



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06..09..2021

Judgment Pronounced on : 30..09..2021

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

Second Appeal No.300 of 2019

and

C.M.P.Nos.4527 of 2019

and

C.M.P.No.13305 of 2021

N.Murugesan (Died)

1.M.Meenakshi

2.P.Kaleeswari

3.M.Baladhandapani

4.C.Jayamani

Appellants 1 to 4 are the legal

heirs of the deceased sole appellant.

... Appellants

-Versus-

1.N.Palanisamy

2.The Tahsildar,

Perur Taluk,

Coimbatore District.

... Respondents

This second appeal is filed under Section 100 of CPC against the judgment and decree dated 11.07.2018 passed in A.S.No.68 of 2014 by the learned Principal Subordinate Judge, Coimbatore, confirming the judgment and decree dated 26.02.2014 passed in O.S.No.1118 of 2007 by the learned I Additional District Munsif, Coimbatore.

For Appellants

: Mr.John Paul

For Respondents

: Mr.Karthikei Balan for
R1

Dr.S.Suriya,

Government Advocate for
R2



JUDGMENT

This Second Appeal has been filed by the legal heirs of the deceased 2nd defendant, who had suffered a decree of mandatory injunction on 26.02.2014 in O.S.No.1118 of 2007 on the file of the learned I Additional District Munsif, Coimbatore, thereby directing the 1st defendant to cancel the name of the 2nd defendant from the patta bearing No.1184 for the suit property which came to be confirmed in Appeal Suit in A.S.No.68 of 2014 by the learned Principal Subordinate Judge, Coimbatore, by decree and judgment dated 11.07.2018.

2. The 1st respondent is the plaintiff in the suit. The deceased Murugesan was the 2nd defendant and the 2nd respondent - Tahsildar, South Taluk, is the 1st defendant in the suit. The suit was filed by the 1st respondent for mandatory injunction directing the 1st defendant to cancel the name of the 2nd defendant from the patta bearing No.1184 relating to the suit property situated at Pooluvapatti Village in Coimbatore South Taluk.

3. The case of the plaintiff is that he is the absolute owner of the suit property which is the agricultural land. The patta for the entire property was in the name of the plaintiff exclusively for several years. The plaintiff has been in possession and enjoyment of the suit property for several years. While so, in the third week of October, 2005, the plaintiff came to know that 1st defendant Tahsildar had included the name of the 2nd defendant. Immediately after coming to know about the same, the plaintiff made representations to the 1st defendant seeking to remove the name of the 2nd respondent from the patta for the suit property. Despite the same and repeated representations made subsequently, the 1st defendant did not remove the name of the 2nd defendant. Taking advantage of the situation, the 2nd defendant is trying to sell the suit property. The 2nd defendant is attempting to trespass into a portion of the suit property and to encroach upon the same on the strength of the recent inclusion of his name in the patta. The inclusion of name of the 2nd defendant is illegal and unlawful. No notice was issued to the plaintiff before the name of the 2nd defendant was included in the patta and thereby principles of natural justice were violated. Hence, the suit.

4. The second defendant resisted the suit inter alia contending that the suit is frivolous and vexatious and not maintainable in law and on facts. The present suit has been



filed as counter blast to the suit filed by the 2nd defendant in O.S.No.662 of 2007 on the file of the I Additional District Munsif. This defendant has become the absolute owner of the suit property pursuant to the sale deed executed on 31.08.1987 by this mother. He has been in possession and enjoyment of the suit property till date. The suit property is a vacant site measuring 29 cents. The plaintiffs are having their respective share in the property adjoining to the 2nd defendant property. The plaintiff has no right to interfere with the defendant's peaceful possession and enjoyment of the suit property. His name was included in the patta after following due procedure and principles of natural justice. There is no cause of action and the causes of action alleged in the plain are false and invented for the purpose of suit. The suit is liable to be dismissed.

5. Based on the above pleadings of either parties, the court below had framed the following issues for trial:-

(1) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?

(2) To what other reliefs the plaintiff is entitled for?

During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and proved as many as documents 8 documents as Ex.A1 to A.8 and on the side of the defendants, the 2nd defendant examined himself as D.W.1 and proved as many as 10 documents as Ex.B.1 to B.8.

6. The learned I Additional District Munsif after having considered the oral and documentary evidence adduced by either parties had found that the 2nd defendant's mother who had no title in herself to the suit property executed a settlement in the name of her son and based on such settlement the 1st defendant had included the name of the 2nd defendant in the patta jointly with the plaintiff. The plaintiff proved that he had acquired title through his father. Therefore, the learned Munsif had decreed the suit as prayed for, but, however, without cost, thereby directing the 1st defendant to remove the name of the 1st defendant from the patta for the suit property. Challenging the same, the 2nd defendant preferred an appeal which was dismissed by the first appellate court. Feeling aggrieved by the same, the legal heirs of the 2nd defendant is before this court with this second appeal.

7. This second appeal was admitted on the following substantial questions of law:-

(1) Whether the suit is barred in view of Section 14 of The Tamil Nadu Patta Pass Book Act?



WEB COPY

(2) Whether the courts below have committed an error in decreeing the suit holding that the mother of the appellant has no right to execute the settlement deed (Ex.B.4) since her father died in the year 1940, particularly, when there was no partition or division by metes and bounds between the sons and daughters of Palani Navithan?

(3) Have not the court below committed error in decreeing the suit directing the 1st defendant to cancel the patta in the name of the 2nd defendant, when the 2nd defendant has seriously disputed the title and possession of the plaintiff in and over the suit property?

(4) Whether the courts below are right in decreeing the suit of the present nature, in the absence of a prayer for declaration and recovery of possession?

8. For the sake of convenience, the parties in this proceedings will be referred to as per their array before the court below.

9. Suit is for simple mandatory injunction for the deletion of the name of the 2nd defendant included in the patta for the suit property. The plaintiff claims absolute title over the entire extent of suit property which is admittedly agricultural land in nature. According to him, patta was originally in his name alone. The plaintiff asserts that he has been in possession of the suit property for several years. On the other hand, the 2nd defendant claimed absolute title over a portion of the suit property based on a registered settlement deed dated 31.08.1987 executed by his mother in favour of him and he had been in possession of the property for several years. According to him, the disputed property was the self-acquired property of his maternal grand-father late Palani Navithan and after his death, the property was devolved upon his two sons viz., Nachi Navidhan, Muruga Navithan and three daughters viz., Mari, Palani and Nanjal, the mother of the 2nd defendant and the mother in turn had settled her share in his favour. The 2nd defendant contended that the disputed property is lying as vacant and as it is smaller in extent, the same cannot be used for the purpose of cultivation. The suit filed by the plaintiff against the other co-sharer to remove the patta is not maintainable.

10. The learned counsel appearing for the appellants/legal heirs of the deceased 2nd defendant though



argued at length on the substantial questions of law framed in this second appeal and the learned counsel appearing for the 2nd respondent/plaintiff replied elaborately, in view of the question of maintainability of the suit raised, this court is inclined to decide, the 1st substantial question of law.

11. Before going into the factual and legal aspects of the matter, it would be useful to refer to the relevant provision in The Patta Pass Book Act, 1983

14. Bar of suits:- No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass-book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass-book under this Act, he may institute a suit against any person denying or interest to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass-book shall be amended in accordance with any such declaration."

12. The learned counsel for the appellants would submit that the suit is not maintainable for the relief sought for in the plaint in view of the bar under section 14 of the Patta Pass Book Act and therefore, the trial court ought to have directed the 2nd respondent either to file appeal before the authority concerned in the prescribed mode as per The Tamil Nadu Patta Pass Book Act, 1983 or to file a suit for declaration of title and possession.

13. Per contra, the learned counsel for the 2nd respondent would submit that there has been a dispute between the parties regarding title, the 1st defendant was not competent to decide the issue and therefore, the learned Judge of the trial court based on the materials produced by either parties, which were sufficient to decide the issue of title, concluded that the mother of the 2nd defendant had no title to execute a settlement deed in favour of his son, the 2nd defendant and rightly decreed the suit holding that the 1st defendant Tahsildar had committed an error in including the name of the 2nd defendant based on the settlement deed executed by a



person who had no title to the property in question which does not require any interference at the hands of this court.

14. The plaintiff is none other than the son of the maternal uncle of the 2nd defendant, in other words, the son of the brother of the mother of the 2nd defendant. The plaintiff had not stated how he had acquired title and got patta for the suit property. As already stated, the 2nd defendant claimed title to a portion of the suit property based on a settlement deed executed in favour of him by his mother. Thus, there is a dispute regarding title over a portion of the suit property between the plaintiff and the 2nd defendant. It is needless to state that in a simple suit for injunction either permanent or mandatory, when there is a serious dispute between the parties regarding title to an immovable property, the courts cannot go into the question of title unless there were necessary pleadings and appropriate issue regarding title of an immovable property. It is also the settled position of law that even when there are necessary pleadings and issue, if the matter involves complicated questions of law relating to title, the court must relegate the parties to the remedy by way of comprehensive suit for declaration of title instead of deciding the issue of title in a simple suit for injunction either mandatory or permanent.

15. In a very recent judgment rendered in the case of Jitendra Singh v. The State of Madhya Pradesh [SLP (C) No.13146 of 2021 dated 06.09.2021], the Honorable Supreme Court has held that as per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made. The Honorable Supreme Court at para 7 of the judgment has held as under:-

7. In view of the above settled proposition of law laid down by this Court, it cannot be said that the High Court has committed any error in setting aside the order passed by the revenue authorities directing to mutate the name of the petitioner herein in the revenue records on the basis of the alleged will dated 20.05.1998 and relegating the petitioner to approach the appropriate court to crystalise his rights on the basis of the alleged will dated 20.05.1998. We are



in complete agreement with the view taken by the High Court.

16. In the case of T.V.Ramakrishna Reddy v. M.Mallappa [SLP (C) No.10621 of 2020 dated 07.09.2021], the Honorable Supreme Court has held that if the plaintiff's title is disputed, suit simpliciter for injunction without claiming declaration of title is not maintainable. The relevant portion of the judgment reads as under:-

"9. The issue is no more res integra. The position has been crystalised by this Court in the case of Ananthula Sudhakar v. P.Buchi Reddy (dead) by Lrs and others, (2008) 4 SCC 594, in paragraph 21, which read thus:

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.



WEB COPY

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

10. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided



WEB COPY

with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

11. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

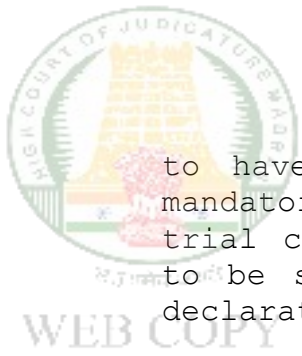
17. Admittedly, the 1st defendant Tahsildar based on settlement deed alleged to have been executed by the mother of the 2nd defendant, included the name of the 2nd defendant in the patta which was standing in the name of the plaintiff. This was objected to by the plaintiff. The possession of the disputed portion of the property is also disputed by the 2nd defendant. According to the plaintiff, the 2nd defendant got included his name in the patta standing in his name behind his back and the 1st defendant had not followed the principles of natural justice while including the name of the 2nd defendant as joint pattadar in respect of the land comprised S.F.No.121/4 situated at Pooluvapatti Village. The validity of the settlement deed is questioned by the plaintiff. Both the courts below have found that the mother of the 2nd defendant had no title in herself over the disputed portion of the property and the 1st defendant had included the name of the 2nd defendant in the patta which was standing in the name of the plaintiff merely based on the settlement deed been executed by the mother of the 2nd defendant who had no title to the property. Therefore, the name of the 2nd defendant included in the patta standing in the name of the plaintiff has to be removed. Accordingly, the learned Judge of the trial court had decreed the suit for mandatory injunction.

18. As already stated supra, this court does not want to go into the question of validity of the settlement deed (Ex.B4) and title of the plaintiff over the entire extent of the suit property when the question of maintainability of the suit has been raised by the defendant. It is also the settled law that



when there is a serious dispute regarding title between the parties, a Tahsildar cannot decide the question of title to grant patta either to grant patta or cancel the patta and the proper way is to direct the party concerned to approach the civil court having jurisdiction for appropriate relief. In the instant case also, there is a serious dispute regarding title between the parties. Therefore, this court does not want to relegate the plaintiff to approach the Tahsildar concerned seeking to remove the name of the 2nd defendant which was included in the patta standing in the name of the plaintiff based on a settlement deed in question. At the same time, for want of sufficient pleading and issue regarding title, this court does not want to go into the question of title of the property. Both the trial court as well as the appellate court did commit an apparent error in deciding the title of the plaintiff without there being any pleadings and issues. The courts below have also not gone into the maintainability of the suit.

19. In the light of the settled proposition of law and having regard to the facts and circumstances of the case, this court is of the view that when the title of the plaintiff to the entire extent of the suit property is in dispute, the suit as filed by the plaintiff for a simple mandatory injunction that too for a direction to the 1st defendant Tahsildar to remove the name of the 2nd defendant which was included in the patta standing in the name of the plaintiff is not maintainable in view of bar under Section 14 of The Patta Pass Book Act, 1983. Though the plaintiff averred that despite objection, the name of the 2nd defendant had been included by the 1st defendant without proper notice to him and thereby the 1st defendant had failed to follow the principles of natural justice, as already stated supra, this court does not want to go into the correctness of the action of the 1st defendant. If the plaintiff was aggrieved by the action of the 1st defendant, he ought to have either approached the appellate authority in the revenue department as provided under the Patta Pass Book Act, 1983 or filed a suit for declaration of title and for other reliefs. However, at this stage, this court is of the view that relegating the plaintiff to approach the appellate authority to get the name of the 2nd defendant removed from the patta would not serve any purpose, as it is the well settled law that the revenue authorities cannot go into the issue of title or the legality or validity of any instruments, like gift-deed or a sale deed or a Will while dealing with the application for mutation in the revenue records. Similarly, when once there was a serious dispute regarding title between the parties, the trial court ought not



to have gone into the issue of title in a simple suit for mandatory injunction. Therefore, the decree and judgment of the trial court and as confirmed by the appellate court are liable to be set aside. The plaintiff can very well file a suit for declaration of title and for other reliefs, if law permits.

20. In view of the above, this court is of the view that the suit as filed by the plaintiff for simple mandatory injunction is not maintainable in view of the bar under Section 14 of the Patta Pass Book Act, 1983 and therefore, the substantial question is answered as against the plaintiff.

21. Since the substantial question on the maintainability of the suit is answered against the plaintiff, this court is of the view that the other substantial questions of law need not be answered.

22. In the result, the Second Appeal is allowed and the decree and judgment of both the courts below are set aside and the Original Suit is dismissed. Considering the facts and circumstances of the case, both parties are directed to bear their respective costs throughout. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Principal Subordinate Judge, Coimbatore,
- 2.The I Additional District Munsif, Coimbatore.

Copy to:

The Section Officer

VR Records

High Court, Madras-104.

+1 cc to M/s.N.Manokaran Advocate sr51336

+1 cc to M/s.Government Pleader sr51054

Second Appeal No.300 of 2019

bp(co)

aa14/06/2022