



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

S.A.No.866 of 2016
and
CMP Nos.17181 & 17182 of 2016

Lalitha

..Appellant / Appellant / Plaintiff

.Vs.

1. Appadurai

2. The Tahsildar

Taluk Office

Cheyar

Thiruvannamalai District.

..Respondents / Respondents / Defendants

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.04.2016 made in A.S.No.11 of 2015 on the file of the learned Subordinate Judge, Cheyyar confirming the judgment and decree dated 21.10.2013 made in O.S.No.90 of 2008, on the file of the learned Additional District Munsif, Cheyyar.

For Appellant : Mr.E.Sathiyaraj

For Respondents : Mr.P.Mani
for R1

Mrs.E.Indhumathi
Government Advocate
for R2

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The case of the plaintiff is that the suit property which is a Government poramboke land was in possession and enjoyment of her husband and on his demise, it is in possession and



enjoyment of the plaintiff and her family for more than 20 years. The further case of the plaintiff is that the 1st defendant, who is her brother-in-law was attempting to interfere with the possession and enjoyment of the property based on Ex.B-1 patta which was obtained by him behind the back of the plaintiff. The plaintiff has also filed the patta and other documents to establish her possession in the suit property. Since she apprehended threat to the suit property which was claimed to be in her possession and enjoyment, the suit was filed seeking for the relief of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property.

3.The 1st defendant filed a written statement and took a stand that no patta was granted in favour of the plaintiff and her husband and he has been in possession and enjoyment of the suit property for more than 17 years. The 1st defendant also relied upon Ex.B-1 patta that was issued in his favour and hence, the 1st defendant sought for the dismissal of the suit.

4.The 2nd defendant - Tahsildar filed a written statement and took a stand that if at all, the plaintiff is aggrieved by the patta granted in favour of the 1st defendant, she should only redress her grievance by approaching the appropriate authority and she cannot make allegations that Ex.B-1 is a fabricated patta. The 2nd defendant has further questioned the maintainability of the suit on the ground that Section 80 CPC., notice was not issued before the filing of the suit.

5.Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this second appeal before this Court.

6.Heard Mr.E.Sathiyaraj, learned counsel for the appellant, Mr.P.Mani, learned counsel for R1 and Mrs.E.Indhumathi, learned Government Advocate for R2. This Court has carefully considered the materials available on record and the findings of both the Courts below.

7.There is no requirement for this Court to go into any of the issues and the suit is liable to be dismissed on the simple ground that the plaintiff was not in possession of the property as per Ex.A-1 settlement deed that was relied upon by the plaintiff. Admittedly, the plaintiff had executed a settlement deed in favour of her son on 21.05.2007 and the same was marked as Ex.A-1. In the recitals, it has been specifically stated that the possession of the suit property has been handed over to the plaintiff's son Vijayakumar. Thereafter, the plaintiff



files the suit on 13.02.2008. On the date when the suit was filed, the possession had already been handed over in favour of the plaintiff's son. Therefore, the very claim made by the plaintiff, as if, she is in possession and enjoyment of the suit property, is unsustainable. This vital fact has been noticed by both the Courts below and hence the same has been put against the plaintiff. This Court does not find any ground to interfere with this finding against the plaintiff.

8.Both the Courts below have rendered a factual finding that the plaintiff is not in possession and enjoyment of the suit property and the same is based on appreciation of evidence. This Court does not find any perversity in the findings of both the Courts below. In any case, no substantial question of law is involved in this Second Appeal.

9.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 petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KP
To

1. The Subordinate Judge,
Cheyyar.
2. The Additional District Munsif ,
Cheyyar.

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

+1cc to Mr.E.Sathiyaraj, Advocate, S.R.No.23125
+1cc to Mr.P.Mani, Advocate, S.R.No.22425
+1cc to the Government Pleader, S.R.No.23058,23060

S.A.No.866 of 2016

GMR[co]
NSK 19/04/2022