IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.302 of 2017

1.Anbalagan
2.Nagarathinam
3.Durian @ Boomilingam
4.Elumalai
5.Sasi
6.Selvam
7.Raji
8.Prabhu
9.Kuppammal

.. Appellants/Defendants

Vs.

A.Takshinamoorthy .. Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgement and decree of the learned Principal Subordinate Judge, Tindivanam, dated 12.12.2016 in A.S.No.53 of 2014, thereby reversing the judgement and decree of the learned District Munsif cum Judicial Magistrate, Vanur dated 20.10.2014 in OS.No.131 of 2008.

For Appellants : Mr.T.Saikrishnan

For Respondent : Mr.S.Kaithamalai Kumaran

JUDGMENT

1) The appellants are the defendants in the suit in OS.No.131 of 2008 on the file of the District Munsif Court-cum-Judicial Magistrate, Vannur Taluk, Thindivanam.

2) The respondent in this appeal as plaintiff, filed the suit in OS.No.131/2008 for declaration of his title to the suit 'A' Schedule property and for consequential permanent injunction restraining the defendants/appellants from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

3) The suit 'A' schedule property is described as an extent of 12 cents in Survey Number 181/22 in Periya Kozhuvari village in Vannur Taluk. The extent of 6 cents out of total extent of 12 cents in survey Number 181/22 is described as suit 'B' schedule property.

4) The case of the respondent herein, in the plaint is that the suit property is the absolute property of the plaintiff. It is his case that one Muthammal purchased the suit property by a registered sale Deed dated 11.12.1944 from one Kamatchiammal and the said Muthammal later executed a registered settlement Deed in favour of the plaintiff on 29.06.1966, when he was a minor. It is his further case that his father was in the management of the property till he became major and that the plaintiff became the absolute owner after attaining majority.

5) It is his specific case that suit 'B' schedule property is part of suit 'A' schedule property which was obtained by him under the settlement Deed, which is marked as Ex.A2. Stating that the defendants have falsely obtained Patta in respect of suit 'B' schedule property and tried to interfere with the possession of plaintiff, the plaintiff came forward with the suit for declaration of title and consequential injunction.

6) The suit was resisted by the appellants, by specifically disputing the avernments in the plaint. It is the case of the defendants that Muthammal the predecessor in title of plaintiff, is the wife of one Koneri and the said Koneri purchased the properties on 11.12.1944, in the name of his wife. Stating that the said Koneri died leaving behind his wife one Muthammal and his brother by one Anandan, it is contended that the plaintiff is the son born through the said Anandan and Muthammal. The settlement Deed stated to have been executed by Muthammal in favour of the plaintiff is specifically denied in the written statement. It is further stated that the entire suit 'A' schedule property was in the joint possession and enjoyment of one Sambasivam and Kali. It is further stated that the said Sambasivam and Kali had divided the suit properties and other properties orally and in the said oral partition, the suit 'B' schedule property was allotted to the share of Sambasivam. It is further stated that the plaintiff's father Kali was given only an extent of 6 cents. Stating that the suit 'B' schedule property is in continuous enjoyment and possession of Sambasivam till his death and Patta and other revenue records were standing in the name of Sambasivam for a long period, the defendants as the legal heirs of the said Sambasivam, claimed title to the property which is

described as suit 'B' schedule. It is also stated that the kist receipts filed by the plaintiff does not relate to the suit property.

7) The Trial Court after considering the documents Exs.A1 and A2 came to the conclusion that the plaintiff has established his title in respect of the property in Survey Number 181/22 measuring an extent of 12 cents which is described as suit 'A' schedule property. However, it was held by the trial Court that the plaintiff has failed to prove his possession in respect of the entire extent of suit property as he is in possession of 6 cents alone as revealed from the document Ex.A19.

8) In view of the findings of the Trial Court that the plaintiff has not proved his possession in respect of 6 cents which is described as suit 'B' schedule, though the declaratory relief was given in respect of 'A' schedule property, as regards the relief of permanent injunction, the Trial Court granted relief including suit 'B' schedule, on the ground that the suit 'B' schedule property is in the possession of the appellants.

9) Aggrieved by the judgement and decree of the Trial Court, the respondent/plaintiff has filed an appeal in A.S.No.53 of 2014 before the Principal Sub Court, Thindivanam. It is to be noted that the appellants have not preferred any appeal as against the judgement and decree of the Trial Court declaring the plaintiffs title in respect of suit 'A' schedule property. Therefore, this Court is of the view that the findings of the Trial Court as regards the title of suit 'A' schedule property has become final.

10) The Lower Appellate Court, considered the pleadings and evidence independently. After upholding the tittle of plaintiff in respect of suit 'A' schedule property, the question fell for consideration before the Appellate Court was whether the plaintiff is in enjoyment of the suit 'B' schedule property or not?

11) Though the appellants have filed few Kist receipts and Patta that was given under UDR, after considering the documents Exs. A3 to A12, the Kist receipts filed by the plaintiff; the Appellate Court held that the settlement Deed executed by the original owner was acted upon and that the plaintiff's father was in the possession and enjoyment of the suit property by paying Kists to the suit property. The documents Exs.A3 to A12 are also considered by this Court. Though the document Ex.A3 is not relied upon by this Court, all other documents Exs.A4 to A12 [Kist receipts]

were issued in respect of the properties pertaining to several Patta numbers including Patta No.134. The document Ex.A1 is the original sale Deed under which Muthammal, the plaintiff's predecessor in title purchased the property in 1944. The said document clearly reveals that the entire property measuring an extent of 12 cents in survey Number 181/22 was conveyed in favour of the plaintiff. The total extent of 12 cents in survey Number 181/22 is also referred to as a property registered in Patta No.134. The Kist receipts Exs.A4 to A12 clearly reveals that the entire extent in suit survey number, namely 12 cents is registered within the holdings of respondent /plaintiff in tune with the settlement Deed under Ex.A2 in favour of the plaintiff.

12) The Lower Appellate Court found that the suit 'B'' schedule property is therefore in the absolute possession and enjoyment of the plaintiff as it was pleaded in the plaint. The Appellate Court therefore held that the plaintiff has not only established the title with regard to the 12 cents of the property but also possession of both 'A' and 'B' schedule properties namely the entire extent of 12 cents in survey Number 181/22. Therefore the appeal filed by the respondent/plaintiff was allowed and the suit was decreed in toto by modifying the judgement and decree of the Trial Court.

13) Aggrieved by the judgements and decrees of the Courts below, the above Second Appeal is filed by the defendants in OS.No.131/2008. At the time of admitting the Second Appeal, this Court has framed the following substantial questions of law:

> “[1]Whether or not the Lower Appellate Court is right in holding that the appellant failed to prove their possession of B Schedule property on a premise which is beyond the case and pleadings of both sides?
>
> [2] Whether or not the finding of the Lower Appellate Court that Ex.B1 cannot be looked into for any purpose is correct in law?”

14) As held by the Courts below, this Court has no hesitation to hold that the plaintiff /respondent has proved his exclusive title to the entire suit 'A' schedule property. Since the appellants have not challenged the findings of the Trial Court declaring the title of plaintiff in respect of suit 'A' schedule property, the findings of the Trial Court has become final and therefore, it is not open to the

appellants to dispute the title of plaintiff over the entire suit 'A' schedule property (12 cents).

15)As pointed out by this Court earlier, the documents Exs.A4 to A12 are Kist receipts standing in the name of plaintiff's father by name Kali, with reference to several properties including the properties covered by Patta No.134. The fact that the plaintiff was paying Kists for few decades as seen from the documents Exs.A4 to A12 clearly proves the case of plaintiff about his possession as exclusive owner of the entire property.

16)As against the plaintiff's claim, the case of the defendant is inconsistent and self contradictory. It is admitted that Muthammal had executed the settlement Deed in the year 1966 in favour of the plaintiff. However the defendant contended that the said Muthammal had no right to execute the settlement Deed on the ground that the property was purchased in the name of Muthammal by her husband by name Mr.Koneri. No evidence was let in by the defendants as to how the said Koneri had purchased the property in the year 1944 in the name of his wife. Assuming that the property was purchased by the husband of Muthammal in her name, the presumption is that the sale Deed was for the benefit of Muthammal.

17)The further case of the defendants is that the suit property was divided between Sambasivam and Kali the plaintiff's father. It is not stated how the suit property became the joint property of Sambasivam and said Kali. The defendants claimed title to an extent of 6 cents as legal heirs of Sambasivam. Unless it is specifically pleaded and established that Sambasivam had title to suit 'B' schedule, this Court is unable to find any factual or legal basis for the contention of the defendants. Therefore the appellants claim that they are in possession of the property is on the false premise which is not substantiated by any verifiable material.

18) It is true that the suit 'B' schedule property stands in the name of one Sambasivam as per Patta under Ex.B1. Though it is stated that Sambasivam and his sons defendant's 1 to 4 are jointly enjoying the property by paying Kists, this Court is unable to find any other independent evidence to show physical possession of suit 'B' schedule property by any of the appellants. When title of plaintiff in respect of suit 'A' schedule property is admitted, this Court is unable to find any substance in the claim on the basis of subsequent revenue records without title.

19) It is a well settled proposition that 'possession follows title, when the property is a vacant land. In the present case also the suit property is described as a vacant land. It is not the case of the defendants that they are in physical possession of the property by putting up any construction or by doing any overtact so as to contend that they are in physical possession claiming title adverse to the respondent. When the revenue records stands in the name of plaintiff for a long period of years the recent entires in revenue records in the name of defendants cannot be considered to accept the case of defendants that they are in possession of the property.

20) From the reading the provision of Patta Pass Book Act, it is to be seen that the revenue officials exercising their power under Patta Pass Book Act, namely the Tashildar, Revenue Division Officer and District Revenue Officer is not competent to mutate names on their own on the basis of mere claim by any one. The power of revenue officials under Tamil Nadu Patta Pass Book Act, is limited under few circumstances and only in the case of death of any person or by reason of transfer of interest in the land or by reason of any other subsequent change in the circumstances, an application for modification of entries in the Patta Pass Book Act can be entertained.

21) In the present case, the Patta and revenue records stood in the name of Muthammal. Thereafter the Patta stands in the name of plaintiff's father, who happened to be the guardian of the plaintiff. Unless the defendant claimed title as a legal heir of Muthammal or plaintiff's father, it is not possible for the defendant to get Patta by a legal process contemplated under the Tamil Nadu Patta Pass Book Act. Therefore, this Court is unable to rely upon the documents namely the revenue records produced by the appellants to hold that they are in possession of the property. Though the Patta can be relied upon as a piece of evidence to prove one's possession, in the present case, this Court is unable to hold in favour of appellants as the plaintiff has filed several documents namely revenue records showing that the entire property in survey Number 181/22 is in the possession of the plaintiff's predecessors interest and thereafter in the name of plaintiff continuously. As pointed out earlier, this Court is unable to find transfer of Patta in favour of defendants/appellants by a legitimate process known to Law.

22) As a result, this Court finds no merits in the appeal and the substantial questions of law framed have no substance especially in the light of findings of facts by the Lower

Appellate Court. Accordingly this Second Appeal stands dismissed. No costs. The judgement and decree of the learned Principal Subordinate Judge, Tindivanam dated 12.12.2016 in A.S.No.53 of 2014, thereby reversing the judgement and decree of the learned District Munsif cum Judicial Magistrate, Vanur dated 20.10.2014 in OS.No.131 of 2008, is upheld.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Principal Sub Court,
   Tindivanam

2. The District Munsif cum Judicial Magistrate,
   Vanur.

Copy to:
The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Mr.Kaithamalai Kumaran, Advocate, S.R.No.29075

+1cc to Mr.Sai Krishnan, Advocate, S.R.No.29110

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MG(CO)
SU(23/05/2022)