



WEB COPY



S.A.No.1338 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1338 of 2003
and
C.M.P.No.3468 of 2018

1.B.S.N.Robert
2.Vadivel Servai (Died)
3.Kolanji
4.Poonkodi
5.Mathiyalagan
[Appellants 3 to 5 brought on record
as Legal Representatives of the
deceased 2nd appellant viz., Vadivel Servai,
vide Order of Court dated 13.06.2022
made in C.M.P.No.1167 of 2021
in S.A.No.1338 of 2003

... Appellants/Defendants

- Vs -

Kengai Ammal

... Respondent/plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Additional District and Sessions Judge, Fast Track Court, Kallakurichi made in A.S.No.159 of 2002 dated 30.06.2003 in confirming the Judgment and Decree of the I Additional



S.A.No.1338 of 2003

District Munsif, Kallakurichi made in O.S.No.123 of 1986 dated 30.11.1998.

For Appellants : Mr.P.Valliappan, Sr.Counsel
for Mr.S.Shriram Narayanan

For Respondent : Mr.P.Dinesh Kumar

JUDGMENT

The instant second appeal has been filed at the instance of the defendants. The respondent herein is the plaintiff before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

The brief facts which gives rise to the instant second appeal is that:

3. The suit properties are in possession and enjoyment of the plaintiff since 1974 and that the plaintiff has been paying kist for the suit property. Though there was a fraudulent transfer of patta in the name of the 1st defendant, the possession and enjoyment of the plaintiff was recognised by the authorities. Further, the suit property was included in patta No.162 in the name of the plaintiff. The plaintiff further submit that on coming to know



S.A.No.1338 of 2003

about the grant of patta, the 1st defendant was colluded with the Government officials and annulled patta without notice. The plaintiff made an arrangement to file the appeal against the Special Tahsildar and hence, the plaintiff has come forward to file the suit for declaration and for permanent injunction.

4. The said suit was resisted by the defendants by contending that the plaintiff has no right or title over the suit property, and the 1st defendant is the lawful owner of the suit property and the suit property was in possession of the 1st defendant only. It was also contended by the 1st defendant that he has executed the agreement of sale in favour of the 2nd defendant on 18.02.1986. Hence, the defendants submitted that the plaintiff has no right over the suit property and hence, prayed to dismiss the suit.

Evidence and documents:-

5. Before the trial Court, the plaintiff has marked 33 documents as Exs.A1 to A33, and on behalf of the defendants, 16 documents were marked as Exs.B1 to B16. On behalf of the plaintiff two witnesses were examined as PW1 and PW2 and on behalf of the defendants three witnesses were examined as DW1 to DW3.

Finding of the both the Court below:-



S.A.No.1338 of 2003

6. The trial Court after having considered the oral and documentary evidence, decreed the suit as prayed for. Aggrieved with the same, the defendant approached the First Appellate Court and the First Appellate Court confirmed the decree and thereby dismissed the appeal. Aggrieved with the same, the defendant is before this Court by way of this second appeal.

7. This Court while admitting the second appeal has framed the following substantial questions of law :

"1. Whether on the facts and in the circumstances of the case, the Courts below were right in holding that the respondent/plaintiff has entitled to get declaration and permanent injunction without any title deeds but based on the documents of patta and kist receipts from the year 1985?

2. Whether on the facts and in the circumstances of the case, the Courts below were correct in granting a decree in favour of plaintiff considering the revenue records as title deeds moreso when plaintiff had not claimed adverse possession?

3. Whether the first appellate Court is right in dismissing the appeal without disposing of I.A.No.65 of



S.A.No.1338 of 2003

WEB COPY

2001, which is for production of additional documents?



S.A.No.1338 of 2003

WEB COPY

Submissions of either side counsel:-

8. The learned Senior Counsel appearing on behalf of the appellant/defendant would submit that, though the claim of the plaintiff is based upon the patta, subsequent to that they moved writ petition in W.P.No.22345 of 1993 wherein, there was a direction to Revenue Officials to reconsider the earlier order passed by them. The learned Senior Counsel would also further contend that, based upon the order in WP, vide Order dated 09.04.2001, restored the assignments in the name of the 1st defendant. The learned Senior Counsel has invited the attention of this Court in respect of I.A.No.65 of 2001 before the First Appellate Court to receive such document. Whereas, the First Appellate Court without considering the said submission has disposed the appeal. The learned Senior Counsel has also further invited the attention of this Court about the CMP No.3468 of 2018 filed before this Court to receive the additional document qua the order passed by this Court in W.P.No.1837 of 2002, challenging the order of the Land Commissioner dated 09.04.2001.

9. Per contra, the learned counsel for the respondent/plaintiff would contend that as on the date of filing of the suit, the patta stands in their name and that the alleged cancellation of patta, by virtue of the order dated



S.A.No.1338 of 2003

09.04.2001 passed by the Land Commissioner is without any notice to the plaintiff. Therefore, the same will not bind them. As a consequence, the decree granted by the Trial Court as well as the First Appellate Court is perfectly in order. It was also further contended by the learned counsel for the respondent/plaintiff that under Section 100 of CPC, unless there is a perversity in the order, there is no scope for this Court to interfere the well-considered finding of both the Courts below. Hence, prayed to dismiss the Second Appeal.

10. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

11. Before we delve into the merits of the matter, this Court deems it appropriate to consider the application in CMP.No.3468 of 2018 and the order passed by the First Appellate court in I.A.No.65 of 2001. It is an admitted fact in I.A.No.65 of 2001 these defendants have attempted to file additional document under Order XLI Rule 27 of CPC qua the order of the Land Commissioner, by and in which, the very genesis of the plaintiff's claim viz., Patta No.162 on 30.03.1985 was cancelled and an assignment was made in favour of the defendants.



S.A.No.1338 of 2003

WEB COPY

12. However, the learned counsel for the plaintiff would contend that there was no notice issued by the Land Commissioner, before ordering the assignment in favour of the defendants on 09.04.2001. Therefore, would contend that such order will not bind upon them.

13. At this juncture, the learned Senior Counsel appearing on behalf of the defendants invites the attention of this Court about CMP.No.3468 of 2018. Wherein, the defendants wanted to file an additional documents viz., the order passed in WP.No.1837 of 2002.

14. On perusal of the records, the said writ petition was filed by the plaintiff/respondent against the order of the Land Commissioner dated 09.04.2001, which according to the plaintiff, no notice was given to them before passing such an order. Though such defence was raised by the plaintiff, still she has filed a writ petition challenging the validity of the said order. But, the said writ petition was allowed to be dismissed for default and admittedly as on today, no application was filed for restoration of the writ petition. As such, the order passed in WP.No.1837 of 2002 on 24.08.2007 has reached it's finality. If that being the case, the very challenge put forth by the plaintiff in respect of the cancellation of patta qua the order of the Land Commissioner dated 09.04.2001 was negated and thereby, the order



S.A.No.1338 of 2003

dated 09.04.2001 will bind upon the parties qua the plaintiff and the defendants.

15. It is pertinent to mention here that the suit was filed during 1986 and we are in 2023, almost 27 years has passed. In the interregnum, there are many subsequent developments has sprouted. Such subsequent developments has got a direct nexus with the genesis of the suit viz., patta no.162 dated 30.03.1985. Therefore, such subsequent developments has to be given due regard. Otherwise, it would become unfair to either party. Therefore, such documents are required to be received as the same would advance the cause of justice and would be more useful for this Court to pronounce the judgment effectively. Hence, this Court deems it appropriate to allow I.A.No.65 of 2001 filed before the First Appellate Court and also the CMP.3468 of 2018 filed before this Court. If that being the case, the order of the Land Commissioner dated 09.04.2001 is to be received an evidence as Ex.A34 and the certified copy of the order in WP.No.1837 of 2002 is also to be received an evidence as Ex.A35.

16. Coming back to the merits of the matter, the entire suit revolves around the patta granted in favour of the plaintiff on 30.03.1985. Now that as per the Land Commissioner's order (Ex.A34), the patta, which stands in



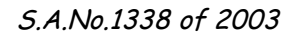
S.A.No.1338 of 2003

the name of the plaintiff, was cancelled and the property was assigned in the name of the 2nd defendant. It is equally pertinent to mention here that though the plaintiff contended that the order of the Land Commissioner (Ex.A34) will not bind them as no notice was issued, by filing the writ petition in WP.No.1837 of 2002 challenging Ex.A34 order, the plaintiff is estopped to take such defence. If really the plaintiff has got case on account of absence of notice, he would have agitated the same before the Writ court and would have obtained the order in his favour. Here, the writ petition was dismissed under Ex.A35 order, by confirming the Land Commissioner order (Ex.A34).

17. What would emerge from the above discussion is that the very fulcrum of the suit viz., patta dated 30.03.1985 [Ex.A5] is not in force. Further, the suit property is now assigned to the 2nd defendant under Ex.A33.

18. It is pertinent to mention here that the plaintiff seeks relief based upon Ex.A5-patta and not on any other ground. Now that Ex.A5-patta stands cancelled through Ex.A34-assignment, which was confirmed by Writ Court in Ex.A35 order. Therefore, the plaintiff cannot have any relief for declaration.

19. At this juncture, the learned counsel for the plaintiff would invite the attention of this Court in respect of Ex.A32 viz., notice dated 08.11.1985



20. In the result, this Second Appeal and CMP.3468 of 2018 are allowed. The judgment and decree of both the Courts below are set aside, thereby, the suit in O.S.No.123 of 1986 is ordered to be dismissed. There shall be no order as to costs.

Neutral Citation Case: Yes/No



S.A.No.1338 of 2003

List of documents marked before this Court:-

<i>Exhibit No.</i>	<i>Dated</i>	<i>Description</i>
A34	09.04.2001	Order of the Land Commissioner (photo copy)
A35	24.08.2007	Certified copy of the order in WP.No.1837/2002

20.12.2023
(2/2)

To

1. The Additional District and Sessions Judge,
Fast Track Court,
Kallakurichi.
2. The I Additional District Munsif,
Kallakurichi.



WEB COPY



S.A.No.1338 of 2003

C.KUMARAPPAN, J.,

ssn/kmi

S.A.No.1338 of 2003
and
C.M.P.No.3468 of 2018

20.12.2023