



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

SECOND APPEAL (MD) No.883 of 2010

and

M.P. (MD) No.1 of 2011

1.M.Mohammed Fathima

2.Amara Beevi

.. Appellants/Respondents 1 & 2/
Defendants 1 & 2

-VS-

1.Mohammed Asiya Ammal

.. 1st Respondent/Appellant/
Plaintiff

2.Seiyad Ali Fathima

.. 2nd Respondent/3rd Respondent/
3rd Defendant

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 05.01.2010 made in A.S.No.96 of 2005 on the file of the Subordinate Judge, Tuticorin by reversing the Judgment and Decree dated 21.09.2004 made in O.S.No.1299 of 1995 on the file of the Additional District Munsif Court, Tiruchendur.

For Appellants : Mr.S.Kadarkarai

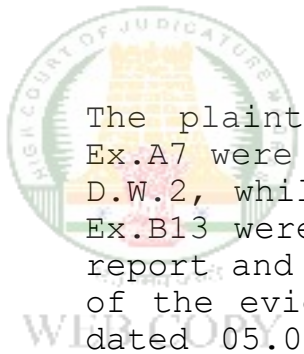
For Respondent-1 : Mr.T.Lajapathi Roy

Respondent-2 : Batta Due

JUDGMENT

Defendants 1 and 2, in O.S.No.1299 of 1995 on the file of the Additional District Munsif, Tiruchendur, are the appellants in this Second Appeal.

2. The 1st respondent herein namely Mohammed Asiya Ammal filed the said suit seeking the relief of declaration that the suit second schedule belongs to the plaintiff and for a direction directing the defendants to surrender possession to the plaintiff after removing the superstructure put up thereon. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues.



The plaintiff's son Sulaiman was examined as P.W.1 and Ex.A1 to Ex.A7 were marked. The 2nd defendant-Amara Beevi examined herself as D.W.2, while Mr.K.M.Sheik Mohammed was examined as D.W.1. Ex.B1 to Ex.B13 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C1 and Ex.C2. After consideration of the evidence on record, the trial court, by judgment and decree dated 05.01.2010, dismissed the suit. Challenging the same, the plaintiff filed A.S.No.96 of 2005 before the Sub Court, Tuticorin. By the impugned judgment and decree dated 05.01.2010, the decision of the trial court was set aside and the appeal was allowed and the suit was decreed as prayed for.

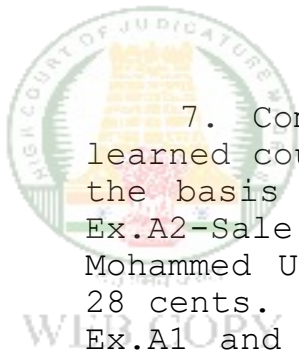
3. The 3rd defendant did not challenge the decision of the first appellate court. She appears to have accepted the impugned judgment and decree. Defendants 1 and 2 alone filed the second appeal.

4. The second appeal was admitted on 07.03.2022 on the following substantial question of law:-

"Whether the lower appellate court failed to note that the suit property is a Grama Natham and that the Government assigned the said property in favour of the appellant and consequently whether it is correct to grant a decree for declaration and recovery of possession?"

5. The learned counsel appearing for the appellants reiterated the contentions set out in the memorandum of grounds. He pointed out that defendants 1 and 2/the appellants herein were granted assignment pattas by the competent authority. Due to inadvertence, the said documents were omitted to be marked. He wanted permission from this Court to adduce the assignment pattas as additional documents. In the alternative, he prayed for remand. The core contention of the learned counsel appearing for the appellants is that when the property is a Grama Natham and when it has been occupied by the appellants herein, the first appellate court could not have granted the relief of declaration and recovery of possession in favour of the plaintiff. He called upon this Court to answer the substantial question of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial court.

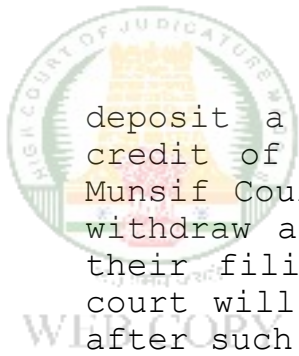
6. Even before replying to the submission of the learned counsel for the appellants, the learned counsel for the 1st respondent/plaintiff submitted that notwithstanding the outcome of the second appeal, the 1st respondent shall deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to the credit of O.S.No.1299 of 1995 on the file of Additional District Munsif Court, Tiruchendur so that each of the appellants can withdraw Rs.2 Lacs each. This undertaking given by the learned counsel for the 1st respondent, based on instruction, is recorded.



7. Coming to the merits of the matter, it is seen that the learned counsel appearing for the plaintiff has anchored his case on the basis of Ex.A2, dated 06.12.1965 and Ex.A3, dated 22.09.1994. Ex.A2-Sale Deed was executed in favour of the plaintiff by one Meera Mohammed Uzwan Labai. The property covered under Ex.A2 measures 28 cents. I went through the four boundaries description set out in Ex.A1 and Ex.A2. It is seen that the eastern boundary has been mentioned as "pilathu". This expression can be understood to mean as 'public pathway'. The Advocate Commissioner had also submitted report and plan. A look at Ex.A2 would show that even the constructions put up by the appellants herein are lying to the West of a road running North to South. The defendants have only marked some house tax receipts. They have not marked any other documents. Of course, the learned counsel appearing for the appellants would strongly plead that in the year 1994 itself, assignment pattas were issued in favour of the defendants and that on that basis, they put up constructions. I am normally not averse to admitting additional evidence, because discretion to admit additional documents should not depend on the vigilance or negligence of the parties. If the appellate court would require additional evidence for rendering a satisfactory verdict, then it should have no hesitation to admit additional evidence. But as rightly pointed out by the learned counsel appearing for the 1st respondent even in the written statement filed in the year 1996, there is not even a single reference to the assignment pattas alleged to have been issued in the year 1994. Since the written statement filed by the appellants before the trial court merely denies the case of the plaintiff and there is no claim of any title, I am not inclined to accept the request of the learned counsel appearing for the appellants to make an order of remand. In the written statement, there is also a plea of adverse possession. When a plea of adverse possession is made, it means that the defendants are accepting the title of the plaintiff and that they have perfected their title only by adverse possession.

8. Ex.A3 is the patta issued by the jurisdictional Tahsildar. Ex.A3 is not an assignment patta. On the other hand, it is a recognition of the occupation of the plaintiff over the suit property. Ex.A3 clearly corresponds to the suit property.

9. When the property is a Natham, the title would vest in the person, who has been in occupation and enjoyment thereof. By marking Ex.A1 to Ex.A3, the plaintiff has clearly established that she had been in possession and enjoyment of the suit property. Even according to the defendants, if the property is a Grama Natham, Government will not have title over the same and it could not have assigned the property in favour of the defendants. Therefore, the first appellate court rightly decreed the suit. The substantial question of law is answered against the appellants. However, in view of the undertaking given by the plaintiff through her counsel



deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to the credit of O.S.No.1299 of 1995 on the file of Additional District Munsif Court, Tiruchendur so that each of the appellants herein can withdraw a sum of Rs.2,00,000/- (Rupees Two Lakhs only) subject to their filing an affidavit accepting this decision. The executing court will entertain any execution petition from the plaintiff only after such deposit.

10. With these directions, the Second Appeal stands dismissed. M.P.No.1 of 2011 is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Subordinate Judge, Tuticorin.

2.The Additional District Munsif,
Tiruchendur.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-12648
[F] dated 17/03/2022)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-
12767[F] dated 17/03/2022)

S.A. (MD) No.883 of 2010

Dated: 16.03.2022