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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021

DELIVERED ON : 02.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.1478 of 2005
and C.M.P.No.19237 of 2005

1.Annamalai Mudaliar
2.Sivakolundu Mudaliar
3.Rangasamy Mudaliar (Died)
4.Suseela
5.Sivakalai

...Appellants

vs.

1.Krishna Mudaliar (Died)
2.Kathai
3.Kuppan
4.Karuppan
5.Kumar
6.Karthikeyan
7.Ponnammal
8.Sivapooshanam
9.Kanakavalli
10.Ajith
11.Aravind

...Respondents

(Appellants 4 and 5 are brought on record as LR's of the deceased 3rd Appellant viz., Rangasamy Mudaliar and the Respondents 2 to 11 are brought on record as LR's of the Sole respondent viz., Krishna Mudaliar vide order of Court dated 10.01.2020 made in CMP.No.9944, 9945, 9947 and 9950/2019 in S.A.No.1478/2005)

Prayer: Second Appeal filed under Section 100 CPC, against the Judgment and Decree dated 29.4.04 passed in A.S.No.175 of 2003 on the file of II Additional Sub Court, Villupuram confirming the judgment and the decree dated 1.4.2002 passed in O.S.No.248 of 2000 before the II Additional District Munsif Court, Thirukovilur.

For Appellants : Ms.Nilopher
for Ms.R.Meenal

For Respondents : R1 - Died steps taken
Mr.P.Dinesh Kumar for R2 to R6
R7 to R11 - served - no appearance



JUDGMENT

(This case was heard through Video Conferencing)

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This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2.The Appellants are the plaintiffs in the suit O.S.No.248 of 2000 on the file of the II Additional District Munsif Court, Thirukovilur and the respondents are the defendants in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3.The suit was filed for a declaration of title over the suit schedule property and for permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property. The suit property is situated in grama natham S.No.77/1 - New R.S.No.272/7 measuring EW 20 feet and NS 17 feet (totally measuring 340 sq.ft.) with a hut and a cattle shed.

4.It is the case of the plaintiffs that the first and second plaintiffs are the sons of the third plaintiff and the third plaintiff inherited the property from his ancestors. According to the plaintiffs, after considering the long possession and enjoyment of the property by the third plaintiff, the Government of Tamil Nadu vide a proceeding H.S.No.395/77 dated 17.04.1968 granted patta for the suit schedule property in favour of the third plaintiff which has been marked as Ex.A1 before the Trial Court. According to the plaintiffs, they are in possession of the suit schedule property for more than 35 years and they are claiming ownership of the suit schedule property by prescription of title by adverse possession also. According to the plaintiffs, on 23.06.2000 when the plaintiffs started to put up a hut, the defendants interfered and wanted to purchase the plaintiffs land which the plaintiffs refused and since then a dispute arose between them.

5.It is also the case of the plaintiffs that they have also given a Police complaint against the defendants for their unlawful attempt to disturb their peaceful possession and enjoyment of the suit schedule property.

6.However, it is the case of the respondents/defendants that the suit schedule property is a grama natham property and does not belong to the Government of Tamil Nadu. According to them, the Government had no right to grant assignment of the suit schedule property in favour of the plaintiffs. It is their case that as per the conditions specified in the assignment order



(Ex.A1), the third plaintiff has also not put up a house within 6 months from the date of assignment. It is also their case that the plaintiffs are not in possession of the suit schedule property and therefore they cannot claim title by prescription. They have also disputed the valuation of the suit as according to them, the market value of the suit schedule property is much higher than what was valued by the plaintiffs in the suit. Further, it is their case that they have been using the suit schedule property to dump waste, have haystacks and to tie cattle and they are also claiming title of the property by adverse possession.

7.The Trial Court framed issues and after trial, dismissed the suit O.S.No.248 of 2000 by its judgment and decree dated 01.04.2002 by giving the following findings:

(a) The assignment of the suit schedule property under Ex.A1 in favour of the plaintiffs on 17.04.1968 by the Government was not valid and has not come into effect. The Trial Court has held that grama natham land cannot be assigned by an assignment order viz., Ex.A1. The Trial Court has also given a finding that the plaintiffs and the defendants have failed to prove their respective possession and rejected their respective claims of adverse possession.

8.Aggrrieved by the judgment and decree dated 01.04.2002 passed in O.S.No.248 of 2000 by the II Additional District Munsif Court, Thirukovilur, the plaintiffs have preferred an appeal before the II Additional Sub Court, Villupuram in A.S.No.175 of 2003. The Lower Appellate Court by its judgment and decree dated 29.04.2004 confirmed the findings of the Trial Court and dismissed the appeal.

9.Aggrrieved by the judgment and decree dated 29.04.2004 passed in A.S.No.175 of 2003, this Second Appeal has been filed.

10.This Court while admitting this Second Appeal on 31.01.2006 formulated the following substantial question of law:

"Whether in law the courts below are right in holding Ex.A1 assignment stated to be invalid, when only the RDO is competent to cancel the assignment under Clause 15(15) of the Board Standing Orders?"

11.Heard Ms.Nilopher, learned counsel representing the counsel on record for the Appellant Ms.R.Meenal and Mr.P.Dinesh Kumar, learned counsel for the respondents 2 to 6.

12.With regard to the findings of the Courts below that the assignment order (Ex.A1) is not a valid assignment order, the learned counsel for the Appellant would submit that the



assignment is under Board's Standing Order 21. She would submit that under the said Board's Standing Order, portions of gramamattam or village site at the disposal of Government, not being land required for common use of the villagers may be granted for building purposes to bonafide applicants.

13. She would also submit that under Board Standing Order 21 (2), procedure for scrutinising applications for grant of assignment of grama natham has also been set out. According to her, the assignment order (Ex.A1) has been obtained from the Government only after proper scrutiny by the Government. She would further submit that till date, the assignment (Ex.A1) has not been cancelled and hence it is a valid assignment.

14. She would further submit that it is settled law that boundaries will prevail over the extent. According to her, both the Courts below though having found that the four boundaries in Ex.A1 and the plaint schedule are all the same have erred in rejecting the claim of the plaintiffs. According to her, though Ex.A1 assignment order is for a larger extent of land, the suit was filed by the plaintiffs for a limited extent only due to the reason that the defendants attempted to disturb the plaintiffs peaceful possession and enjoyment only with regard to that limited extent of land alone.

15. She would also submit that the sale deed dated 07.04.1986 (Ex.A2) pertaining to S.No.154/14 which was purchased by the defendants from the sons of the third plaintiffs brother Shanmuga Mudaliyar does not relate to the suit schedule property, as the suit schedule property pertains to S.No.77/1 and not S.No.154/14. According to her, discrepancies in the evidence of PW1 about the boundaries and Ex.A2 and any finding about Ex.A2 has no bearing for the facts of this case as the subject matter of the property in Ex.A2 is a totally different property.

16. She would further submit that Ex.A3 also does not relate to the suit schedule property. However, she would submit that under Ex.A3, the defendants have admitted the ownership of the third plaintiff and his brother and sought permission to put up a wall.

17. She would also submit that Ex.B1 sale deed 26.06.1967 also does not relate to the suit schedule property as it pertains to the property measuring 2.5 cents out of 5 cents in Survey Number 154/13 and 1 cent out of 3 cents in Survey Number 154/14, whereas the suit schedule property pertains to S.No.77/1.



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18. Ms. Nilopher, learned counsel for the Appellants would further contend that the suit schedule property is not a joint family property of the brothers but it is assigned by the Government in favour of the third plaintiff alone.

19. According to her, the first and second plaintiffs being the sons of the third plaintiff are entitled to the suit schedule property. She would further submit that there is no pleading in the written statement that the defendants had purchased the suit property under Ex.A2 sale deed dated 07.04.1986 from Shanmuga Mudaliyar, brother of the third plaintiff after he was allotted a property under a partition. According to her, without pleadings both the Courts below have erred in rendering findings against the plaintiffs.

20. She would further submit that there was no necessity for the plaintiffs to challenge the sale deed dated 07.04.1986 (Ex.A2) as the property involved therein does not relate to the suit schedule property.

21. Ms. Nilopher, learned counsel for the Appellants would finally contend that ever since the date of the assignment i.e. on 17.04.1968 (Ex.A1) the plaintiffs are in possession of the suit schedule property and till date, the assignment having not been cancelled, the Courts below ought to have decreed the suit in favour of the plaintiffs but instead have misread the evidence available on record and have erroneously dismissed the suit.

22. In support of her submissions, learned counsel for the Appellants drew the attention of this Court to the following authorities:

(a) A Division Bench judgment of Madras High Court in the case of Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District vs. V. Swaminathan and Others reported in 2004 3 CTC 270.

(b) A decision of the Hon'ble Supreme Court in the case of Subhaga And Others vs. Shobha and Others reported in (2006) 5 SCC 466.

(c) A decision of the Hon'ble Supreme Court in the case of Mallanaguoda and Others vs. Ningnanagouda and Others reported in 2021 SCC Online SC 307.

(d) A decision of the Hon'ble Supreme Court in the case of Laxi Ram (Dead) by LR. And Others vs. Bietswar Singh and Others reported in (2008) 10 SCC 620.



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23.Finally she would submit that when the Courts below have misread the evidence and have come to a perverse finding, this Court under Section 100 CPC can interfere with the findings of the Courts below.

24.Per contra, Mr.P.Dinesh Kumar, learned counsel for the respondents would submit that the Courts below have rightly rejected the claim of the Appellants/plaintiffs as the suit schedule property being a grama natham land was never vested with the Government and therefore the assignment order (Ex.A1) is invalid.

25.He would further submit that when the defendants have specifically denied the ownership of the suit schedule property by the plaintiffs, the plaintiffs have not even summoned the records from the Government to establish their title and therefore according to him, the Courts below have rightly rejected the claim of the plaintiffs.

26.Mr.P.Dinesh Kumar would finally submit that both the Courts below have rightly appreciated the evidence available on record and only thereafter have rejected the claim of the plaintiffs. According to him, law has been well settled that grama natham lands cannot be assigned by the Government. He would submit that there are no debatable issues of law involved in this appeal and there is no merit in this second appeal. According to him, the issues raised by the plaintiffs are only factual issues which have been correctly considered in accordance with law by the Courts below.

27.In support of his submissions, the learned counsel for the respondents drew the attention of this Court to the following authorities:

(a)A Single bench judgment of the Madras High Court in the case of A.K.Thillaivanam and Another vs. The District Collector, Chengai Anna District at Kancheepuram and others reported in 1998-3-L.W.603.

(b)A Division Bench judgment of the Madras High Court in the case of Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District vs. V.Swaminathan and Others reported in 2004 3 CTC 270. 2004-3-L.W.278.

(c) A Single Bench judgment of the Madras High Court in the case of Palani Kunnakudi vs. S.Venkataramanan reported in MANU/TN/4207/2016.

(d) A Single Bench judgment of the Madras High Court in the case of Kappil and Ors. vs. Vaiyapuri reported in MANU/TN/4720/2018.

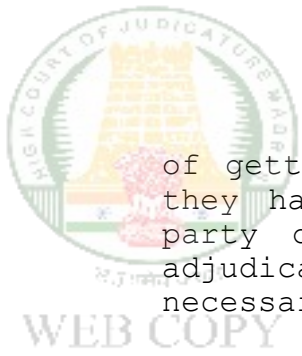


Discussion:

28. Admittedly, the suit schedule property is a grama natham property. The plaintiffs are claiming ownership under an assignment order dated 17.04.1968 (Ex.A1) issued by the Government of Tamil Nadu in favour of the third plaintiff. However, the respondents/defendants have disputed the said assignment. The term grama natham was brought into existence by the Government of Tamil Nadu in order to define the land that could be used for buildings and houses. It was also created to better differentiate the house sites from Government held lands, such as inam land, ryotwari land, pannai land and waste land.

29. Grama Natham can only be used for residential purposes and not for commercial purposes. The plaintiffs have filed a suit for declaration of their title over the suit schedule property by virtue of the assignment order marked as Ex.A1 before the Trial Court. The said assignment order Ex.A1 has been issued by the Government of Tamil Nadu. It has been the consistent stand of the defendants that it is not a valid assignment. Since according to them, there cannot be a legal assignment by the Government of Tamil Nadu for a grama natham land. When the plaintiffs have sought to establish their title over the suit schedule property by filing a declaratory suit, all necessary parties for the effective adjudication of the dispute ought to have been arrayed.

30. Admittedly, when it is the plaintiffs own case that the assignment order (Ex.A1) has been issued only by the Government of Tamil Nadu and when they are seeking declaration of their title, the Government of Tamil Nadu ought to have been arrayed as a party defendant in the suit and only then it can be ascertained as to whether the said assignment in favour of the third plaintiff is a valid assignment or not. The presence of necessary parties is obviously required for the Court to adjudicate and pass an effective and complete decree granting relief to the plaintiffs. The Government of Tamil Nadu is certainly a necessary party for the effective adjudication of a declaratory suit filed by the Appellants/plaintiffs. No effective and complete decree can be passed by the Court without impleading the Government of Tamil Nadu as a party respondent as the defendants have taken a categorical stand that the assignment order Ex.A1 in favour of the third plaintiff is an invalid assignment. Further, when assignment order (Ex.A1) in favour of the third plaintiff is of the year 1968 and that too when the defendants have pleaded that the third plaintiff has violated the terms and conditions of the assignment order by not putting up a building as per the terms and conditions, necessarily the plaintiff ought to have arrayed the Government of Tamil Nadu as a party defendant in the suit for the purpose



of getting the relief of declaration of their title. However, they have failed to array the Government of Tamil Nadu as a party defendant who is a necessary party for the effective adjudication of the suit and hence for non joinder of the necessary party, the plaintiffs claim will have to fail.

31.The decisions relied upon by the learned counsel for the respondents/defendants referred to supra also point out that if a land is a grama natham, the said land is never vested with the Government. When both the parties have agreed that the suit schedule property is a grama natham property and that too when the defendants have disputed the validity of the assignment (Ex.A1) on the ground that being a grama natham property an assignment cannot be done by the Government, the plaintiffs ought to have arrayed the Government of Tamil Nadu as a party defendant in the suit in order to fortify their title.

32.Both the Courts below have concurrently taken note of the above mentioned factors and have observed that the plaintiffs have not summoned the Government records for the purpose of proving their title. When the plaintiffs assert that they are the owners of the suit schedule property by virtue of the assignment (Ex.A1), the burden is on them to prove their title by impleading all necessary parties as party defendants for the effective adjudication of the dispute. The Government having issued the assignment order (Ex.A1) in favour of the third plaintiff is certainly a necessary party in a suit for declaration of title filed by the plaintiffs.

33.The learned counsel for the Appellants has relied upon the Board Standing Order 21 (Section I - in Villages) for the purpose of establishing that the assignment order (Ex.A1) is a valid assignment and it reads as follows:

"Portions of gramanattam or village site at the disposal of Government, not being land required for the common use of the villagers, may be granted for building purposes to bonafide applicants. The maximum extent that could be assigned to any applicant for building houses is 1.25 acres. But the Tahsildars have discretion to grant a smaller extent in special circumstances, if, for instance the grant of an extent of 1.25 acres would encroach too much upon the area available for future assignments or the extent encroached upon already is less than 1.25 acres. In cases, where the extent is more than 1.25 acres and where it cannot conveniently be sub-divided for grant to another person assignment may be ordered under this R.S.O on collection of market value as per the norms fixed by the Government, from time to time. The assignment in all cases shall be subject to the conditions of the orders of the assignment referred to in paragraph 7 below."



34. Board Standing Order 21(2) also sets out the procedure for dealing with applications seeking for assignment of grama natham lands. The assignment order (Ex.A1) was issued in the year 1968 and it is the contention of the respondents/defendants that the terms and conditions of the assignment were not complied with by the plaintiffs. Eventhough, the plaintiffs would plead that the assignment is still in force, unless and until the Government of Tamil Nadu has taken a stand that the assignment is still in force, the plea made by the plaintiffs cannot also be accepted by this Court. Only when the Government of Tamil Nadu was made as a party defendant in the suit and they submit their stand with regard to the assignment order (Ex.A1) as well as its present status, the claim of the plaintiffs that they are the absolute owners of the suit schedule property cannot be declared by any Court. The burden of proof under Section 101 of the Indian Evidence Act is upon the plaintiff to place all records and implead all necessary parties for effective adjudication of their title over the suit schedule property.

35. Having failed to implead the Government of Tamil Nadu who has issued the assignment order (Ex.A1) and having failed to summon the Government records pertaining to the said assignment, the plaintiffs have miserably failed to discharge their burden under Section 101 of the Indian Evidence Act. Only when they discharge their burden, the defendants burden to disprove the plaintiffs contentions would arise.

36. The Trial Court as well as the Lower Appellate Court has rightly held that the plaintiffs have failed to prove that the assignment order (Ex.A1) is a valid assignment.

37. A dispute has also been raised by the respondents/defendants with regard to ownership of the suit schedule property as according to them, the suit schedule property and a house in patta property situated to the North of the suit property were in enjoyment of the ancestors of the defendants. According to them, they were using the suit schedule property to dump waste, have haystacks and to tie cattle. They have also claimed title by prescription over the suit schedule property by adverse possession.

38. The judgments relied upon by the learned counsel for the Appellants will have any bearing to the facts of the case only when the Government of Tamil Nadu's stand on the present status of the assignment in favour of the third plaintiff issued on 17.04.1968 under Ex.A1 is known. When the plaintiffs have not arrayed the Government of Tamil Nadu as a party defendant in the suit and when there is a cloud over the title of the plaintiffs



as seen from the issues raised by the defendants, the decisions relied upon by the learned counsel for the Appellants will not support the case of the plaintiffs on account of non joinder of necessary party, viz., the Government of Tamil Nadu who had issued the assignment.

39.Both the Courts have concurrently held that both the plaintiffs as well as the defendants have failed to prove their possession over the suit schedule property and rejected their respective claims of adverse possession.

40.Excepting for filing the assignment order (Ex.A1) pertaining to the suit schedule property, no other documents have been filed by the plaintiffs to prove their possession till the date of the suit.

41.This Court is in agreement with the findings of the Courts below that both the parties have failed to prove their possession over the suit schedule property. Only based on the materials and evidence available on record, the Courts below have concurrently rejected the claim of the plaintiffs. The factual issues raised by the respective parties have been rightly considered by the Courts below and there is no substantial question of law involved in this Second Appeal. Therefore, the substantial question of law formulated by this Court at the time of admission of this Second Appeal is answered against the Appellants/plaintiffs as there is no merit in this Appeal.

42.In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-VII)

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Sub-Assistant Registrar

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To

- 1.The II Additional Subordinate Judge, Villupuram.
- 2.The II Additional District Munsif, Thirukovilur.

+1 CC to Ms.R.Meenal, Advocate sr 38172.
+1 CC to Mr.P.Dinesh Kumar, Advocate sr 37603.

S.A.No.1478 of 2005

GPL(CO)
SP(16/09/2021)