were examined and Exs.B1 to B4 were



8. On an appreciation of the materials placed on record, both oral and documentary, and the submissions put forth by the respective parties, the courts below were pleased to hold that the items 1,2,4 and 5 of the plaint schedule properties belong to the plaintiff and they are in the possession and enjoyment of the plaintiff and accordingly, as regards the abovesaid items, granted the reliefs in favour of the plaintiff as prayed for and dismissed the plaintiff's suit as against the Item No.3 of the plaint schedule properties. Impugning the same, the present second appeal has been filed by the plaintiff.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Have the courts below committed an error of law by misleading and misappreciating the admitted evidence of the officials in respect of the owner of the land?
- 2) Have the courts below committed an error of law in considering the oral evidence of the defendant to the exclusion of documentary evidence?
- 3) Are the courts below are correct in dismissing one item of the suit property by decreeing the other items by relying upon Ex.A1?

10. No representation for the respondents. The respondents on being called and remaining absent, they were set exparte.

11. The point to be considered in this second appeal is whether the third item of the suit properties belong to the plaintiff and the same is in his possession and enjoyment and whether the plaintiff is entitled to secure the reliefs of declaration and permanent injunction as prayed for in respect of the third item of the suit properties also.

12. The plaintiff claims title to the suit properties by virtue of the sale deed dated 15.11.1974 marked as Ex.A1. According to the plaintiff, he had purchased the suit properties from one Govinda Mudali by way of Ex.A1 sale deed . However, as rightly concluded by the courts below, the plaintiff has given



the suit properties in 5 items and when Ex.A1 recites that by way of the same 2.02 acres out of 3.06 acres in Survey No.3/2B had been purchased by the plaintiff from one Govinda Mudali, the plaintiff should have endeavoured to correlate the suit properties as described in the plaint schedule and the property as described in Ex.A1 sale deed. The plaintiff, at the foremost, has not established that his vendor had lawful title to the plaint schedule properties entitling him to convey the same under Ex.A1 sale deed. No document has been placed by the plaintiff evidencing that his vendor had, at any point of time, enjoyed the disputed property, namely, the third item of the suit properties. The plaintiff has also failed to mark the parent title deed to establish as to how his vendor had acquired the title qua the third item of the suit properties. No revenue record has also been placed by the plaintiff evidencing that his vendor had ever enjoyed the third item of the suit properties. Though Ex.A1 recites as if Govinda Mudali had acquired the property comprised in Ex.A1 sale deed, as above pointed out, no document in the name of his vendor has been projected by the plaintiff. In such view of the matter, merely on the production of Ex.A1 sale deed, we cannot infer that the disputed item No.3 of the plaint 'A' schedule properties belong to the plaintiff's vendor and that he had validly conveyed the same in favour of the plaintiff under Ex.A1 sale deed. Therefore, when the plaintiff has failed to correlate the property comprised in Ex.A1 sale deed with the plaint schedule properties, particularly the disputed item, in such view of the matter, the courts below are found to be justified in not placing reliance upon Ex.A1 sale deed, particularly as regards the claim of title, possession and enjoyment of the plaintiff qua the third item of the plaint schedule properties. As held by the courts below, the plaintiff has also miserably failed to establish that he has ever been in the possession and enjoyment of the third item of the suit properties. Only the kists receipt dated 14.02.1996 has been marked by the plaintiff as Ex.A3 and when the same is found to be obtained after the institution of the suit, as held by the courts below, no credence could be attached to the same. Barring Exs.A1 and A3, the other documents put forth by the plaintiff is the patta dated 16.04.1996 marked as Ex.A2. Therefore, it is evident that the plaintiff has based his claim for seeking the reliefs qua the disputed item mainly based on Ex.A2 patta and the patta cannot be construed as the document of title. If really the plaintiff had acquired a valid title to the third item under



Ex.A1 sale deed, the plaintiff would have also endeavoured to establish that his vendor also had obtained the patta in respect of the disputed item, namely, the third item.

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13. As above pointed out, it is the specific case of the defendants that the disputed property, namely, the third item has been used as the burial ground and the same is the poromboke land by the villagers from time immemorial and therefore, according to them, by way of Ex.A2 patta, the plaintiff cannot claim title to the disputed item. In this connection, when we consider the evidence of the Assistant of Thiruthani Tahsildar Office examined as D.W.2, it is seen that the revenue records depict the disputed item only as the grave yard poromboke land and he would also state that there is a patta towards east from the colony and turning towards north is the grave yard indicated in the village map marked as Ex.B1 and according to Exs.B2, B3 and B4 being the sketch, Adangal and 'A' register, the suit survey No.3/4 is the path leading to the poromboke land and the colony people are using Survey No.3/4 as the grave yard. Therefore, considering the evidence of D.W.2, when it is seen that the disputed item has been depicted as the grave yard in the revenue records and used as the grave yard by the villagers, it does not stand to reason as to how the plaintiff would be entitled to claim title to the disputed item based on Ex.A1 sale deed particularly as above discussed, the plaintiff has miserably failed to establish that his vendor had a lawful claim of title to the disputed item. The Tahsildar examined as D.W.3 has also testified that Mambakkam Colony has been in existence for the past 20 years and when he had recently visited the colony, the suit property is found to be the path having 13 feet width and extending to about half a kilometer and the same leads to the grave yard, which lies very next to the mountain from the grave yard turning towards north the path ends at a distance of 20 mtrs. Therefore, as per D.W.3, the grave yard is situated in Survey No.3/4 and it is also noted that the grave yard is of the extent of 0.57.5 hectares and the path leading to the grave yard is lying in different survey numbers. Accordingly, the first defendant examined as D.W.1 has also deposed that the grave yard has been used from time immemorial as the burial ground by the villagers and therefore, the courts below are found to be justified in placing reliance upon the evidence of D.Ws. 1 to 3, particularly, when their evidence are found to be fortified by the village records marked as Exs. B1 to B4. Further, as held by the courts below, when it



is seen that the evidence of D.W.3 go to disclose that the colony people had been using Survey No. 3/2B7 as the grave yard for more than 50 years, the same being the third item and when on a recent visit D.W.3 has also noted about the path leading to the grave yard as deposed by him and mentioned supra and when Ex.B1 village map clearly depicts survey No.3/2B7 as being only the grave yard and in such view of the matter, the claim of the plaintiff that he has been issued patta inclusive of the disputed item by the authority concerned, as such, cannot be accepted in any manner. When from the evidence of D.Ws 2 and 3 as well as D.W.1 it is noted that Survey Nos.3/2 B7 had been used as grave yard from time immemorial, the claim of the revenue officials, namely, D.Ws.2 and 3 that based on the survey proceedings, the suit properties had been converted as patta lands, as such, cannot be accepted. But, quiet inconsistent to the abovesaid version, when according to them, the disputed item has been used as the burial ground for several years, in such view of the matter, as held by the courts below, the authority concerned, before endeavouring to issue the patta in respect of the disputed item, should have invited objections from the colony people who had been using the disputed item as the burial ground. On the other hand, without proper enquiry and hastily seem to have issued the patta to the plaintiff marked as Ex.A2 on 16.04.1996 and the plaintiff having secured the patta dated 16.04.1996 is found to have laid the suit immediately on 17.04.1996. This would only go to show that the plaintiff has been able to obtain the patta somehow or the other and immediately had rushed to the court as if the disputed item also belongs to him. If really the suit property had been classified as patta land by the revenue authorities in the survey proceeding long back, the 'A' register would have depicted the disputed item as the patta land. The plaintiff would have also endeavoured to produce the adangal, chitta extracts pertaining to the suit properties to conclude that the same had been classified as the patta land for several years as sought to be projected by the revenue officials examined in the matter. On the other hand, other than Ex.A2 patta, the plaintiff has not filed any other revenue documents to show that the disputed item has been classified only as the patta land and that the patta had been rightly granted to the plaintiff by way of Ex.A2 proceedings. On the other hand, when as above discussed, the same revenue officials have admitted that it is only the colony people who had been using the disputed item as the grave yard for more than 50 years, the claim of the plaintiff that he had been enjoying the



plaint schedule properties inclusive of the disputed item by planting mango trees, as such, cannot be accepted in any manner. Other than Ex.A2 patta no document has been projected by the plaintiff to evidence that he has a valid claim of title, possession and enjoyment of the disputed item and considering the abovesaid factors, when the patta said to have been issued to the plaintiff is at stake particularly its credibility not having been established by the plaintiff, as pointed out supra, and when the enjoyment of the disputed item lying in Survey No.3/2B7 as grave yard has been clearly admitted by D.Ws.2 and 3, in such view of the matter, the courts below are found to be justified in not granting the reliefs in favour of the plaintiff qua the third item of the suit properties.

14. In the light of the abovesaid factors, the courts below are found to have appreciated the oral and documentary evidence projected in the matter correctly and in the right perspective, both on factual matrix and on the question of law, and accordingly declined to grant the relief in favour of the plaintiff qua the third item of the suit properties and the reasonings and conclusions of the courts below for the same not shown to be in any manner perverse, illogical and irrational, in my considered opinion, no substantial question of law, as such, is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

15. In conclusion, the judgment and decree dated 26.10.2007 passed in A.S. No.46/2005 on the file of the Additional District Judge, Fast Track Court No.V. Thiruvallur, confirming the judgment and decree dated 30.01.2004 passed in O.S. No.276/96 on the file of the District Munsif Court, Tiruthani, are confirmed. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



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1. The Additional District Judge, Fast Track Court No.V.
Thiruvallur,

2. The District Munsif Court, Tiruthani,

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

S.A.Nos. 1016 of 2008

AD(CO)
SB(28/10/2021)