

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.Nos.2093 & 2094 of 2004

- 1.Veeran
- 2.Selvaraj (Died)
- 3.Nedunchezian
- 4.Manikandan
- 5.Gomathi ...Appellants in S.A.No.2093 of 2004

(Appellants 4 & 5 brought into record as LR's of the deceased 2nd appellant viz., Selvaraj vide Court order dated 04.02.2022 made in C.M.P.Nos.161, 164 & 165/2022 in S.A.No.2093/2004)

- 1.Ayyankutty (Died)
- 2.Munusamy (Died)
- 3.Govindan
- 4.Veeran
- 5.Velayutham
- 6.Manikandan
- 7.Gomathi

- 8.Senthilmurugan ...Appellants in S.A.No.2094 of 2004

(Appellants 4 to 7 brought into record as LR's of the deceased 1st appellant viz., Ayyankutty vide Court order dated 06.01.2022 made in C.M.P.Nos.20979, 20981 & 20982/2021 in S.A.No.2094/2004)

(Appellant 8 brought into record as LR's of the deceased 2nd appellant viz., Munusamy vide Court order dated 06.01.2022 made in C.M.P.Nos.20998, 21001 & 21002/2021 in S.A.No.2094/2004)

Vs.

Thangammal ... Respondent in both appeals

Common Prayer : Second Appeals filed under Section 100 CPC, 1908 against the decree and judgment dated 05.11.2003 passed in A.S. Nos.236 & 217 of 2002, on the file of the Additional District Cum Sessions Court (Fast Track Court) at Kallakurichi, reversing the decree and judgment dated 31.08.2000 passed in O.S. Nos.966 & 960 of 1996, on the file of the II Additional District Munsif Court, Kallakurichi.

In both S.As:

For Appellants : Ms.T.R.Gayathri
for M/s.Sarvabhauman Associates

For Respondent : Ms.Abirami
for Mr.V.Ragavachari

COMMON JUDGMENT

The appellants in S.A. No.2093/2004 are the defendants in O.S. No.966/1996 on the file of the II Additional District Munsif, Kallakuruchi. The respondent/plaintiff filed the suit for a permanent injunction restraining the appellants/defendants from interfering with her peaceful possession and enjoyment of the suit property and for costs. During the pendency of the present second appeal, the second appellant died and his legal heirs were brought on record as appellants 4 and 5.

2. The appellants in S.A. No.2094/2004 are the plaintiffs in O.S. No.960/1996 on the file of the II Additional District Munsif, Kallakuruchi. The appellants 1 to 3 filed the suit for a declaration of their title to the suit property and for a permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit property and for costs. During the pendency of the second appeal the appellants 1 and 2 died and their legal heirs were brought on record as appellants 4 to 8.

3. Both the suits in O.S. No.960 of 1996 and O.S. No.966 of 1996 were tried jointly by the trial court and the evidence was recorded in common in O.S. No.960 of 1996. The plaintiffs in O.S. No.960 of 1996 were called as plaintiffs and the defendant in that suit was called as defendant.

4. For the sake of convenience, the parties are referred to as called in the trial court and at appropriate places, their rank in the present appeals would also be indicated.

5. Brief averments of the case of the plaintiff in O.S. No.960/1996 are as follows:

The suit property is the ancestral property of the plaintiffs. A patta was granted in favour of the plaintiffs 1 and 2 and the father of the third plaintiff, with a condition that the said property should not be alienated to any person other than Harijans. The plaintiffs 1 and 2 were working in Bangalore and taking advantage of the said situation, Ramasamy, father of the third plaintiff, sold the suit property infavour of the defendant Thangammal through a

registered sale deed dated 22.01.1985 (Ex.A1). According to the plaintiffs, the alienation made by the father of the third plaintiff would not bind them since the defendant Thangammal does not belong to Harijan community. Therefore, she cannot claim any title over the suit property. The defendant is attempting to interfere with the plaintiffs' possession over the suit property since 01.11.1996. Hence the suit was filed by the plaintiffs for a declaration of their title to the suit property and for a permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit property.

6. The suit was resisted by the defendant (Thangammal) on the following grounds:

- 1) It is false to contend that the suit property is the ancestral property of the plaintiffs.
- 2) The suit property was assigned in favour of Ramasamy, father of the third plaintiff, by the Government under patta Ex.B10.
- 3) Ramasamy, father of the third plaintiff, sold the suit property in favour of the defendant through a registered sale deed dated 22.01.1985 (Ex.A1) and put the defendant in possession of the suit property.
- 4) The defendant is also paying necessary tax to the Government (Ex.B3 to Ex.B7).
- 5) The plaintiffs have been attempting to interfere with her peaceful possession and enjoyment of the suit property and one such attempt was made on 10.12.1996.

She therefore filed the suit in O.S. No.966/1996 for the relief of Permanent injunction restraining the defendants in O.S. No.966/1996 from interfering with her peaceful possession and enjoyment of the suit property and also prayed for the dismissal of the suit in O.S. No.960/1996.

7. The averments made by the plaintiffs and the defendants in O.S. No.966/1996 and O.S. No.960/1996 are one and the same.

8. On the basis of the above pleadings, the trial court framed the following issues in O.S. No.960/1996.

- 1) Whether the plaintiffs have got title over the suit property?
- 2) Whether the plaintiffs are entitled for a permanent injunction as prayed for by them?
- 3) To what relief the plaintiffs are entitled?

9. The following issues were framed in O.S. No.966/1996.

- 1) Whether the plaintiff is entitled for a permanent injunction as prayed for by her?
- 2) To what relief the plaintiff is entitled?

10. In the trial court, the first plaintiff examined himself and two other witnesses and marked Ex.A1. The defendant (Thangammal) examined herself and one another witness and marked Ex.B1 to Ex.B10.

11. After full contest, the learned II Additional District Munsif, Kallakuruchi, decreed the suit in O.S. No.960/96 as prayed for by the plaintiffs and dismissed the suit in O.S. No.966/1996 on the following grounds:

- 1) Though the plaintiffs did not file the conditional patta granted in their favour, the Village Administrative Office, who was examined as P.W.2 had deposed that as per the revenue records, Patta No.45 in respect of the suit property stood in the names of the plaintiffs.
- 2) The patta Ex.B10 relied upon by Thangammal, the defendant, does not contain any seal or signature of the revenue officials and therefore, it cannot be relied upon for any purpose.
- 3) The defendant also did not adduce a copy of chitta or adangal to show that she has been in possession and enjoyment of the suit property and on the other hand, the plaintiffs' contention is that a conditional patta No.45 was issued in their favour.
- 4) Since the defendant does not belong to Harijan community, the sale deed (Ex.A1) executed by the father of the third plaintiff is not valid.

12. Aggrieved over the same, Thangammal (defendant in O.S. No.960/1996 and plaintiff in O.S. No.966/1996) filed two appeals in A.S. Nos.217 & 236 of 2002 before the Additional District Court (Fast Track Court), Kallakuruchi. The learned Additional District Judge, after analysing the oral and documentary evidence adduced on both sides, reversed the findings recorded by the trial court vide his decree and judgment dated 05.11.2003 on the following grounds.

- 1) Though the trial court had observed that the plaintiffs in O.S. No.960/1996 did not adduce any documentary evidence to substantiate their contention that a patta was granted in their favour, it was held that the plaintiffs have proved their title and possession over the suit property based on the evidence of P.W.2.
- 2) It is pertinent to point out that the Village Administrative Officer (P.W.2) did not produce any records from the Revenue Department to show that a patta was issued to the family of the plaintiffs.
- 3) When Thangammal, the defendant in O.S. No.960/1996, had adduced sufficient documentary evidence to show that she has been in possession and enjoyment of the suit property ever since the date of sale Ex.A1, the trial court has wrongly held that she is not in the possession and enjoyment of the suit property.

- 4) In fact the kist receipts (Ex.B3 to Ex.B7) clearly prove the possession over the suit property by the defendant (Thangammal) and hence, she is entitled for a permanent injunction against the plaintiffs.
- 5) The plaintiffs have not adduced any documentary evidence to prove their title or possession over the suit property and therefore, their suit is liable to be dismissed.

The first appellate court, therefore, set aside the decree and judgment in O.S. No.960/1996 and dismissed the suit in O.S. No.960/1996 and decreed the suit in O.S. No.966/1996.

13. Aggrieved over the same, these present second appeals are filed on the following substantial question of law.

"Whether in view of the condition in the assignment that the property cannot be alienated except in favour of a Harijan, the defendant acquired any right by virtue of alienation, Ex.A1 sale deed?"

14. Heard Ms. T.R. Gayathri for M/s. Sarvabhauman Associates, learned counsel for the appellants and Ms. Abirami for Mr.V.Ragavachari, learned counsel for the respondent.

15. The plaintiffs in O.S. No.960/1996 contend that the suit property is their joint family property by virtue of a conditional patta issued by the Revenue Department in their favour. It is their further contention that as per the condition attached to the said patta, the property can be alienated only to the persons belonging to Harijan community. It is also their contention that the third plaintiff's father Ramasamy sold the suit property in favour of the defendant, when the plaintiffs were away from the village, through a registered sale deed on 22.01.1985 (Ex.A1) and that the defendant has been attempting to interfere with their possession and enjoyment of the suit property since 01.11.1996. In order to establish their title and possession over the suit property, the plaintiffs mainly rely on the oral evidence of the first plaintiff as well as the evidence of P.W.2 and P.W.3. P.W.2 is the Village Administrative Officer of the concerned village. His evidence is that a conditional patta was granted to the family of the plaintiffs. However, he did not produce any Registers/Records from his office to substantiate his oral evidence. The plaintiffs have not also filed any patta issued to their family as alleged by them. In the absence of any documentary evidence, the trial court had committed an error by decreeing the suit in favour of the plaintiffs.

16. The plaintiffs have not also adduced any evidence to show that they are in continuous possession and enjoyment of the suit property. On the other hand, the defendant has adduced kist receipts (Ex.B3 to Ex.B7) in respect of the suit property and showed her possession over the same. It is not

known as to how the trial court came to the conclusion that the suit property should not be sold in favour of any person other than Harijans especially when the patta and the conditions attached thereto have not been filed by the plaintiffs. Ex.B10 is an order of assignment issued in favour of Ramasamy, father of the third plaintiff. The trial court had held that no credence can be attached to Ex.B10 since there is no seal or signatures of revenue officials on it. However, as already observed, the suit in O.S. No.966/1996 was filed by Thangammal only for a permanent injunction and she adduced Ex.B3 to Ex.B7 to show her possession. The plaintiffs in O.S.No.960/1996 claim title only through a patta issued by the Government. As already observed no such patta was adduced by the plaintiffs. Apart from that absolutely there is no documentary evidence on the side of the plaintiffs to prove their possession also. In such circumstances, the observations of the first appellate court cannot be found fault with. The findings recorded by the first Appellate Court are based on factual aspects of the case and therefore, there is no substantial question of law involved in the present second appeal. Since no assignment order/patta has been filed by the plaintiffs, answering the substantial question of law framed by this court on 10.12.2004 does not arise. Thus, the second appeals fail and are dismissed.

17. In the result,

- i. the second appeals are dismissed. No costs.
- ii. The decree and judgment dated 05.11.2003 passed in A.S. Nos.236 & 217 of 2002, on the file of the Additional District Cum Sessions Judge (Fast Track Court), Kallakurichi, is upheld and
- iii. the decree and judgment dated 31.08.2000 passed in O.S. Nos.966 & 960 of 1996, on the file of the II Additional District Munsif, Kallakurichi, is set aside.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

bga

To

- 1.The Additional District Cum Sessions Judge
(Fast Track Court),
Kallakurichi,
- 2.The II Additional District Munsif,
Kallakurichi.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+2ccs to M/s.Sarvabhauman Associates, SR. No. 23183, 23184
+2ccs to Mr.V.Ragavachari, Advocate SR. No. 23355, 23494

S.A.Nos.2093 & 2094 of 2004

NR (CO)
PR (20/07/2022)