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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	12.07.2021
Pronounced On	03.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.763 of 2014

(Through Video Conferencing)

1.Mani (died)

2.Subulakshmi

3.Mari

4.Rajaperumal

5.Maharaja

6.Poovarasi ... Appellants/Appellants/Plaintiffs/
LRS of the Deceased Sole Plaintiff

(Appellants 2 to 6 brought on record as
Lrs. of the deceased first appellant vide
Order dated 17.04.2021 made in
C.M.P.No.11063 of 2020.)

Vs.

Kuppan ... Respondent/Respondent/Defendant

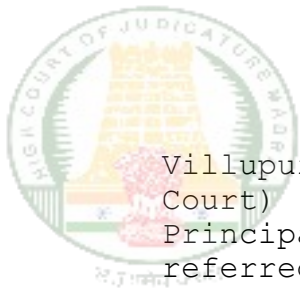
Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree in A.S.No.24 of 2012 on the file of the Principal Subordinate Court, Villupuram, dated 26.02.2014 in confirming the Judgment and Decree in O.S.No.49 of 2010, on the file of the Principal District Munsif Court, Villupuram, dated 19.12.2011.

For Appellants : Mrs.V.Srimathi

For Respondent : M/s.Thanga Vadhana Balakrishnan

J U D G M E N T

I have heard the learned counsel for the appellants and the learned counsel for the respondent. I have also perused the evidence on record and the impugned Judgment and Decree dated 26.02.2014 of the Principal Subordinate Court,



Villupuram (hereinafter referred to as the First Appellate Court) and the Judgment and Decree dated 19.12.2011 of the Principal District Munsif Court, Villupuram (hereinafter referred to as the Trial Court).

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2. During the pendency of this appeal, the appellant died. Therefore, the sole appellant's representatives were impleaded as the second to sixth appellants vide order dated 17.04.2021. Ranks of the parties before the Trial Court shall be referred to this Judgment for the sake of the clarity.

3. The deceased plaintiff had filed O.S.No.49 of 2010 before the Trial Court. O.S.No.49 of 2010 was filed for a permanent injunction to restrain the defendant and his agents from interfering with the peaceful possession of the deceased plaintiff.

4. The Trial Court had partly allowed the suit filed by the deceased plaintiff by restricting the relief to 77 sq. mts. (1.90 cents) of land in the Suit Schedule Property in term of Ex.A27 Patta dated 29.11.1990.

5. Under these circumstances, the deceased plaintiff had filed A.S.No.24 of 2012 before the First Appellate Court against Judgment and Decree dated 19.12.2011 passed by the Trial Court in O.S.No.49 of 2010.

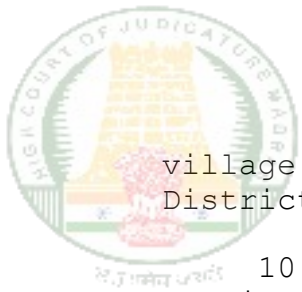
6. The First Appellate Court dismissed the appeal of the deceased plaintiff vide impugned Judgment and Decree dated 26.02.2014 in A.S.No.24 of 2012.

7. This Second Appeal was thus filed by the deceased plaintiff against the impugned Judgment and Decree dated 26.02.2014 passed by the Appellate Court in A.S.No.24 of 2012.

8. By an order dated 28.10.2021, this appeal was admitted and the following substantial questions of law were framed for consideration and final disposal of this appeal:-

- i. Whether the Courts below are justified in dismissing the suit when the deed of assignment (Ex.B1) bars the State from issuing any patta in respect of Gramanatham?
- ii. Whether the Courts below were right in holding that the defendant could have claimed patta over the property of the plaintiff in absence of evidence of prior occupation of the property taking into consideration the nature of lands as Gramanatham?

9. The case of the deceased plaintiff before the Trial Court and the First Appellate Court was that the deceased plaintiff's ancestors were in possession of Poramboke land (waste land) to an extent of 25 cents which was later re-classified as Gramanatham land for housing needs of the



village in S.No.89, Kakanoor Village, Annoor Sub Registration District, Villupuram Registration District.

10. According the deceased plaintiff, the said land was consisted thorn bush which was cleared by the deceased plaintiff's grandfather during his lifetime and thereafter the deceased plaintiff's grandfather had put up a small thatched hut and the rest of the area in 25 Cents was used for storing cattle hey and for rearing cattle.

11. Before the Trial Court, the deceased plaintiff had averred that the deceased plaintiff along with his mother Manonmani Ammal, Natesan and Natesan (two different persons) had filed O.S.No.297 of 2000 against the Government Officials (District Collector, Assistant Director of Mines and Minerals, Revenue Divisional Officer, Tahsildar, Surveyor and one Subramaniam the husband of former president of the Panchayat) to not alienate the land by issuing patta to third parties and that O.S.No.297 of 2000 was decreed as exparte on 29.08.2001.

12. It was submitted that as far as the schedule of the property described in O.S.No.297 of 2000 as that of the deceased plaintiff and his mother and the schedule of the property of the deceased plaintiff in O.S.No.49 of 2010 were one and the same. Neither any appeal nor any application was filed under Order 9 Rule 13 of Civil Procedure Code, 1908 to set aside the exparte Judgment and Decree dated 29.08.2001 in O.S.No.297 of 2000.

13. It was therefore submitted that in the teeth of Ex.A3 Patta issued by the Tahsildar dated 23.07.1987 and Ex.P27 Manaivari Thoraya Patta dated 29.11.1990 and exparte Judgment and Decree dated 29.08.2001 in O.S.No.297 of 2000, the possession of the suit schedule property stood established in favour of the deceased plaintiff to an extent of 25 Cents.

14. According to the deceased plaintiff, the respondent attempted to encroach and trespass on the same land and therefore the deceased plaintiff was entitled for the relief by way of a permanent injunction.

15. The defendant (respondent herein) resisted the suit filed by the deceased plaintiff and stated that the exparte order dated 29.08.2001 in O.S.No.297 of 2000 was not binding on the defendant as the defendant was not a party to the aforesaid proceedings. It was stated that the defendant's father was issued with a patta in Plat No.63 measuring to an extent of 120 sq. mts. (14 x 8.6 mts = 2.96 Cents).

16. As mentioned above, the Trial Court had partly decreed the suit to the extent of 77 sq. mts. (1.90 Cents) as per Ex.A27 ManaivariThorayaPatta dated 29.11.1990 issued in the name of the deceased plaintiff's mother Manonmani Ammal, W/O. NarayanasamyGounder.



17. Aggrieved by the same, the deceased plaintiff had filed A.S.No.24 of 2012 which was also dismissed by the First Appellate Court vide impugned Judgment and Decree on 26.02.2014.

18. Though the substantial the above questions of law that has been framed by this Court when this case was admitted on 28.10.2014, it is noticed that Ex.B1 is not a Deed of Assignment. On perusing Ex.B1, it is noticed that it is a copy of Chitta (ej;jk; epythpjpl;l J}a rpl;lhefy;). The Ex.B1 pertains to Plat No.63, in same S.No.89, Kakanoor Village, Annoor Sub Registration District, Villupuram Registration District. It was issued in the name of defendant's father Ariputhiri Gounder. As per Ex.B1 Chitta dated 02.10.2009, the defendants father was in possession of an extent of 120 sq. mts. ($120/40.48 = 2.96$ Cents).

19. There is no nexus between the land that was assigned to the defendant's father Ariputhiri Gounder vide Ex.B1 dated 02.02.10.2009 and the land in Ex.A3 Plat Handling Over Order dated 23.07.1987 issued by the Tahsildar to the deceased plaintiff's mother. Ex.A27 Manaivari Thoraya Patta dated 29.11.1990 shows the extent of land as 77 sq. mts. or 1.90 Cents.

20. The First Appellate Court has correctly concluded that the deceased plaintiff has not proved the possession over the 25 Cents of land. The First Appellate Court has found fault with the deceased plaintiff in as much as no documents were filed by the deceased plaintiff to substantiate that the deceased plaintiff had paid House Tax even though it was pleaded before the Trial Court that the deceased plaintiff has paid House Tax.

21. The deceased plaintiff has not also proved that the defendant was not allotted the property in Plat No.63. The deceased plaintiff had not produced any documents to substantiate the possession over the 25 Cents of land in Survey No.89, Kakanoor Village, Annoor Sub Registration District, Villupuram Registration District barring an extent of 77 sq. mts. (1.90 Cents) of land as per Ex.A27 Manaivari Thoraya Patta dated 29.11.1990 issued to the mother of the deceased plaintiff.

22. The deceased plaintiff has also not given correct boundaries of the suit schedule properties before both the Trial Court and the First Appellate Court.

23. That apart, as per Ex.A3 Plat Handling Over Order dated 23.07.1987, the deceased plaintiff's mother was assigned only 104 sq. mts or 2.5 Cents ($104/40.48$) in Survey No.89, Kakanoor Village, Annoor Sub Registration District, Villupuram Registration District and not 25 Cents as was argued by the



learned counsel for the appellants.

24. Above mentioned Ex.A27 Manaivari Thoraya Patta dated 29.11.1990 filed before Trial Court by the deceased plaintiff actually restricts the extent of land of the deceased plaintiff to a mere 77 sq. mts. ($77/40.48 = 1.90$ Cents).

25. Therefore, there is no merits in this Second Appeal filed by the appellants. No substantial questions of land had in fact arisen in this Second Appeal in as much as the deceased plaintiff was failed to produce any documentary evidence to show either assignment or long possession of 25 Cents of Poramboke Land through his late mother and late grandfather which was subsequently converted as Grama Natham in the year 1976.

26. Since the appellants have not proved that the appellants were in possession of 25 Cents of land, I do not find any merits in this Second Appeal. The substantial questions of law are therefore answered against the appellants.

27. Accordingly, this Second Appeal is dismissed. No cost.

Sd/-

Assistant Registrar(T & P)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Villupuram.

2.The Principal District Munsif,
Villupuram.

Copy To

The Section Officer,
V.R.Section, Madras High Court.

+1cc to Mr.Thanga Vadhana Balakrishnan, Advocate SR.No.37802

S.A.No.763 of 2014

GJ(CO)

GMV (25/10/2021)

<https://hcservices.ecourts.gov.in/hcservices/>