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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.226 of 2017
and C.M.P. No.5434 of 2017

1.Nagaraj
2.Saroja
3.Ravichandran
4.Sathishkumar

.. Appellants/Respondents 1 to 4/
Defendants 1 to 4

Vs

1.Nanjundappan
2.The Tahsildar,
Tahsildar Office,
Sathyamangalam.

...1st Respondent/Plaintiff/Plaintiff

3.The District Collector,
District Collector Office,
Erode.

.....2nd and 3rd Respondents /
5th & 6th Respondents/Defendants 5 and 6

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree of the Subordinate Judge, Sathyamangalam made in A.S. No.8 of 2016 dated 04.01.2017 reversing the judgment and decree of the District Munsif of Sathyamangalam made in O.S. No.342 of 2009 dated 10.01.2014.

For Appellants : Mr. Sudhakar
for V.P.K.Gowtham

For Respondent 1 : Mr. N.Manokaran

2&3 : Mr. A.E.Ravichandran



JUDGMENT

This second appeal is filed against the judgment and decree of the learned Subordinate Judge, Sathyamangalam made in A.S. No.8 of 2016 dated 04.01.2017 .

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2. Brief facts that are necessary for the disposal of this second appeal are as follows:

The defendants 1 to 4 in the suit in O.S. No. 342 of 2009 on the file of Sub Court, Sathyamangalam, are the appellants in this Second Appeal. The fifth defendant is the Tahsildar and sixth defendant is the District Collector of Erode District. The first respondent in this appeal filed a suit in O.S. No.342 of 2009 on the file of Sub-Court, Sathymanagalam, for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The case of the plaintiff / first respondent in the suit is that the suit property originally belonged to one Karuppaboyan S/o. Muniaboyan. It is also stated that the plaintiff purchased the property from the children of Karuppaboyan vide registered sale deed dated 07.12.1981. It is contended by the plaintiff that after purchasing the property, he put up a residential house and that he is living with his family members in a tiled house constructed by him in the western side of the suit property. The plaintiff pleaded that he has been paying property tax for the building and had obtained electricity service connection. Stating that the appellants are trying to interfere with the plaintiffs peaceful possession and enjoyment of the property, the suit came to be filed by the first respondent.

3. The second defendant filed a written statement in the following lines:

Though it is admitted that patta for the property was originally given to one Karuppaboyan, the predecessor in interest of the vendors of the plaintiff, the father-in-law of the second defendant was in enjoyment of the property by paying B-memo charges to the Government. It is further contended that after the death of his father-in-law, the second defendant is in enjoyment of the property for more than twenty years. Since the second defendant was found to be in possession, patta for the property was issued by the Government to the second defendant on 15.12.2006. It is the case of the second defendant that the plaintiff had obtained electricity service connection fraudulently by getting the signature from the second defendant. Similarly with regard to service connection and the property tax in the name of plaintiff, it is case of the second defendant that the plaintiff has fraudulently obtained those documents.



4. The trial Court framed issue whether patta issued in favour of Karuppaboyan was cancelled and whether the plaintiff is paying kist and other taxes for the suit property and maintaining the same. After accepting the case of the defendants that patta issued to Karuppaboyan had been cancelled and that the Government had taken back the lands from the plaintiff, the trial Court held that the plaintiff has no right to a property which is a property of Government. Regarding the question of possession and enjoyment of the suit property, the trial Court found that the plaintiff himself admits that patta for the suit property had been issued to the first defendant's wife. From there the trial Court also presumed that the plaintiff cannot be in possession and enjoyment of the suit property. Since the plaintiff claims title to the suit property on the basis of sale deed Ex.A2, executed by the sons of Karuppaboyan and the patta passbook issued to Karuppaboyan under Ex.A1 had been cancelled, it was found by the trial Court that the plaintiff cannot claim title to the suit property on the basis of sale deed executed by Karuppaboyan. Relying upon the notice that was received by the plaintiff and marked as an exhibit, the trial Court also found that the suit properties are poromboke land and that the plaintiff cannot claim title over such property. The suit was therefore dismissed by the trial Court mainly on account of the fact that patta that stood in the name of the plaintiff's predecessor in interest was cancelled and that patta had also been issued to one of the defendants.

5. Aggrieved by the judgment and decree of the trial Court dismissing the suit, the plaintiff / first respondent preferred an appeal in A.S. No.8 of 2016 on the file of Sub Court, Sasthyamangalam. After framing proper issues as to the title and enjoyment of the suit property, the appellate Court came to conclusion that the findings of the trial Court are not sustainable. It is held by the lower appellate Court that the plaintiff has proved his title by filing document Exs.A3 to A10. Since the property had been originally given to Karuppagoyan by the Government under Ex.A1, the appellate Court found that the sale deed executed by the heirs of Karuppagoyan in favour of plaintiff is valid. The documents filed by the plaintiff under Exs. A3 to A10 are the kist receipts and house tax receipts and Electricity Bills. From the nature of documents filed by the plaintiff, the trial Court came to the conclusion that the house property was constructed by the plaintiff and that the plaintiff has proved his possession till the year 2009. Though the second defendant produced before this Court the patta under Ex.B1, the appellate Court found that the second defendant did not file any kist receipts or adangal to prove his possession over the suit property. After holding that the defendants have not produced any scrap of paper to prove their possession, the lower appellate Court came to the conclusion that the suit property is



in the physical possession and enjoyment of the plaintiff.

6. The lower appellate Court also considered whether the plaintiff established his title to the property. The appellate Court, on basis of documents Exs.A1 and A2, came to the conclusion that the property belonged to Government was originally given to the predecessor in interest of the plaintiff and that under Ex.A2, the sale deed dated 07.12.1991, the plaintiff purchased the property from sons of Karuppaboyan. Based on the revenue documents and the kist receipts as well as the Electricity Bills, the lower appellate Court also come to conclusion that the plaintiff was in physical possession till the suit came to be filed. The lower appellate Court went to the extent of holding the cancellation of patta issued to the plaintiff and the change of patta in favour of second defendant were illegal as no procedure required in law for cancelling patta issued to the plaintiff was followed. The trial Court though held that in a suit for bare injunction, question of title need not be gone into, the trial Court consciously bothered to consider the lawful possession and enjoyment of the property by plaintiff.

7. Learned counsel appearing for the appellants relied upon the Substantial Questions of Law raised in the memorandum of appeal. Though several substantial questions of law were raised, the following questions of law have been insisted by the learned counsel appearing for the appellants:

" a. Whether the present suit for injunction is maintainable without seeking the relief of declaration of title when the appellants / defendants categorically denied the title of the plaintiff / 1st respondent ?

d. Whether the finding of the lower appellate Court is not perverse in holding that the issue of title need not be gone into the present case, when serious dispute of plaintiff's title over the suit property by the defendants ?

e. Is it not fatal to the case of the plaintiff in not choosing to challenge the earlier cancellation of patta proceedings dated 08.08.1989 and the subsequent issuance of patta in favour of his wife ? "

8. Learned counsel appearing for the appellants relied upon the patta that was issued to the defendants and contended that the plaintiff who admits in the course of evidence that patta issued in favour of the plaintiff was cancelled cannot claim title or lawful possession over the suit scheduled property.



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9. From the facts narrated and as seen from the documents, this Court can safely conclude that the following facts are not in dispute. Originally the property stood in the name of one Karuppaboyan. Ex.A1 is the patta passbook given to Karuppaboyan. It is not in dispute that the said Karuppaboyan is the father of vendors of the plaintiff. An extent of 0.79.0 Hectares has been registered in the holding of Karuppaboyan. It is the specific case of the plaintiff that the property was purchased by the plaintiff from the sons of Karuppaboyan. The kist receipts also establish that the kist had been collected only from the plaintiff in respect of land covered by patta No.1076 which is produced as document Ex.A1. Similarly the evidence adduced in this case shows that the plaintiff has put up construction in the suit property. The property tax receipts and the electricity bills clearly indicates that the plaintiff has been in possession of the property namely the residential building constructed in the suit property. The family ration card produced by the plaintiff and other documents clearly give an indication that the property is in the holding of plaintiff. The plaintiff has also produced before the lower Court, the Adangal extract, issued to him in respect of the property. However, the second defendant produced before the lower Court a document Ex.B1 which is nothing but an order of assignment under Revenue Standing Order 15 dated 15.12.2006. As per this document, an extent of 0.39.5 Hectares in Survey No.735 /5 at Sikkarasanpalayam, was assigned in favour of second respondent. The defendants produced only document Ex.B1 which is an order of assignment in favour of first defendant and they filed map for Survey No.735. Except these two documents no other documents is filed on behalf of the defendants. As against the voluminous documents filed by the plaintiff placing title to the property from the patta pass book issued in the name of Karuppaboyan and the kist receipts and Adangal extract, the order of assignment under Ex.B1 is not supported by any other documents.

10. If patta or assignment in favour of Karuppaboyan is cancelled by the Revenue Department, it must be by following a procedure.. In the present case, the defendants 5 and 6, though are made parties, did not file a written statement as to the assignment in favour of the second defendant. The second defendant gave evidence as if patta in favour of plaintiff was cancelled. However no proceedings are marked before cancelling the patta that stood in the name of Karuppaboyan. The patta is not a document of title even though it is referred to as a document of title under Tamil Nadu Patta Passbook Act. Tamil Nadu Patta Passbook Act prescribe a procedure for modification of revenue records. When the property was originally recognised as the property of Karuppaboyan, by issuing patta passbook under Ex.A1, absolutely there is no record forthcoming either from the defendants 1 to 4 or from the defendants 5 and 6 as to how and



in what manner the patta that stood in the name of Karuppaboyan and the plaintiff was changed subsequently. No proceedings were initiated against the plaintiff or his vendor either for cancellation of assignment or cancellation of patta. In such circumstances this Court is unable to go by the document Ex.B1 which is not supported by corroborative documents.

11. The document Ex.X1 also shows that the property to an extent of 0.79.0 Hectares in Survey No.735/5 stands in the name of Karuppaboyan S/o. Muniyaboyan. However, there is a reference to proceedings dated 08.08.1989 for resumption of land. D.W.2 is the Regional Deputy Tahsildar of Sathyamangalam. He deposed to the effect that originally the land was assigned in favour of Karuppaboyan and that the patta was subsequently cancelled in the year 1989. However from the evidence of D.W.2, the details of cancellation of patta or resumption of land from Karuppaboyan was not given. This only indicates that the appellants have influenced the Revenue Officials to create records as if the land had been assigned in favour of Karuppaboyan and that such assignment was cancelled in the year 1989. It is to be noted that the patta passbook issued to the Karuppaboyan does not refer to any assignment. When patta passbook was issued to an individual, it cannot be presumed that patta was issued pursuant to an assignment. Even as per Ex.X1, patta stands in the name of Karuppaboyan in the year 1981. The property was sold by the legal heirs of Karuppaboyan in the year 1981 in favour plaintiff. In such circumstances, as pointed out by the lower appellate Court, it cannot be presumed that the so called cancellation of assignment is valid and true unless it is established that both plaintiff and his predecessors were given show cause notice. Be that as it may, it is not the case of defendants that the land originally was assigned in favour of the plaintiff's predecessor in interest and that the assignment was subsequently cancelled by following due process of law. When the appellants claim title to the property on the basis of assignment, the appellants who claim title under defendants 5 and 6 should plead and prove how they trace title to the property as against the documents filed by the plaintiffs to establish that the property is not a vacant land and that the plaintiff is residing by putting up construction. When the plaintiff is in possession and enjoyment of the land by putting up construction over the suit property, it is incomprehensible as to how an assignment can be made in favour of the second defendant by the defendants. Assuming that the suit property belonged to Government and it was originally assigned in favour of plaintiff's predecessor in interest, unless the defendants 5 and 6 establish by documents that the assignment which was originally in favour of plaintiff's predecessor in interest had been cancelled by process known to law, there is no scope for issuing patta or assignment in favour of another person. The



plaintiff and his predecessor in interest were in possession of property as supported by documents. In such circumstances, by producing an order of assignment without any other document to support the case of D.W.2 will not confer any right to the appellants. The person in lawful possession of the property can file a suit against a person who has no better title.

12. A suit for bare injunction filed by the plaintiff, who is in possession as against a stranger who has no better title, is maintainable without a relief of declaration of title. The appellants have projected the case as if the plaintiff has admitted that the appellants are in possession of the property. This Court is unable to see any admission. Learned counsel appearing for the appellants did not produce any material to show that the plaintiff has admitted the possession and enjoyment of the property by defendants. It is true that the lower appellate Court has given a finding that the plaintiff need not prove his title over the suit property. From the documents filed by the plaintiff and the pleadings, it is seen that the plaintiff claims title on the basis of the patta passbook that was issued to the predecessor in interest of the plaintiff and the sale deed under Ex.A2 executed by the legal heirs of Karuppaboyan. Having regard to the fact that the title of predecessor in interest of the plaintiff was established by documents, the claim of plaintiff that he is in possession of property is also supported by Ex.A1 to A22.

13. This Court is of the view that the plaintiff has established his lawful possession as against defendants, who have no better title than the plaintiff. Hence this Court is unable to appreciate any of the substantial questions of law raised by the appellants as having substance. It may be true that the plaintiff has not challenged the cancellation of patta as it was spoken to by D.W.2. No order of cancelling patta was produced before the Court below. Merely because a patta or assignment is in favour of second defendant, it cannot be presumed that the patta in favour of plaintiff's predecessor in interest was cancelled. In the absence of any corroborative evidence, this Court is unable to accept the contentions of the appellants in the written statement. The issue regarding the lawful possession of plaintiff has been answered by the lower appellate Court with reference to the voluminous of documents filed by the plaintiff / first respondent apart from oral evidence and the case pleaded by the defendants on the basis of Ex.B1 and B2 alone is not proved. Since the lower appellate Court has considered the relevant materials and its findings are based on reasons, this Court has no reason to interfere with the findings on facts arrived by the lower appellate Court.



14. The second appeal deserves dismissal and is dismissed accordingly. The judgment and decree of the Subordinate Court, Sathyamangalam made in A.S. No.8 of 2016 reversing the judgment and decree of the District Munsif Court, Sathyamangalam made in O.S. No.342 of 2009 dated 10.01.2014, is confirmed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(ADMN-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Sathyamangalam.

2.The District Munsif,
Sathyamangalam.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.28373

+lcc to Special Government Pleader, S.R.No.28396

S.A. No. 226 of 2017

GPL(CO)
CB(09/11/2021)