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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	16.03.2021
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CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

S.A.NO.417 OF 2010

AND

M.P.NO.1 OF 2010

C.Arunachalam

... Appellant/Defendant

Vs.

1.T.Murugan

2.T.Mari

... Respondents/Plaintiffs

PRAYER : The Second Appeal filed under Section 100 of C.P.C., against the Judgement and Decree dated 23.12.2008 made in A.S.No.45 of 2006 on the file of the Sub Court, Maduranthakam confirming the judgement and decree dated 30.03.2005 made in O.S.No.234 of 1997 on the file of the District Munsif Court, Maduranthakam.

For Appellant : Mr.M.S.Subramaniam

For Respondents : Ms.Raja Shama Gayathri
for Mr.K.Goviganesan

JUDGEMENT

This Second Appeal has been filed against the Judgement and Decree dated 23.12.2008 passed in A.S.No.45 of 2006 on the file of the Sub Court, Maduranthakam confirming the judgement and decree dated 30.03.2005 passed in O.S.No.234 of 1997 on the file of the District Munsif Court, Maduranthakam and to set aside the same.



2. The Appellant is the defendant.

The short facts of the plaintiffs' case are as under:-

3. The suit property is the service Inam land originally classified as 'Vetti Maniam' and the same had been given to the plaintiffs' forefathers. After the demise of their forefather Thulukkanam, the patta was transferred to their name in Patta No.335. From then onwards, they were in enjoyment of the same by paying kist. The defendant has no manner of right or title in the suit property but he is causing threat to the plaintiffs enjoyment. On 18.08.1997 also, the defendant made an attempt to trespass into the suit property and the plaintiffs resisted it. Hence this suit is filed for declaration of title and consequential Injunction.

The short facts of the defendant's case are as under:-

4. The suit property in Survey No.13/2 was originally owned by Thulukkanam (who is not the father of the plaintiffs and he is a different person), Mottai @ Thenan and one Angammal. The defendant purchased 0.90 cents out of 1.35 acres in Survey No.13/2 by virtue of a sale deed dated 07.04.1997 from the legal heirs of Thenan @ Mottai and Thulukkanam. The defendant was in possession and enjoyment of the suit property subsequent to his sale deed. The defendant has purchased 0.90 cents from the legal heirs of 2 sharers namely Thulukkanam and Mottai @ Thenan. The defendant's vendors had dealt with the property by mortgaging the same and later the same was discharged. The plaintiffs have got no connection with Thulukkanam (as mentioned in the patta). The plaintiffs' father Thulukkanam was working as a Revenue Official long ago, hence he managed to get a patta in his name fraudulently. The plaintiffs are not entitled to claim the relief and the suit has to be dismissed.

5. On the side of the plaintiffs, two witnesses were examined as P.W.1 & P.W.2 and EXs.A1 to A11 were marked. On the side of the defendant, 4 witnesses were examined as D.W.1 to D.W.4 and EXs.B1 to B8 were marked.

6. After the conclusion of the trial, the Trial Court partly decreed the suit in respect of relief of injunction and dismissed the suit in respect of the relief of declaration. The defendant challenged the same by way of filing the first appeal and the First Appellate Court also confirmed the judgement and decree of the Trial Court. However, the plaintiffs have not filed



any cross appeal in respect of that portion of the relief of declaration which was denied to them. The second appeal has been admitted on the following substantial questions of law:-

1. Whether the courts below have erred in holding that the plaintiffs are in possession of the suit property based on the documents which are rejected by the courts below, as not reliable for proof of title?

2. Whether the courts below have committed an error in granting a decree for injunction when the same has been sought for based on title and possession while negating the plea for declaration of title?

7. So now the simple point for consideration before this Court is whether the Lower Court is correct in accepting the evidence of the plaintiffs in order to grant them the relief of permanent injunction. There is no dispute as to the classification of the property as Vetti Maniam. The Trial Court has extracted the evidence of D.W.2 in order to show that the defendant himself had permitted the possession and enjoyment to the plaintiffs over the suit property. Despite the defendant claimed title over the suit property, he did not file any counter claim for declaration or recovery of possession. The Lower Courts have observed that the property being a service Inam, the party who claims title over the property should produce the settlement patta. Since no such patta is produced by either side which might have been given after the Inam settlement, the Lower Court has proceeded to examine who is in possession.

8. The learned Trial Judge while appreciating the evidence on record, has observed that the plaintiffs have stated that they have inherited the property from the forefather of their mother. However, the patta (Ex.A1) stands in the name of Thulukkanam, who is said to be the father of the plaintiffs. It is correct that the learned Trial Court has not given much credence to Ex.A1 and Ex.A5 in which the patta numbers have been corrected. However, from the patta in the name of the plaintiffs (Ex.A2) and kist receipts paid by the plaintiffs vide Exs.A3 & A4, and other documents, it got convinced that the plaintiffs are in enjoyment over the suit property. Even though the plaintiffs could not prove their title by inheritance, their possession over the suit property for a long period has been established.



9. The learned counsel for the appellant submitted that though the appellant omitted to produce the sale deed dated 07.04.1997 in his favour before the Lower Court, he has produced the same before the First Appellate Court and that will prove his title to the suit property. However, the appellant did not prove the passing of title to his vendors. These factual matters have been dealt by the Lower Courts.

10. The plaintiffs produced the chitta for the fasili years 1380 to 1389. Chitta or Adangal will be maintained for each Fasili year and from that it can be known who was in the enjoyment of the lands and what kinds of crops were cultivated during the relevant period. If someone traces any names from the Revenue Register and gets a sale deed from that person (who does not hold any title deeds), it should atleast be proved through the revenue records that the vendor was in continuous possession and enjoyment of the property more than the statutory period and perfected title by adverse possession.

11. The patta in the name of the plaintiffs would show that at some point of time, the suit property fell under the possession and enjoyment of the plaintiffs. Had the defendant's vendors have inherited title from their ancestors and really interested, they would have recovered possession from the plaintiffs by way of filing a suit for declaration and recovery of possession within the period of limitation. Having allowed the plaintiffs to be in enjoyment of the suit property for a long time by silent acquiescence, now it can not be claimed that the vendors of the defendant were the owners. The defendant has stated in his evidence that he had seen the patta in the name of his predecessor's ancestor before purchasing the property. However he could recollect the name in which the alleged patta stood. But he had stated about his knowledge that patta has been granted in the name of plaintiffs. However he claims that it is not correct. In that case, his vendors ought to have claimed before the appropriate authorities that the patta given in the name of the plaintiff is not correct and that they only had the title to the property or prevented the enjoyment of the plaintiff by taking suitable legal proceedings. The defendant's witness D.W.2 has admitted in his evidence that even before 20 years, the patta has been mutated in the name of plaintiffs' father and they did not raise any objection. In fact D.W.2 claimed himself as the descendant of one Mottai, who the defendant considers as the original owner. The defendant's vendors have allowed the plaintiff to enjoy the suit property for a long time and did not



object when patta was granted in his name long ago.

12. The defendant did not prove that his vendors were in actual and continuous enjoyment of the suit properties and thereafter, they passed title to the defendant by executing a sale deed in his favour. The Trial Court has held that the plaintiffs were not able to produce sufficient documents to get the relief of declaration of his title. Neither the defendant was in a better position to claim title or possession over the suit property.

13. Had the plaintiffs claimed title by pleading adverse possession by impleading the Government also as a party, they might have got the relief of declaration. However, it is not wrong on the part of the Courts below to accept the materials placed by the respondents/plaintiffs in support of their possession over the suit property. One of the vendors of the defendant who was examined as D.W.2 himself has admitted in his evidence that the vendors were not in enjoyment of the suit property for nearly 30 years. Since the plaintiffs have proved their possession of the suit property, the Courts below are right in granting the limited relief of injunction despite the relief of declaration of title was denied.

14. In the backdrop of the above discussion, I do not find any factual or legal infirmity in the judgement and decree of the First Appellate Court and it does not warrant any interference. Hence the substantial questions of law Nos.1 and 2 are answered against the appellant.

15. In the result, the Second Appeal is dismissed and the judgment and decree of the First Appellate Court is confirmed. No costs. Connected miscellaneous petition in M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge,
Maduranthakam.

2. The District Munsif,
Maduranthakam.

+1cc to Mr.K.Goviganesan, Advocate, S.R.No.20451

+1cc to Mr.M.S.Subramaniam, Advocate, S.R.No.20634

S.A.No.417 of 2010

VGII (CO)
CS/26/11/2021