



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.03.2022

DELIVERED ON : 22.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.604 of 2021

and

C.M.P(MD)Nos.8010 & 8011 of 2021

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M.Subburaman ... Appellant/Appellant/Plaintiff
Vs
1.Karthika
2.Minor Niranja ... Respondents/Respondents/Defendants 2 & 3

*(Minor 2nd respondent
through her mother and natural
guardian 1st respondent)*

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Ramanathapuram in A.S.No.19 of 2016, dated 26.02.2020 in confirming the judgment and decree of the District Munsif Court, Ramanathapuram in O.S.No.48 of 2009, dated 28.06.2009.

For Appellant : Mr.S.Ramesh
for Mr.V.Raghavachari
For R-1 & R-2 : Mr.J.Barathan
for Mr.T.R.Jeyapalam

JUDGMENT

The plaintiff is the appellant herein.

2. The plaintiff had filed O.S.No.48 of 2009 on the file of the District Munsif Court, Ramanathapuram for the relief of declaration that the order passed by the revenue authorities in patta proceedings as null and void and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule properties. The suit was dismissed by the trial Court. The plaintiff had filed A.S.No.19 of 2016 before the Subordinate Court, Ramanathapuram. The learned Subordinate Judge was pleased to dismiss the appeal. As against the concurrent findings, the present Second Appeal has been filed by the plaintiff.

3. The plaintiff has contended that the suit schedule property having an extent of 8 cents is the ancestral property of the plaintiff, which was originally in possession of the plaintiff's father, namely, Madhava Naidu. After the death of Madhava Naidu, the plaintiff is in possession of the suit schedule properties. The



plaintiff has further contended that some of the co-sharers of the plaintiff had filed O.S.No.46 of 2002 before the Additional District (Fast Track Court), Ramanathapuram, claiming partition. Based upon the arguments advanced on the side of the plaintiff and his father, the said suit was dismissed on 15.12.2003.

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4. The plaintiff has further contended that the defendants claim that the plaintiff's father has executed a power deed with regard to the suit schedule properties on 05.07.2000. Based upon the said power deed, the defendants claim that he has sold the suit schedule properties in favour of his mother on 14.07.2000. The mother of the defendant is said to have executed a Will in favour of the defendant. Since the suit schedule property is the ancestral property of the plaintiff's father, the said documents will not affect the right of the plaintiff. The plaintiff has further contended that his father has not executed any power deed in favour of the defendant.

5. The plaintiff has further contended that the Tahsildar had refused to issue patta in the name of the defendants. However, the Revenue Divisional Officer had issued a patta in favour of the defendant on 07.03.2006 and thereafter, the said order has been confirmed by the District Revenue Officer on 29.01.2009. Hence, the plaintiff had prayed that the said orders issued by the revenue authorities in patta proceedings may be declared as null and void and a decree for permanent injunction may be granted.

6. The defendants filed a written statements contending that the suit schedule property was never the ancestral property of the plaintiff. The defendants have further contended that O.S.No.46 of 2002 was disposed of and in the said judgment, there is no reference about the title or possession of the plaintiff or his father.

7. The defendants have further contended that the plaintiff's father has executed a power deed in favour of the defendant under Exhibit B2 on 05.07.2000 for an extent of 12 and a half cents. Based upon the said power deed, the defendant has executed a sale deed in favour of his mother, Radha Ammal under Exhibit B3 on 14.07.2000. The sale consideration was paid to the father of the plaintiff and he has issued a receipt under Exhibit B4. The defendant further contended that his mother Radha Ammal has executed a Will on 14.09.2000 under Exhibit B5 and since Radha Ammal had passed away on 13.12.2000, the Will has come into force. Hence, he is having title to the suit schedule properties and he is in possession of the said property.

8. The defendants have further contended that the plaintiff's father, namely, Madhava Naidu had cancelled the power deed in favour of the defendants on 22.07.2000. In the said cancellation deed, the father of the plaintiff has admitted that already the defendant has



further contended that in O.S.No.46 of 2002, the prayer for partition was dismissed, on the ground that the entire suit schedule property belongs to Madhava Naidu and hence, the contention of the plaintiff that, it is an ancestral property in the hands of his father is not legally correct.

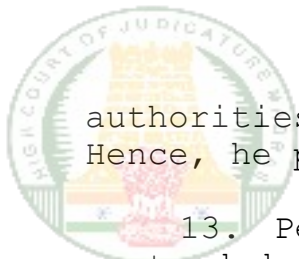
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9. The trial Court after appreciation of the oral and documentary evidence, arrived at a finding that the defendant has specifically disputed the title of the plaintiff. However, the plaintiff has filed only a suit for permanent injunction without a prayer for declaration of title and hence, the suit is not maintainable. The trial Court further found that as per Section 14 of the Tamil Nadu Patta Passbook Act, the present suit is barred.

10. The First Appellate Court after re-appreciation of oral and documentary evidence, concurred with the findings of the trial Court and found that the present suit is not maintainable, in view of the bar under Section 14 of the Tamil Nadu Patta Passbook Act. Where any order is passed in the Patta Passbook Act, the remedy that is open to the plaintiff is only to approach the civil Court for declaration of title. But the plaintiff has not filed a suit for declaration of title, but has merely challenged the orders passed by the revenue authorities. The First Appellate Court further found that there is a cloud over the title of the plaintiff and hence, the present suit for permanent injunction is not maintainable. The First Appellate Court further found that the plaintiff has not established his possession over the suit schedule properties to get a decree for permanent injunction.

11. The learned Counsel appearing for the appellant had contended that the plaintiff has specifically pleaded that the power deed will not bind the plaintiff. He further contended that the title of the plaintiff's family has been confirmed in the judgment and decree in O.S.No.46 of 2002 and hence, the finding of the Courts below that the present suit for permanent injunction is not maintainable without a prayer for declaration of title is not legally sustainable.

12. The learned Counsel for the appellant further contended that the first defendant in the present suit, namely, Vijaya Ragavan was also a party to O.S.No.46 of 2002 and hence, the Courts have arrived at an erroneous finding that the judgment in the previous proceedings would not be binding upon the present defendants. The learned Counsel for the appellant further contended that in view of the findings in O.S.No.46 of 2002, the plaintiff's father will not have any independent right to execute alleged power deed or alienate the same covering the share of the plaintiff also. He further contended that Section 14 of the Tamil Nadu Patta Passbook Act only prohibits the parties from challenging the entries made in the



authorities have decided the title over the dispute at property. Hence, he prayed for admitting the above Second Appeal.

13. Per contra, the learned Counsel for the respondents had contended that the previous suit, namely, O.S.No.46 of 2002, the dispute was only with regard to the fact that whether the suit properties are liable for partition or not. There was no issue with regard to the fact that who is the owner of the suit schedule property. Even the said suit for partition was dismissed holding that the properties are the absolute properties of the plaintiff's father. He further contended that the plaintiff's father has executed a registered power deed and based upon which a sale deed has been executed by the defendant in favour of his mother. Thereafter, the defendant's mother has executed a Will through which the defendant has become the owner of the suit schedule properties. The plaintiff has not chosen to challenge the power deed or the sale deed executed pursuant to the said power deed. He further contended that the sale deed executed by the defendant in favour of his mother with regard to the suit schedule property was confirmed by the father of the plaintiff in the power of attorney cancellation deed, dated 22.07.2000. Hence, the plaintiff cannot be heard to contend that the said sale deed is not valid. He further contended that the title of the plaintiff has been specifically disputed in the written statement and the present suit for permanent injunction is not maintainable in the eye of law. Hence, he prayed for dismissal of the Second Appeal.

14. I have carefully considered the submissions made on either side.

15. The suit schedule properties were originally subject matter of O.S.No.46 of 2000 on the file of the Additional District (Fast Track Court) Ramanathapuram. In paragraph No.54 of the said judgment, it has been categorically found that the said property was originally owned by Guruviah Naidu and thereafter, it devolved upon the father of the plaintiff, namely, Madhava Naidu. Hence, it is evident that the suit properties are the exclusive properties of the plaintiff's father. Only on the said ground, the prayer for partition by the other co-sharers was rejected in O.S.No.46 of 2002. Hence, the absolute owner of 12 and a half cents, namely, Madhava Naidu had executed a power deed in favour of the defendant under Exhibit B2. Based upon the said power deed, the defendant has executed a sale deed in favour of his mother, Radha Ammal under Exhibit B3. On the same day, the sale consideration has been handed over to the father of the plaintiff and a receipt has been issued by the father of the plaintiff under Exhibit B4. Thereafter, the plaintiff's father has chosen to cancel the general power of attorney on 22.07.2000. According to the defendant, the cancellation deed clearly confirms Exhibit B3 sale deed in favour of the defendant. Only with regard to the balance extent of 4 and



a half cents, the deed of cancellation of power of attorney has been executed by the defendant's father.

16. All the above said facts will clearly indicate that the title has passed on from the plaintiff's father to the defendant's mother way back on 14.07.2000. Based upon the said sale deed, the defendant's mother has executed a Will in favour of the defendant on 14.09.2000. The defendant's mother had passed away on 13.12.2000 and the property has got bequeathed in favour of the defendant.

17. Based upon the said sale deed and the Will, the defendant has approached the revenue authorities. Though the Tahsildar had refused to issue patta, the Revenue Divisional Officer and the District Revenue Officer have granted patta in favour of the defendant. These orders passed by the revenue authorities are under challenge in the present suit.

18. Section 14 of the Tamil Nadu Patta Passbook Act, 1986 is extracted as follows:

"14. Bar of suits.-No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration."

19. A careful perusal of the above said Section will clearly indicate that no suit can be filed as against the revenue authorities in respect of a claim to have a entry made in the patta passbook which is maintained under this Act. However, if a person is aggrieved over any entry made in the patta passbook, he can very well institute a suit as against any person denied or interested to deny such right for a declaration of his rights under the Specific Relief Act. Hence, it is clear that where the revenue authorities have chosen to grant patta in favour of a party, the aggrieved party has to approach the civil Court with a prayer for declaration of title. In the present case, though the defendant has produced several documents raising a cloud over the title of the plaintiff, the plaintiff has not chosen to pray for declaration of title. That apart, the present suit is not maintainable, in view of the bar under Section 14 of the Tamil Nadu Patta Passbook Act, 1986.



20. The trial Court as well as the Appellate Court have arrived at a concurrent finding that the plaintiff has not established his title over the suit schedule property. The plaintiff has also not produced any document whatsoever to establish his possession over the suit schedule properties. In view of the above said discussion, I do not find any question of law much less a substantial question of law to interfere in the above Second Appeal. The judgment and decree of the Courts below are confirmed. The Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

btr

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,
Ramanathapuram.

2.The District Munsif,
Ramanathapuram.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,Madurai. (2 Copies)

+1 CC to M/s.V. RAGHAVACHARI, Advocate (SR-27511[F]
dated 22/06/2022)

+1 CC to M/s.T.R. JEYAPALAM, Advocate (SR-27668[F] dated 23/06/2022)
Judgment made in

S.A(MD)No.604 of 2021

22.06.2022

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