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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2021
PRONOUNCED ON : 29.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.152 of 2010

1. Dhandapani
2. R.Perumal
3. R.Harikrishnan
4. N.Munian ... Appellants/Defendants/Respondents

Vs.

Kanniammal ... Respondent/Plaintiff/Appellant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 15.04.2009 made in A.S.No.27 of 2008 on the file of the Sub Court, Madurantagam, modifying the judgment and decree dated 16.12.2006 made in O.S.No.441 of 2004 on the file of the District Munsif Court, Madurantagam.

For Appellants : Mr.N.Nithianandam

For Respondent : Mr.N.Nagu Sah

J U D G M E N T

The defendants in O.S.No.411 of 2004 on the file of the learned District Munsif, Madurantagam, are the appellants herein. Before the said Court, the respondent in this appeal filed the above referred suit as against the appellants, seeking the relief of declaration, declaring that the plaintiff is the absolute owner of 'B' schedule property and for granting consequential permanent injunction.

2. By judgment and decree dated 16.12.2006, the learned District Munsif, Madurantagam, allowed the suit in part, wherein the relief of declaration has been granted. In respect to the relief of injunction, the learned District Munsif, Madurantagam,



dismissed the suit.

3. Aggrieved over the said finding, the plaintiff preferred an appeal in A.S.No.27 of 2008 before the learned Subordinate Judge, Madurantagam. By judgment and decree dated 15.04.2009, the learned Subordinate Judge, Madurantagam, allowed the suit with entirety and granted the relief of permanent injunction.

4. Feeling aggrieved over the judgment and decree dated 15.04.2009 made in A.S.No.27 of 2008, the defendants in the suit have preferred the present second appeal.

5. For the sake of convenience, hereinafter, the appellants 1 to 4 are called as 'Defendants' and the respondent is called as 'Plaintiff'.

6. The laconic averments made in the plaint, are as follows:

(i) The suit properties are the ancestral properties of one Palani, further the same was classified as natham lands for which patta was not issued prior to natham survey. During natham survey, the Government recognising the possession of the said Palani, issued patta dated 14.11.2002. The plaintiff had purchased the suit properties from the said Pazhani and since from the date of purchase, she is in the possession and enjoyment of those properties.

(ii) The plaintiff claims that she and her predecessors-in-title had prescribed title in the suit property by adverse possession also. The defendants by taking advantage that the plaintiff belongs to minority community, attempted to trespass into the property. Infact the plaintiff has declined the offer made by the defendants in purchasing the suit properties. Therefore, an attempt was made on 03.04.2012 by the defendants to trespass into 'B' schedule properties. Hence, in order to prevent the same, the plaintiff filed the present suit.

7. The case of the defendants, as averred in the written statement is as follows:

(i) The suit properties are classified as 'Meyakkal porambokke', over which neither the plaintiff nor her predecessors-in-title have got any right. The question of granting patta is pending before the Revenue Divisional Officer, Madurantagam, now he is conducting enquiry. The possession of the suit properties lies with the villagers. During festival time and on other auspicious days, the villagers conducted



'Maadu Virattu' [மாடு வீரட்டு] and other temple festivals in the suit land. Public functions also would be held in the suit schedule property. There is a building belonging to the Women's Self Help group as well as a community hall situated in 'Meyakkal Porambokke'. These buildings were constructed on the basis of the resolution passed by the Panchayat in the year 1990.

(ii) The grant of patta is illegal. It would not confer any title on the plaintiff. There was a pathway leading to the burial ground and Palmyra trees were found available in the alleged suit property. It is the property of the panchayat as well as the entire villagers, over which, the plaintiff cannot claim any right. Hence, the suit is liable to be dismissed with costs.

8. Based on the above said pleadings, the learned District Munsif, Madurantagam, framed necessary issues and tried the suit. On the side of the plaintiff, she examined herself as PW1 and exhibited three documents as Ex.A1 to Ex.A3. Further, she examined one G.Alaguvel as PW2. On the side of the defendants, the 1st and 2nd defendants themselves have given evidence as DW1 and DW2. However, no documents were marked on their side.

9. Having considered the materials placed before him, the learned District Munsif, Madurantagam, vide judgment and decree dated 16.12.2006 allowed the suit in part, wherein he granted a decree for declaration and as far as the relief of injunction is concerned, he dismissed the suit.

10.

10. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.47 of 2008 before the learned Subordinate Judge, Madurantagam. By judgment and decree dated 15.04.2009, the learned Subordinate Judge, Madurantagam, after allowing the appeal, granted the relief of injunction also.

11. Aggrieved over the said finding of the Courts below, the appellants/defendants 1 to 4, are before this Court with the present Second Appeal. When the Second Appeal is taken up for admission, this Court formulated the following Substantial Questions of Law.

"1. Whether the Courts below have committed an error in decreeing the suit in the absence of Village Panchayat who is just and necessary party especially when the suit property is classified as 'Meykal Poramboke' and the same belonging to the Village Community at large?

2. Whether the courts below have failed to invoke Order 1 Rule 10(2) CPC, for impleading the



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necessary parties and failed to frame an issue to that effect when it was specifically pleaded by the defendants that the village panchayat is a necessary party to the suit?

3. Whether the lower Appellate Court is correct in reversing the judgment of Trial Court and granting decree for injunction simply because declaratory decree has been granted when the trial Court has categorically found that the plaintiff has not produced any documents to prove her possession?

12. Heard Mr.N.Nithianandam, learned counsel appearing on behalf of the appellants and Mr.N.Nagu Sah, learned counsel appearing on behalf of the respondent and perused the materials available on record.

13. It is the submission of the appellants/defendants that the suit property, is a 'Meykal Porambokke' used by the public, being the reason that the suit property is a government property, before allowing the suit in entirety, it is necessary to see whether all necessary parties are impleaded as party to the proceedings or not. In this connection, the Courts below without seeing the same allowed the suit, which is liable to be set aside.

14. The specific submission of the appellants' counsel is that, the village panchayat concerned to the suit land, is a necessary party and therefore, without hearing the panchayat, granting a decree in favour of the respondent is erroneous.

15. Per contra, the learned counsel appearing on behalf of the respondent/plaintiff would submit that in view of the patta issued by the revenue authorities, the plaintiff herein filed the suit as against the defendants. In otherwise, the alleged panchayat has not interfered with the title and possession of the suit property and therefore, it is not necessary for the plaintiff to implead the village panchayat as a necessary party. He would further submit that the patta issued by the competent authority, is a reliable document to accept the plaintiff's contention and therefore, the findings arrived at by the trial Court need not be interfered with by this Court.

16. Now, on considering the said submissions with the relevant records, it would appear that against the declaratory relief granted by the trial Court, the defendants/appellants have not preferred an appeal before the first appellate Court. Hence, it was decided that there is no grievance to the



appellant as against the declaratory relief granted by the learned District Munsif, Mathurantagam, in favour of the plaintiff.

17. Further, on going through the plaintiff's side documents, on his side, the sale deed dated 14.11.2002 pertains to the suit land was marked as Ex.A1. Secondly, the patta issued by the revenue officers in favour of the vendor of the plaintiff viz., Palani was marked as Ex.A2. Further, the patta in respect to the suit property, which stands in the name of the plaintiff was marked as Ex.A3.

18. Now, on going through the contents of the said document it appears that for the suit land, the Tahsildhar, Cheyyur, who is the competent authority for issuing the patta, had issued the patta in the year of 1994 itself. Subsequent to that in order to cancel the patta, no steps have been taken by the defendants.

19. Therefore, without challenging the patta, which stands in the name of the plaintiff, now challenge to the possession of the plaintiff, cannot be sustained.

20. It is true, it is for the plaintiff to prove her title, by producing the relevant document. In this regard, as already observed, the plaintiff had exhibited the patta which stands in her name as Ex.A3. Only in the said circumstances, being the reason the patta has been issued in favour of the plaintiff, the Court below granted the declaratory relief that too, the same has not been challenged by the defendants.

21. Though, in respect to the possession, no document has been produced by the plaintiff, in this aspect, in a case of Prataprai N. Kothari Vs. John Braganza, reported in 1999 (4) SCC 403, our Hon'ble Apex Court held as follows:

"If not for any other reason, at least on account of the doctrine of law that possession follows title, the defendant must be held entitled to be in full possession of the open space."

Hence, it is the settled preposition that the possession follows title. Therefore, it has to be decided that the plaintiff alone is in the possession of the suit schedule property.

22. Infact in order to challenge the plaintiff's case, on the side of the defendants, none have been examined. Further, no document has been exhibited to show that the suit property is in the possession of the public.



23. It is the submission of the defendants that the patta has not been issued for the extent of 21 cents. It is true, usually for the houseless people, the government issue patta only for a meagre extent. But here it is a case, the learned counsel appearing for the respondent/plaintiff would submit that the Government after recognising the possession of the plaintiff, issued patta for 921 sq. meters.

24. Now, on considering the said submission, it is true, Ex.A1 and Ex.A2 denotes the fact that the revenue authority issued patta in favour of the vendor of the plaintiff for 921 sq. meters. Accordingly, without challenging the patta, arguing as above by the defendants is of no use. Moreover, it is not the case of the plaintiff that panchayat or public raised objection for his title and possession. Accordingly, filing the suit against the defendants is legally permissible and accordingly, non-adding of the panchayat is not a ground for allowing this Second Appeal.

25. Therefore, in the light of the above discussions, the Second Appeal filed by the appellants/defendants, is dismissed. The Judgment and decree dated 15.04.2009 made in A.S.No.27 of 2008 on the file of the Sub Court, Madurantagam, modifying the judgment and decree dated 16.12.2006 made in O.S.No.441 of 2004 on the file of the District Munsif Court, Madurantagam, is sustained. No Costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Subordinate Judge, Madurantagam.

2.The District Munsif, Madurantagam.

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

+1cc to Mr.N.Nagu Sah, Advocate SR.No.62053

S.A.No.152 of 2010

AD(CO)

GN(21/12/2021)