



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2022

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.411 of 2021
and
C.M.P(MD)No.5453 of 2021

B.S.Balasubramanian ... Appellant/Appellant/1st Defendant

Vs.

1.B.Ramesh ... 1st Respondent/1st Respondent/Plaintiff

2.The Tahsildar,
Nilakottai Taluk,
Dindigul District. ...2nd Respondent/2nd Respondent/2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 26.11.2020 passed in A.S.No.11 of 2018, on the file of the Principal District Court, Dindigul, confirming the judgment and decree, dated 18.08.2017 passed in O.S.No.439 of 2012, on the file of the Principal Sub Court, Dindigul.

For Appellant : Mr.S.Kumar
for K.P.S.Palanivel Rajan

For R - 1 : Mr.T.Arul
for Mr.A.R.Kannappan

For R - 2 : Mr.G.Suriyananth
Additional Government Pleader

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.439 of 2012, by the Principal Sub Court, Dindigul and in A.S.No.11 of 2018, by the Principal District Court, Dindigul, are being challenged in the present Second Appeal.

2. The first respondent/plaintiff has instituted a suit in O.S.No.439 of 2012 on the file of the trial Court for the relief of declaration and permanent injunction, wherein, the present appellant and the second respondent have been shown as defendants.



3. The case of the plaintiff was that originally, the suit property was assigned to one Marudhai Chettiar, son of Veerappan Chettiar by the Tamil Nadu Government, who in turn had mortgaged the property before the Solavandhan L.M.Bank for a sum of Rs.3,500/-. At this juncture, the said Marudhai Chettiar sold the property to the plaintiff's father-V.Balasubramani on 09.11.1973 by a registered sale deed for a valid sale consideration for a sum of Rs.7,000/-. The plaintiff's father remitted a sum of Rs.3,000/- before the Bank and paid the balance Rs.3,000/- and also paid the advance of Rs.1,000/- to the said Maruthai Chettiar. Later on, the plaintiff's father mutated the revenue records in his name and has been paying kist and obtained electricity service connection in S.C.No.75. The said V.Balasubramani had executed a Will in favour of the plaintiff and his brother, dated 27.01.2004 and when their father died on 16.05.2004, the said property devolved on the legal heirs of V.Balasubramani, by virtue of the Will, dated 27.01.2004 and after the death of their father, the suit property came to be in possession of the plaintiff and he also applied for patta before the revenue authorities. The second defendant unilaterally had issued patta only for a reduced extent. Hence, the plaintiff has approached the second defendant for correcting the patta. At that point of time, the first defendant had given an objection before the Revenue Divisional Officer, Dindigul and the Revenue Divisional Officer, Dindigul, had dismissed the said objection filed by the first defendant and the first defendant filed an appeal before the District Revenue Officer, which was also dismissed on 09.07.2012. In spite of the said rejection, the first defendant interfered with the peaceful possession and enjoyment of the plaintiff. Hence, the plaintiff has filed the suit for the relief stated supra.

4. The first defendant had filed a written statement, denying all the averments made in the plaint and submitted that the suit property was assigned to him on 30.04.1982 by the Tahsildar, Nilakottai and issued patta No.697 for the said land. He has been paying kist for the fasli 1417, but the Village Administrative Officer refused to collect the tax. While so, the plaintiff's father V.Balasubramani died on 16.05.2008 and they have not obtained patta prior to his death. The patta was transferred only on the basis of the Will, dated 27.01.2004 and the Will was a forged one and not valid and the same cannot be accepted, as the Government assigned the land to Maruthai Chettiar only to enjoy the property and the plaintiff's father has got no right to mortgage or lease the property. Further, the plaintiff's father has not obtained permission for purchasing the property. The first defendant has been enjoying the property for more than 27 years without any interruption and he has not interfered with the possession of the plaintiff and the suit has to be dismissed.

5. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as P.W.1 and Exs.A1 to A14 were



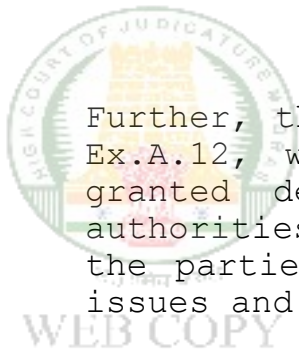
marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B.1 to B.7 were marked and also Ex.X.1 to Ex.X.4 were marked.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the first defendant, as appellant, has filed an Appeal Suit in A.S.No.11 of 2018. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the first defendant, as appellant.

9. The learned counsel appearing for the appellant/first defendant would submit that the Courts below ought to have dismissed the suit on the ground that the plaintiff has not proved the order of assignment made in favour of Maruthai Chettiar. Further, the Courts below have committed an error in relying Ex.A.1-sale deed and Ex.A.2-Will executed in favour of the plaintiff and held that the plaintiff has established his title over the suit property. The Courts below have failed to appreciate the essential condition enumerated under Section 63 of the Hindu Succession Act and Section 68 of the Indian Evidence Act to prove the execution of the Will. Further, the Courts below ought not to have relied upon Exs.A.4 to A.9 and came to the conclusion that the suit property is in possession of the plaintiff, when those documents are not related to the suit property. Further, the Courts below have committed an error in rejecting Exs.B.1 to B.3 viz., UDR Register, Kist receipt and Chitta in the name of the appellant/first defendant from 1998 onwards and these documents would clinchingly proves the title of the appellant over the suit property. The trial Court has wrongly placed the burden of proof on the first defendant to prove his title over the suit property when the plaintiff has miserably failed to discharge his initial burden to establish his rights over the suit property in accordance with Sections 101 to 103 of the Indian Evidence Act. The first Appellate Court has failed to consider the averments in the plaint that the plaintiff claiming title based on the Will alleged to have been executed by his father and execution of Will is not proved in accordance with provisions of the Act, but the first Appellate Court held that the question of proving the execution of the Will is not an issue in the suit and given a perverse finding that the plaintiff inherited the suit property by his father. But the admitted fact that the plaintiff is not alone the legal heir of the deceased Balasubramanian. Hence, the claim of the plaintiff that he is an absolute owner is totally untenable.



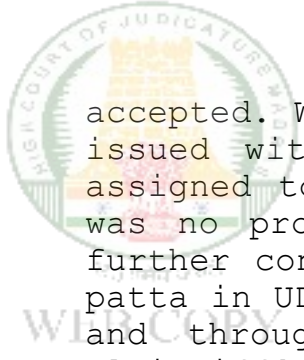
Further, the Courts below ought not to have relied upon Ex.A.11 and Ex.A.12, which are the proceedings of the revenue authority and granted decree in favour of the plaintiff, when the revenue authorities are not the competent authority to decide the title of the parties. The first Appellate Court has failed to frame proper issues and prayed for allowing the Second Appeal.

10. Heard the learned counsel for the appellant, the learned counsel for the first respondent and also the learned counsel for the second respondent and also perused the records carefully.

11. On going through the materials available on record, it is seen that the plaintiff's father V.Balasubramani has purchased the property and he has also executed a Will on 27.01.2004 by a registered document and as per the same, the plaintiff is entitled to 'B' schedule property, which is the second item in the suit schedule property. Further, as per the said document, the plaintiff is entitled to his share. On 16.05.2004, the plaintiff's father died, which has been proved by a Death Certificate and the same has been marked as Ex.A.3 and as per the Will, the plaintiff had succeeded the suit property and mutation has also been effected by the plaintiff in the revenue records and patta has been granted in favour of him on 05.03.2009 and a computerised patta was issued to him and further, the revenue documents would prove that the plaintiff is in possession and enjoyment of the property from the date of his mutation. The first defendant has objected the plaintiff's possession and enjoyment of the suit property by stating that on 30.04.1982 under UDR scheme, he has been issued with patta in patta No.1267 by the Tahsildar, Nilakottai. The UDR patta cannot be granted by the Tahsildar.

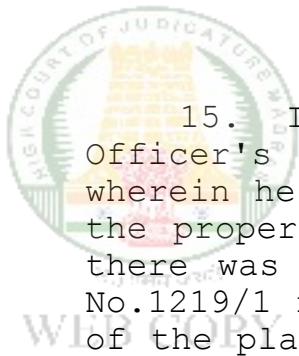
12. The first defendant further submitted that after the patta issued for 27 years, he has been paying kist for the said lands, as the same was also proved by the documents, which is a registered UDR, which was marked as Ex.B.1 and he has been paying kist receipt, which was marked as Ex.B.2 and chitta has been marked Ex.B.3 and obtained patta No.697, which has been marked as Ex.B.4 and he is in possession and enjoyment of the same, but when the first defendant had submitted that when the said land has been assigned to Maruthai Chettair, he cannot sell it or mortgaged it and hence, the said sale is not valid and only at that point of time, the Tahsildar, Nilakottai under UDR scheme, has given him an assignment.

13. It is necessary to peruse the cross-examination of D.W.1 to verify as to how the said land has been allotted to him by the Tahsildar, Nilakottai. D.W.1 in his cross-examination submitted that as per Ex.B.1, UDR register Survey Nos.1218/1 and 1219/1, also comprised in the said document. In Survey No.1218/2 alone, lands are assigned to him and the disputed property was also assigned to him in the year 1982, but to prove the same, no such assignment deed or assignment document has been issued in favour of the plaintiff, is



accepted. When the first defendant has accepted that he has not been issued with any such document to prove that the land has been assigned to him, the claim made by him is to be rejected as there was no proof how the alleged land has been assigned to him. His further contention that the plaintiff's father was also issued with patta in UDR scheme in Survey No.1219/1, which was marked as Ex.A.14 and through Ex.A.1, the sale deed executed in favour of the plaintiff's father was not known to him would show that the first defendant is just making a claim only based on the alleged UDR patta. Further, the finding that the plaintiff's father's name and the defendant's name being one and the same and mistakenly UDR patta has been granted by misunderstanding was not accepted by him. When he has not proved his title to the property by way of an assignment order or any other document issued by the Revenue Department, he cannot now come and claim that he has got right under the UDR patta issued in his favour, is not accepted. Further, the first defendant also owns some other lands in neighbouring survey number and the plaintiff's father name and his name being the same, erroneously some officer would have issued patta in his name. Without any proper deed of assignment, there cannot be any patta being issued by the authority. Only in the year 2009, after enquiry patta has been mutated again in favour of the plaintiff, which has been marked as Ex.A.10.

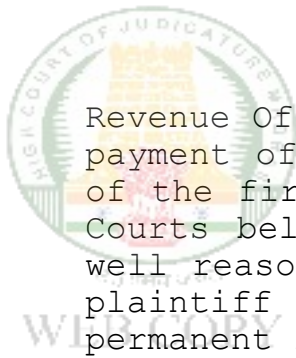
14. When the first defendant objected for issuance of patta in favour of the plaintiff, the Thasildar has examined the claim made by the plaintiff and dismissed the objection made by the first defendant. The first defendant also approached the Revenue Divisional Officer and the Revenue Divisional Officer also dismissed his application, which has been denied by the first defendant as if he was not aware of the said order. The said order is dated 26.05.2010 and the Revenue Divisional Officer observed in his order that the claim made by the first defendant regarding the said land alleged to have been allotted to him by way of an assignment made in the year 1982, but no document whatsoever has been produced to prove his stand. He has only produced a kist receipt and mere production of kist receipt alone will not be sufficient to prove his claim. It is seen that before 1973, the said land has been assigned in favour of one Maruthai Chettiar and recited in the registered document produced by the plaintiff proves the same and the plaintiff's family are in possession, who had dug a Well and installed a motor pump by getting electricity connection and doing cultivation has been proved by the plaintiff which confirms the possession of the plaintiff and there is no truth in the claim made by the first defendant. That being the case, the first defendant suppressed the above said fact and has also denied the same in his cross-examination. Further in his cross-examination, he had admitted that he has filed a revision before the District Revenue Officer. So it is proved that the first defendant is aware of the Revenue Divisional Officer's proceedings and order.



15. It could be further seen from the District Revenue Officer's proceedings in Na.Ka.No.23304/2010/A4, dated 09.07.2012, wherein he has observed that there was no prohibition in mortgaging the properties assigned in the Tamil Nadu Land Development Bank as there was no ban and also confirmed that the said land in Survey No.1219/1 measuring a total extent of 4-47 acres stood in the name of the plaintiff's father Balasubramanian and patta has been issued in his name in Patta No.1152. That being the case, before 1968 itself, the said Maruthai Chettiar has mortgaged the property in the Tamil Nadu Land Development Bank and from the recitals of the said document Ex.A.1-sale deed, it has been found that the first defendant has got no right over the property. If aggrieved, he can proceed against the said order within 60 days to approach the competent civil Court for redressing his grievance, but inspite of the said order being passed in the year 2012, the first defendant has not taken any steps to prove his case, by filing a civil suit. Only the plaintiff has filed the suit which is also admitted by him clearly. Hence, it has been made clear that the plaintiff's father has purchased the property from one Maruthai Chettiar and based on the Will, the plaintiff has inherited the same from his father and accordingly, the plaintiff is entitled for seeking a declaration in respect of the said property. Further, the document is in possession of the plaintiff and all the revenue proceedings initiated by the first defendant which had ended in favour of the plaintiff would prove that the plaintiff is not entitled for the prayer as prayed for. As the first defendant had failed to produce any document to prove that UDR patta has been granted to him, only based on the document when he claimed that it has been assigned to him in the year 1982 by the Tahsildar, Nilakottai, but no such document has been filed to prove his case. That being the case, the first defendant's claim made has to be rejected in toto. In the recitals of the sale deed it has been stated as follows:-

"கீழ்க்கண்ட சொத்து எனக்கு சர்க்காரால் ஜாரி செய்யப்பட்டு நான் பண்படுத்தி கிணறு வெட்டி அனுபவித்து வருகிற கீழ்க்கண்ட புஞ்சை தோட்டத்தை நாளது தேதியில் தங்களுக்கு நான் கிரையம் செய்து கொடுத்து ரூ.7,000/-ம் கீழ்க்கண்ட பண்பற்று விவரப்படி தங்களிடம் நான் பெற்றுக்கொண்டபடியால் மேற்படி ரூபாய்க்கு அடியிற்கண்ட புஞ்சைத் தோட்டத்தை நாளது தேதிமுதல் தாங்கள் கைவசம் வைத்து இஷ்டம் போல் சர்வ சுதந்திர பாத்தியமாய் புத்திர பெளத்திர பரம்பரையாய் தானாதி விநியோக விற்கிரையங்களுக்கு யோக்கியமாய் ஆண்டனுபவித்து கொள்வீர்களாகவும்."

16. The first defendant claims that he is in possession for more than 27 years by producing mere kist receipts also not proved his case and no document other than the said document filed. The plaintiff's father name is also Balasubramanian and the first defendant's name is also being Balasubramanian and the authorities have erroneously issued kist receipts to the first defendant and it may be presumed that by confusion, the same would have been erroneously issued to him. Further, the patta issued by the revenue authorities under the UDR patta has been cancelled by the District



Revenue Officer, this Court has come to the conclusion that the mere payment of kists will not give any right to the property in favour of the first defendant and the same is also made clear by both the Courts below and this Court is not inclined to interfere with the well reasoned Judgments and Decrees passed by the Courts below. The plaintiff has clearly proved his case for grant of declaration and permanent injunction.

17. For the reasons aforesaid, this Court is of the considered view that no questions of law much less substantial questions of law has been made out by the appellant/first defendant to interfere with the well considered judgments and decrees rendered by the Courts below and thus, the Second Appeal fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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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 Principal District Judge, Dindigul.

2.The Principal Subordinate Judge, Dindigul.

Copy to

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.A.R.KANNIAPPAN, Advocate (SR-1418[F] dated 12/01/2022)

Judgment made in
S.A(MD)No.411 of 2021
11.01.2022

na(CO)

TR(04.03.2022) 7P 6C