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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.04.2022

PRONOUNCED ON : 21.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.150 OF 2016

AND

C.M.P.NO.3019 OF 2016

1. M.Narayanasamy Munthadi (Died) .

2. N.Pandu alias Parandaman.

3. N.Ramudu alias Ramagovindan.

... Appellants/Defendants 1 to 3

Vs

1. N.Kuppan.

...1st Respondent/Plaintiff

2. Adhilakshmi.

3. K.S.Munirathinam.

4. K.S.Venkatesan.

5. N.E.Ramachandran.

6. Mageshwari.

7. Subramani.

8. Adhimoolam.

...Respondents 2 to 8/Defendants 4 to 10

9. Devaki.

10. Muniyamma.

... Respondents 9 & 10

[R9 and R10 brought on record as LR's of the deceased 1st appellant viz M.Narayanasamy Munthadi vide Court order dated 26.04.2021 made in C.M.P.No.11016 of 2019 in S.A.No.150 of 2016]



Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside Judgement and decree dated 28.08.2015, made in A.S.No.22 of 2013, on the file of Subordinate Judge, Tiruttani in reversing the well considered Judgement and decree dated 30.09.2011 made in O.S.No.188 of 2007, on the file of District Munsif Court, Tiruttani by allowing the present second appeal.

For Appellant : Mr.A.Gouthaman

For Respondents : Mr.Rajendrakumar
for M/s.Norton & Grant (for R1)

JUDGEMENT

The defendants are the appellants in the Second Appeal.

2. The first respondent/plaintiff filed a suit seeking for the relief of declaration of title and permanent injunction.

3.The case of the plaintiff is that the first item of the suit property was purchased from one Vajeeravelu Reddi through a registered sale deed dated 19.04.1995, marked as Ex.A.1. The second item of the suit property was purchased from one Sembeti Muniammal through a registered sale deed dated 24.04.1995, marked as Ex.A.2. According to the plaintiff, the total extent of both the properties put together measures nearly 7 acres.

4. The further case of the plaintiff is that he became the absolute owner of the suit properties and Patta was also granted in the name of the plaintiff and the plaintiff is also paying the kist for the suit properties.

5. The grievance of the plaintiff is that the defendants attempted to interfere with the possession and enjoyment of the property and were creating a cloud over the title of the plaintiff. Left with no other option, suit was filed seeking for the relief of declaration of title and permanent injunction.

6. The second defendant filed a written statement. He took a stand that the entire property in Survey No.69 was assigned in favour of 56 persons by allotting them various extents. According to the second defendant, the predecessor in title to the first item of the suit property namely Angala Velayutha Reddi was assigned only an extent of 0.26 cents for which Patta was granted by the Assistant Settlement Officer. That apart, neither the predecessor in interest nor the vendor of the



plaintiff were in possession and enjoyment of the property. Insofar as the second item of the suit property is concerned, second defendant contended that Patta was granted in favour of Sembeti Muniammal only for an extent of 0.22 cents and neither the predecessor in interest nor the vendor of the plaintiff were in possession and enjoyment of the property. Thus, the second defendant took a stand that the vendors of the plaintiff did not have the right or title to convey an extent of 7 acres to the plaintiff. The second defendant also questioned the Patta granted in favour of the plaintiff. The second defendant further stated that he is in possession and enjoyment of the suit properties and he also relied upon Ex.B.2 and Ex.B.3 sale deeds executed in his favour in the year 1995. Accordingly the second defendant sought for the dismissal of the suit.

7. The 7th, 8th, 9th and 10th defendants also filed written statement and they also denied the right claimed by the plaintiff to an extent of 7 acres.

8. The Trial Court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, dismissed the suit through Judgement and Decree dated 30.09.2011. Aggrieved by the same, plaintiff filed an appeal before the Sub-Court, Tiruttani in A.S.No.22 of 2013. The lower Appellant Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, was pleased to allow the appeal through Judgement and Decree dated 28.08.2015 and thereby the Judgement and Decree of the Trial Court was set aside and suit was decreed as prayed for. Aggrieved by the same, the defendants have filed this Second Appeal.

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

"(a) Whether the lower Appellate Court is right in decreeing the suit by reversing the well considered Judgement and Decree of the Trial Court, when admittedly the plaintiff did not prove the title of his vendor and no title will pass on plaintiff based upon his purchase from the person who did not have title to the property?

(b) Whether the lower Appellate Court is right in not drawing adverse inference on plaintiff for not examining his vendor to prove his title, when admittedly the defendant disputed the title of the vendor?

(c) Whether the lower Appellate Court is right in ignoring the well settled proposition of law that the



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burden of proof is upon the plaintiff, who come to the Court by seeking declaratory relief and he could not take advantage of the loopholes in the defendant's case?

(d) Whether the lower Appellate Court is right in not following the parameters mentioned in Order XL1, Rule 28 of the Civil Procedure Code before allowing the application and marking of the documents as additional evidence in the Appellate Court?"

10. Heard Mr.A.Gouthaman, learned counsel for the appellant and Mr.Rajendrakumar, learned counsel for the first respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

11. The main crux of the issue involved in the present Second Appeal is that Survey No.69 measures a total extent of 84.51 acres and the Assistant Settlement Officer through the proceedings in the year 1956 granted Patta in this Survey No. in favour of 56 persons and according to the defendants, the vendors of the plaintiff did not have the right and title to convey 7 acres in favour of the plaintiff.

12. The plaintiff is claiming title over the suit properties through the sale deeds marked as Ex.A.1 and Ex.A.2. The plaintiff also claims to be in possession and enjoyment of the suit property by relying upon the documents marked as Ex.A.3 to Ex.A.7.

13. The predecessor in title for both the properties were also granted Patta through the proceedings of the Assistant Settlement Officer in the year 1956. The same is clear on carefully going through Ex.B.1. However both Ex.B.1 and Ex.B.10 do not clearly state as to the actual extent of property that was conveyed in favour of 56 persons during the proceedings of the Assistant Settlement Officer.

14. The Trial Court gave a finding to the effect that the plaintiff has not produced any document to prove the right and title of his vendor. That apart, the Trial Court also took into consideration the mutually destructive plea taken by the plaintiff who also claimed title through adverse possession. In view of the same, the Trial Court found that the plaintiff has not proved the title over the suit property and accordingly the suit was dismissed.

15. The lower Appellate Court mainly relied upon Ex.A.1 and Ex.A.2 and the Patta granted in favour of the plaintiff and marked as Ex.A.3 and Ex.A.4 and came to a conclusion that the



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plaintiff has proved the title over the property. The lower Appellate Court also took into consideration the evidence of the 7th defendant who was examined as D.W.2 and he had stated that the title documents filed by him does not pertain to the suit property and that he does not have any right or title in the suit property. On this ground alone, the lower Appellate Court proceeded to set aside the judgement and decree of the Trial Court and decreed the suit.

16. The learned counsel for the appellants submitted that the lower Appellate Court did not assign proper reasons while interfering in the findings of the Trial Court and the suit was decreed in favour of the plaintiff by pointing out to the weakness of the case of the defendants.

17. Per contra, the learned counsel for the first respondent by relying upon Section 110 of the Evidence Act submitted that it is enough for the plaintiff to prove a lawful origin through which he is claiming title in the property and if the defendants have not proved their title to the suit property, the natural consequence would be that a presumption must be raised in favour of the plaintiff. To substantiate this submission, the learned counsel relied upon the judgement of the Hon'ble Supreme Court in The State of A.P. and Ors. Vs. Star bone Mill and Fertilizer Co. reported in 2013 (2) CTC 347.

18. It is now too well settled that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title. The source of title in the present case is the proceedings of the Assistant Settlement Officer that took place in the year 1956. On going through Ex.B.1, it is seen that Patta has been given in favour of 56 persons. Both the sides are claiming right over the property only based on the sale deeds executed in their favour by their vendor, who is tracing the title from the original assignees, who were granted Patta by the Assistant Settlement Officer. The names of the predecessor in title of the properties purchased by the plaintiff is also found in Ex.B.1. This document is not clear as to the extent of property that was allotted to each of the 56 persons who were granted Patta by the Assistant Settlement Officer.

19. The plaintiff is claiming title over an extent of 7 acres. The defendants are not questioning the source of title and what is actually questioned is the extent of property that is claimed by the plaintiff. The defendants have come up with a specific stand that the predecessor in title was only allotted 26 cents in the 1st item of the suit property and 22 cents in the



2nd item of the suit property. There is a huge gap in the extent of property that is claimed by the plaintiff and the one that is admitted by the defendants. There is a lot of force in the defence taken by the defendants since what was available in Survey No.69 was only 84.51 acres and this was allotted in favour of 56 persons. If the property had been equally allotted in favour of 56 persons, each one would not have got more than 1.51 acres.

20. What has to be seen is not whether the defendants have proved their title in the suit property and the burden of proof is only upon the plaintiff to establish his title over an extent of 7 acres. It may be true that the title of the plaintiff has a lawful origin. However that does not mean that he will be automatically entitled to an extent of 7 acres as claimed by him. This claim made by the plaintiff does not fit in well into the facts of the present case since each allottee could not have got more than 1.51 acres and if two of the allottees are the predecessor in interest of the plaintiff, the best that the plaintiff could have claimed cannot exceed 3.02 acres.

21. The Trial Court had given valid reasons as to why the relief sought for by the plaintiffs cannot be granted. Curiously, the plaintiff also claimed title through adverse possession and this plea is mutually destructive with the original claim made by the plaintiff for title.

22. The lower Appellate Court did not even properly frame the points for consideration as mandated under Order XLI Rule 31 of the Code of Civil Procedure, 1908 (CPC). That apart, the lower Appellate Court did not even discuss the findings of the Trial Court and assign reasons as to why it is differing from the findings of the Trial Court. Apart from that, the lower Appellate Court proceeded to entertain additional evidence relied upon by the plaintiff and marked Ex.A.8 to Ex.A.13 even without following the procedure under Order XLI Rule 28 of CPC. It seems that the order was passed in the application filed under Order XLI Rule 27 of CPC much earlier even before the appeal was taken up for final hearing. This procedure followed by the lower Appellate Court is completely contrary to the settled principles of law. Even otherwise, Ex.A.8 to Ex.A.13 does not in any way improve the case of the plaintiff.

23. The plaintiff ought to have established that his predecessor in interest had the right and title for an extent of 7 acres. This cannot be established merely by relying upon Ex.A.1 and Ex.A.2 which was executed in favour of the plaintiff



in the year 1995. The plaintiff ought to have examined the vendor or the predecessor in interest and should have taken steps to summon the relevant records and called for the concerned official to substantiate that an extent of 7 acres was allotted in favour of the predecessor in interest. Having failed to do so, the plaintiff did not make out a case for the relief claimed by him. In other words, the plaintiff did not discharge the burden cast on him to prove his case and hence the burden never shifted to the side of the defendants. The defendants not proving their title in the suit property is irrelevant since the plaintiff has not proved his case.

24. In view of the above discussion, the lower Appellate Court was not right in allowing the appeal in favour of the plaintiff since the plaintiff has not proved the title of his vendors and the plaintiff failed to examine the vendors and/or the predecessor in title to prove his right and title to an extent of 7 acres in the suit property. The substantial questions of law (a), (b), and (c) are answered accordingly against the plaintiff.

25. The judgement of the lower Appellate Court is also liable to be interfered since the mandate of Order XLI, Rule 31 of CPC was not satisfied and the lower Appellate Court failed to follow the procedure under Order XLI, Rule 28 of CPC while entertaining the additional evidence adduced by the plaintiff. The 4th substantial question of law is answered accordingly.

26. In the result, this Second Appeal is allowed and the judgement and decree of the lower Appellate Court made in A.S.No.22 of 2013, dated 28.8.2015 is hereby set aside and the judgement and decree of the Trial Court is restored and consequently the suit filed by the plaintiff in O.S.No.188 of 2007 is dismissed. Consequently, connected miscellaneous petition is also closed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Tiruttani.

2. The District Munsif,
Tiruttani.

Copy To

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

+2ccs to Mr.R.T.L.Chandar, Advocate, S.R.No.27036

+1cc to Mr.A.Gouthaman, Advocate, S.R.No.27248

S.A.No.150 of 2016
and
C.M.P.No.3019 of 2016

SSI (CO)
RLP (24/05/2022)