



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.04.2022

PRONOUNCING ORDERS ON : 13.04.2022

Coram:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Second Appeal No.311 of 2012
and MP No.1 of 2012

1.Anjammal
2.Pandurangan
3.Natarajan

...Appellants 1 to 3 /Defendants 1 to 3
in Trial Court

..Vs..

1.Vaithilingam ...1st Respondent/Plaintiff in Trial Court

2.Tamil Nadu Government
Rep.by District Collector
Perambalur District.

3.Tamil Nadu Government
Rep.by Revenue Divisional Officer
Udayarpalayam, Ariyalur District.

4.Tamil Nadu Government
Rep.by Tahsildar
Jayankondam
Ariyalur District.

...Respondents 2 to 4/Defendants
4 to 6 in Trial Court

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 5.9.2011 passed by the Subordinate Judge, Ariyalur in A.S.No.25 of 2009 reversing the Judgment and Decree dated 16.12.2008 passed by the District Munsif, Ariyalur in O.S.No.34 of 2005.



WEB COPY

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.S.Subbiah
Senior Counsel
for M/s.S.Vijayakumar
G.Bharadwaj
for R1

Mrs.E.Indumathi
Government Advocate
R2 to R4

J U D G M E N T

The defendants 1 to 3 are the appellants in this Second Appeal.

2.The 1st respondent/plaintiff filed a suit seeking for the relief of declaration of title and permanent injunction. The plaintiff also sought for the relief of mandatory injunction directing the defendants 4 to 6 to carry out the necessary mutation in the revenue records and to show the name of the plaintiff as the owner of the suit properties.

3.The case of the plaintiff is that the suit property originally belonged to his father by virtue of a registered Sale Deed dated 26.07.1969, marked as Ex.A-1. The suit properties were allotted in favour of the plaintiff through a family arrangement on 10.05.1995 and thereby the suit properties and the property in Survey No.483/20 came within the ownership of the plaintiff. The further case of the plaintiff is that the defendants 1 to 3 do not have any right or title over the suit properties. However, they managed to get the revenue records altered whereby, the property in Survey No.483/21 was shown as a sarkar lane and the property in Survey No.483/19 was shown as if a thoraya patta was granted in favour of the 2nd defendant. Since the act of the defendants, caused a cloud over the title of the plaintiff, the plaintiff filed the suit seeking for the reliefs mentioned supra.

4.The defendants 1 to 3 filed a written statement. They took a stand that a panchayat was convened and they reached a settlement with the plaintiff whereby the plaintiff was allotted the portion in Survey No.483/20 and Survey No.483/21 was made as a common lane for both the plaintiff and the defendants. Thoraya patta was also granted in favour of the 2nd defendant



WEB COPY

with respect to the property in Survey No.483/19. The defendants claimed that such an arrangement was made long back and patta has also been issued to the respective parties and hence, the plaintiff is not entitled for the relief sought for by him.

5.The 6th defendant viz., Tahsildar filed a written statement and took a stand that Survey No.195/1 (New Survey No.483) consisted of 13.34 acres. Proceedings were initiated to issue patta to those persons who were in possession of the property by constructing houses. Accordingly, thoraya patta was granted in favour of the plaintiff for Survey No.483/20. Similarly, thoraya patta was granted in favour of the 2nd defendant for Survey No.483/19. Insofar as Survey No.483/21 is concerned, it is shown as a sarkar poramboke lane in the revenue records. Under such circumstances, the 6th defendant had opposed the claim made by the plaintiff and sought for the dismissal of the suit.

6.The trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence was pleased to dismiss the suit through judgment and decree dated 16.12.2008. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.25 of 2009 before the Sub Court, Ariyalur. The lower Appellate Court on re-appreciation of evidence and after dealing with the findings of the trial Court, allowed the appeal through judgment and decree dated 05.09.2011 and thereby, the judgment and decree of the trial Court was set aside. Aggrieved by the same, defendants 1 to 3 have filed this Second Appeal.

7.When the Second Appeal was admitted, the following substantial questions of law were framed by this Court:

a) Whether the Lower Appellate Court failed to see that the suit filed by the plaintiff is barred by limitation in view of Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923?

b) Whether the Lower Appellate Court failed to formulate the points for determination, as mandated under Order XLI Rule 31 of the Code of Civil Procedure?

c) Whether the findings of the Appellate Court can be termed as perverse on the ground that it is not in accordance with the oral and documentary evidence that is available on record?



8. Heard Mr.R.Thiagarajan, learned counsel for the appellants, Mr.S.Subbiah, learned Senior Counsel for R 1 and Mrs.E.Indumathi, learned Government Advocate for R 2 to R 4. This Court also carefully went through the materials available on record and the findings rendered by both the Courts below.

9. It is seen from the pleadings of defendants 1 to 3 that they do not dispute the Sale Deed dated 26.07.1969, that stood in the name of the father of the plaintiff. The plaintiff is claiming title over the suit properties only by virtue of this document. The defendants at paragraph no.4 of the written statement have come up with a specific plea as if, there was some arrangement between the parties for enjoyment of the properties pursuant to a panchayat that was convened. Accordingly, the defendants claimed that the plaintiff was allotted Survey No.483/20, the land in Survey No.483/21 was treated as common lane for both the plaintiff and defendants and the defendants became the owner of the property with respect to Survey No.483/19.

10. Since the defendants took such a specific stand, the onus of proof was upon them to prove that such an arrangement was made pursuant to a panchayat held in this regard. If the defendants have not discharged this burden, they cannot claim any right or title over the suit properties in the light of the Sale Deed dated 26.07.1969 and more particularly since the defendants are not disputing the existence of this Sale Deed.

11. The lower Appellate Court while considering this issue had categorically held that the first item of the suit property was covered under Ex.A-1 and this Sale Deed has been in existence for more than 30 years. Even though defendants 1 to 3 claimed that the first item of the suit property was enjoyed as a common lane right from the beginning, the same was not proved by them. Hence, the lower Appellate Court held that the first item of the suit property cannot be taken to be a common lane merely on the ipse dixit of the defendants 1 to 3.

12. The lower Appellate Court thereafter dealt with the stand taken by the official respondents viz., defendants 4 to 6. They had taken a stand that item one of the suit property has been



categorised as sarkar poramboke lane. The lower Appellate Court found that this categorisation could not be put against the plaintiff in the light of Ex.A-1. Even if such a step was taken by the official defendants, they cannot take over a private property and show it as a Government property in the revenue records, without affording opportunity to the owner of the property.

13.The lower Appellate Court also found that the defendants did not prove their claim as if, a panchayat was held and the properties were allotted between the parties for peaceful enjoyment. There was not a single scrap of paper that was available to show that there was any panchayat convened and it was not even stated as to when it was held and who were present at the time of the so called panchayat.

14.In view of the above, the lower Appellate Court found that the first item of the suit property is owned by the plaintiff by virtue of Ex.A-1 document.

15.In the considered view of this Court, the very theory that was propounded by defendants 1 to 3 as if, a panchayat was held, cannot be sustained since the plaintiff came into the picture in the year 1995 and he could not have participated in the so called panchayat which took place even before the year 1995. The same is clear from the pleadings contained at para 4 of the written statement.

16.Insofar as the second item of the suit property is concerned, the defendants were claiming right by virtue of thoraya patta that was granted in the name of the 2nd defendant and which was marked as Ex.B-1. The second item of the suit property was purchased by the father of the plaintiff through Ex.A-1. The 2nd defendant was not able to prove as to how he became the owner of the second item of the suit property and on what basis the thoraya patta was granted in his favour.

17.The lower Appellate Court while considering this issue, found that Survey Nos.483/20, 483/21 and 83/19 were falling under Survey No.483 as could be seen from Ex.B-5. Boundaries under Ex.A-1 is not disputed and it is found that one of the boundaries is shown as "the property belonging to the father of



the plaintiff situated on the western side". Thus, the lower Appellate Court on appreciation of the oral and documentary evidence found that Survey Nos.483/19, 483/20 and 483/21 absolutely belonged to the plaintiff and the same is covered under Ex.A-1. The defendants were not able to prove before the Court as to how they became entitled to the suit properties. Obviously, the thoraya patta granted in favour of the 2nd defendant for Survey No.383/19 and the property in Survey No.483/21 being shown as a sarkar poramboke lane in the revenue records, by itself does not confer any right on defendants 1 to 3. The findings of the lower Appellate Court in this regard is found to be correct and does not require any interference.

18.The lower Appellate Court also considered the evidence of DW-4, who was the surveyor examined on the side of the defendants. He had stated in his evidence that the sub division of the properties can be done only with reference to the title deeds and after issuing notice to all the interested parties. In the present case, there was no document available to show that any enquiry took place before the properties were sub divided and the patta was granted. The lower Appellate Court found that the official defendants were not right in showing Survey No.483/21 as a sarkar poramboke lane even without proper enquiry and without proper sub division. Thus the right of the plaintiff with respect to the second item of the suit property was also upheld.

19.In the present case, Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923 will not have any application. It is seen from records that thoraya patta was granted in favour of the 2nd defendant and sub division was made without conducting an enquiry and affording opportunity to the plaintiff. Therefore, that will not in any way take away the right and title of the plaintiff which was traced to Ex.A-1 Sale Deed. In the light of such a title document, the revenue proceedings cannot confer a better title on the defendants. The first substantial question of law is answered accordingly.

20.The lower Appellate Court has properly considered each and every issue and assigned proper reasons while deferring with the findings of the trial Court. This Court does not find any perversity in the findings of the lower Appellate Court and it is based on the available oral and documentary evidence. The second and third substantial questions of law are answered accordingly.



21. In view of the above discussion, all the substantial questions of law are answered against the appellants and this Court does not find any ground to interfere with the judgment and decree of the lower Appellate Court.

22. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

KP
To

1. The Subordinate Judge,
Ariyalur.

2. The District Munsif,
Ariyalur.

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

+1cc to Mr. R. Thiagarajan, Advocate Sr.25395
+1cc to Mr. S. Vijayakumar, Advocate Sr.25607
+1cc to the Government pleader Sr.25819

Second Appeal No.311 of 2012

gpl[co]
srg 26/04/2022