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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.55 of 2014
and
MP.Nos.1 and 2 of 2014

1.Perumal

2.Ponnayal

..Appellants/
Respondents/Plaintiffs

.Vs.

The Revenue Divisional Officer
Revenue Divisional Office
Gobichettipalayam
Erode District.

..Respondent/Appellant/ Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.3.2013 passed in A.S.No.47 of 2009, on the file of the Subordinate Judge, Gobichettipalayam, Erode District reversing the decree and judgment dated 23.4.2009 passed in O.S.No.373 of 2008 by the District Munsif Court, Gobichettipalayam, Erode District.

For Appellants : Mr.Titus Enock
for Mr.I..C.Vasudevan

For Respondent : M/s. E.Inthumathi
Government Advocate

JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

2.The case of the plaintiffs is that the suit property was originally assigned in favour of one Thangammal as per proceedings dated 03.11.1949. The said Thangammal was in



possession and enjoyment of the property and she through a registered Sale Deed dated 15.09.1982 sold the property in favour of the plaintiffs. The plaintiffs thereafter were in possession and enjoyment of the suit property and they have put up a construction and also obtained electricity connection. The remaining portion is used for agricultural purposes.

3.A show cause notice came to be issued to the plaintiffs by the defendant calling upon the plaintiffs as to why the assignment should not be cancelled due to violation of the terms of the assignment. Pursuant to the show cause notice, the defendant through proceedings dated 08.12.2008, cancelled the assignment patta. Aggrieved by the same, the plaintiffs filed the suit seeking for a declaration to declare the proceedings of the defendant dated 08.12.2008 as null and void and for a permanent injunction restraining the defendant from interfering with the possession and enjoyment of the property.

4.The defendant filed a written statement and took a specific stand that as per the assignment, the assignee is prohibited from alienating the property within 30 years from the date of assignment and that apart, even if the property is alienated, it can only be done with the prior permission and that too only in favour of a person belonging to the deprived community. Since these conditions were violated, a show cause notice was given and the assignment was cancelled through proceedings dated 08.12.2008. The defendant has therefore submitted that the plaintiffs do not have any right or title over the property and had sought for the dismissal of the suit.

5.The trial Court based on the oral and documentary evidence and after considering the facts and circumstances of the case, found that the proceedings dated 08.12.2008 issued by the defendant was illegal and consequently, decreed the suit through a judgment and decree dated 23.04.2009. Aggrieved by the same, the defendant filed an appeal before the Sub Court, Gobichettipalayam in A.S.No.47 of 2009. This appeal was allowed through a judgment and decree dated 19.03.2013 and the judgment and decree of the trial Court was reversed. Aggrieved by the same, the plaintiffs have approached this Court and filed the present Second Appeal.

6. This Court framed the following substantial question of law.

a. Whether the defendant had the power and jurisdiction to pass the cancellation order dated 08.12.2008 and resume the lands under Revenue Standing Order No.15 ?



7. Heard Mr. Titus Enock, learned counsel for the appellants and Mr. E. Indumathi, learned Government Advocate for the respondent.

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8. This Court has also carefully considered the materials placed on record and the findings of both the Courts below.

9. There is no dispute with regard to the fact that the suit property was originally assigned in favour of one Thangammal through proceedings dated 03.11.1949. Unfortunately, both the Courts below did not have the advantage of going through these proceedings since both the sides did not file the proceedings. The case of the defendant is that the assignor provided for certain terms and conditions insofar as alienation of the assigned lands is concerned. According to the defendant, the assigned land cannot be alienated within a period of 30 years from the date of assignment. That apart, even if any alienation is attempted to be made, the assignee must get the prior approval of the Government and the alienation can be made only to a person belonging to the deprived community. According to the defendant, since these conditions have not been satisfied by the above said Thangammal, the alienation made in favour of the plaintiffs by virtue of a registered Sale Deed dated 15.09.1982 was found to be illegal and not binding on the authorities. Hence, a show cause notice was issued both to the original assignee as well as the plaintiffs and they did not respond for the same. Considering the violation of the terms and conditions of assignment, the assignment itself was cancelled through proceedings of the defendant dated 08.12.2008 and the lands were directed to be resumed and appropriate entries were directed to be made in the revenue records.

10. The trial Court found that the defendant did not produce the original assignment issued on 03.11.1949 and took adverse inference against the defendant. The trial Court also took into consideration the fact that the sale that was made in favour of the plaintiffs was recognized and their names were also entered in the adangal and after nearly 26 years, action was initiated for cancellation of the assignment. The trial Court held that the proceedings initiated by the respondents was illegal and hence interfered with the impugned proceedings dated 08.12.2008 and the show cause notice dated 17.11.2008 and decreed the suit as prayed for.



11.The Appellate Court reversed the judgment and decree of the trial Court. While doing so, the Appellate Court found that the property cannot be alienated to any other person other than the person belonging to the scheduled caste community. This finding was rendered by the Appellate Court only based on the stand taken by the defendant and the availability of such a precondition was not ascertained since the original proceedings dated 03.11.1949 was never produced before the Court. The Appellate Court took adverse inference against the plaintiffs for not producing the original assignment patta. Consequently, the Appellate Court held the sale in favour of the plaintiffs as null and void.

12.The lower Appellate Court while reversing the findings of the trial Court, did not discuss the finding rendered by the trial Court and assign appropriate reasons as to why it is disagreeing with the findings of the trial Court. Assigning of such reasons as mandatory under Order XLI Rule 31 of CPC. The Hon'ble Supreme Court after taking into consideration of the earlier judgments, rendered a recent judgment in K.Karuppuraj .Vs. M.Ganesan reported in 2022 1 CTC 674 and categorically held that if the trial Court judgment is sought to be reversed then the Appellate Court must spell out the reason and discuss the point as to why it is disagreeing with the finding of the trial Court. This mandate has not been fulfilled by the lower Appellant Court in this case. The judgment of the lower Appellate Court deserves to be interfered on this ground alone.

13.In the present case, there is yet another vital fact that goes to the very root of the matter. This is with regard to the very jurisdiction of the defendant to initiate proceedings and resume the lands that were assigned in favour of Thangammal in the year 1949. It is clear from the proceedings dated 08.12.2008 that the proceedings have been initiated under Revenue Standing Order 15. For proper appreciation, the relevant Revenue Standing Order is extracted hereunder:

Revenue Standing Order 15:-

"(xi) Resuming Authority: The authority competent to resume or re-enter on lands for breach of any condition of assignment shall be as follows:-

(a) The Tahsildar, if the land is non-available;



(b) The Revenue Divisional Officer if the land is valuable; and

(c) The Commissioner of Land Administration/Government, for the lands assigned

prior to 14.05.1973.

G.O.Ms.No.2555, Rev.dated 14.05.1973.

Govt.Lr.No.36059/F1/88-2, Rev.dated 15.07.1988

W.P.No.906/70, dated 17.06.1988 C.L.A.'s

Proc.No.E3/8199/87, dated 01.03.1989.

Govt.Lr.36741/LD3-1/97-1, Rev.dated 15.07.1977".

14.It is clear from the above Revenue Standing Order that the lands that are assigned prior to 14.05.1973 can be cancelled and resumed only by the Commissioner of land administration. This position has been confirmed by an order passed by this Court in W.P.No.29808 of 2013 dated 04.04.2018.

15.In the present case, admittedly the assignment was made in the year 1949 and the authority, who had initiated proceedings for resumption of lands was the Revenue Divisional Officer. The said authority, who is the defendant in this suit, lacked jurisdiction to initiate such proceedings. On this ground alone, the proceedings of the defendant is liable to be interfered. The substantial question of law is answered accordingly.

16.In view of the above discussion, the judgment and decree of the Appellate Court made in A.S.No.47 of 2009 dated 19.03.2013 is hereby set aside and the judgment and decree of the trial Court in O.S.No.373 of 2008 dated 23.04.2009 is hereby upheld. Accordingly, the suit filed by the appellants will stand decreed. It is made clear that if the appropriate authority, who has the power and jurisdiction finds that alienation made in favour of the plaintiffs is in violation of assignment conditions, the appropriate authority shall specifically state the violation with reference to the original assignment and provide sufficient opportunity to the plaintiffs and thereafter take action in the manner known to law. The judgment passed in this Second Appeal will not stand in the way of the appropriate authority to initiate such proceedings.



17. In the result, the Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

KP
To

1. Subordinate Judge, Gobichettipalayam,
Erode District.

2. District Munsif, Gobichettipalayam
Erode District.

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

+1 CC to The Special Government Pleader sr 14446.

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SR II (CO)
SP(04/05/2022)