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SA.No.75 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.75 of 2007

1. Saradhambal
2. Palani (died)
3.Bhoopathy
4. Jagadeesan
5.Panchatcharam
6.Selvi
7.Elumalai
8.P.Mohan
9.P.Loganathan
(Appellants 8 and 9 are brought on record as legal heirs of the deceased 2nd appellant vide Court order dated 08.01.2019 made in C.M.P.Nos.475,476 and 478/2019 by RPAJ)

... Appellants

- Vs -

1. Mohammed Khan
2. Theof Khan(died)
3. The District Collector,
Tiruvannamalai.
4. The Tahsildhar, Chengam Taluk, Chengam



SA.No.75 of 2007

5. T. Begum Bee

6. Rahmunnisa

7. Karima Been

8. Shabana

9. Minor Khusiya,
rep. by Guardian, T. Begum Bee (R5)

(Respondents 5 to 9 are brought as legal heirs
of the deceased 2nd respondent vide Court order
dated 08.01.2019 made in M.P.Nos.2 to 4 of 2011
in S.A.No.75 of 2007)

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code
against the Judgment and Decree dated 13.07.2006 in A.S.No.52 of 2005 on
the file of Principal Sub-Court, Tiruvannamalai reversing the Judgment and
decree dated 30.03.2005 in O.S.No.422 of 1997 on the file of the Additional
District Munsif Court, Chengam.

For Appellant	: Mr.T.R. Rajagopalan , Senior Counsel for Mr.T.R. Rajaraman
For Respondents 1,5 and 8	: Mr.S.Parthasarathy, Senior Counsel for Mr. V.Ramakrishnan
For Respondents 3 and 4	: Mr.C.Sathish, Government Advocate
For other Respondents	: No Appearance



SA.No.75 of 2007

WEB COPY

JUDGMENT

The instant second appeal has been filed by the plaintiffs. The respondents herein are the defendants 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.

3.The brief facts, which give rise to the filing of this second appeal, are as follows:

(i) The suit properties are the ancestral joint family properties of one Mr.Vellaiya Pandithar, who was the maternal grand father of plaintiffs 2 to 7, and his two sons namely one Mr.Raghavan Pandithar and one Mr.Subban Pandithar. Here, Mr.Raghavan Pandithar's wife predeceased him, and later, the said Mr.Raghavan Pandithar also died issueless. Therefore, his half share of the properties also devolved upon the said Mr.Subban Pandithar, who was the father of the plaintiffs, and after his demise, the plaintiffs became the absolute owners of the suit properties and they have been in possession and



SA.No.75 of 2007

enjoyment of the same.

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(ii) During September 1996, the first defendant began to lay a false claim over the suit properties alleging that his father one Mr.Lathif khan purchased the suit properties in the year 1962 from the said Mr.Subban Pandithar. According to this plaintiff, the sale deed dated 10.04.1962 was a forged and fabricated one through which, the D1 could not have any title over the suit properties. The first defendant filed an application before the 3rd defendant to transfer the patta relating to the suit properties from the names of the plaintiffs to his name. However, the 3rd defendant transferred the patta jointly in the names of plaintiffs 1 to 4 and defendants 1 & 2, without making any enquiry. Therefore, the plaintiffs came forward with the suit for mandatory injunction directing the defendants 3 and 4 to remove the names of the defendants 1 and 2 from the patta relating to the suit properties.

4.The said suit was resisted by the first defendant by contending that the suit properties originally belonged to the joint family of the said Mr.Vellaiya Pandithar and his two sons namely the said Mr.Raghavan



SA.No.75 of 2007

WEB COPY

Pandithar and the said Mr.Subban Pandithar. After the death of the said Mr.Vellaiya Pandithar, his sons were jointly enjoying the suit properties. Whileso, after the demise of the said Mr.Raghavan Pandithar, who died issueless, as his wife predeceased him, the properties of the said Mr.Raghavan Pandithar exclusively devolved upon the said Mr.Subban Pandithar. The plaintiffs have never been in possession and enjoyment of the suit properties. By virtue of the sale deed dated 10.04.1962 executed by the said Mr.Subban Pandithar, the father of the D1 had been enjoying the suit properties. He orally leased out the suit properties to his vendor, Mr.Subban Pandithar on condition that he should pay the kist and deliver the rent to him. Taking advantage of the absence of the defendants, the plaintiffs made entries by influencing the officials under the UDR scheme. If really the plaintiffs got title over the suit properties, they should have sought for a relief of declaration and that they could not seek mere a mandatory injunction, without seeking the relief of declaration.

Evidence & documents and Findings of the Court below:-

5. Before the Trial Court, the plaintiffs examined four witnesses as



SA.No.75 of 2007

WEB COPY

P.W.1 to P.W.4 and 9 documents were marked as Ex.A1 to Ex.A9. On behalf of the defendants, two witnesses were examined as D.W.1 and D.W.2 and three documents were marked as Ex.B1 to Ex.B3.

6. The Trial Court framed the following issues

- 1. Whether the sale deed, dated 10.04.1962 executed in favour of the defendant's father is true, valid and binding on the plaintiff?*
- 2. Whether the oral lease between Lathifkhan, Sahib, Subban is true?*
- 3. Whether the plaintiff perfected his title by adverse possession?*
- 4. Whether the suit is bad for non-joinder of necessary party?*
- 5. Whether the plaintiff is entitled to the suit claim?*
- 6. To what other relief?*

7. After framing the above issues, the Trial Court ultimately decreed the suit. Aggrieved by the Judgment of the Trial Court, defendants 1 & 2 approached the First Appellate Court by filing an appeal. The First Appellate Court, on re-appreciation of the evidence, arrived at a conclusion that the plaintiffs ought to have sought for the relief of declaration, and that without seeking the relief of declaration, they could not simply file a suit for mandatory injunction and thereby the First Appellate Court allowed the first



SA.No.75 of 2007

appeal. Aggrieved by the Judgment of the First Appellate Court, the plaintiffs filed the instant second appeal.

Submissions of either side counsel:-

8. The learned Senior Counsel appearing on behalf of the appellants would contend that when the 1st defendant alleged that his father purchased the suit properties in the year 1962, the reason for allowing the revenue records to continue in the names of the said Mr.Vellaiya Pandithar and later in the names of the plaintiffs till 1997 for over a period of 35 years was not explained. The learned Senior Counsel would further contend that though the Trial Court decreed the suit, the First Appellate Court, without having any legal basis, interfered with the same. It is his further submission that the First Appellate Court failed to consider the fact that the revenue officials, though directed the parties to go before the Civil Court to resolve the dispute on title, proceeded to issue a joint patta. The First Appellate Court failed to consider that the plaintiffs have been in possession and enjoyment of the suit properties. The learned Senior Counsel would further contend that the



SA.No.75 of 2007

WEB COPY

finding of the First Appellate Court that Ex.A.9 was not at all an order, but only a communication, is a perverse finding. The learned Senior Counsel has also relied upon the two Judgments of the Apex Court, in the case of ***Union of India Vs Vasavi Co-operative Housing Society Limited [2014 (2) SCC 269]*** and in the case of ***Edelweiss Asset Construction Company Limited Vs. R. Perumalswamy [2021 (11) SCC 98]*** in support of the appellants' contention.

9. *Per contra*, the learned Senior Counsel appearing on behalf of the respondents 1, 5 & 8 would contend that the suit as framed is not maintainable. According to him, the mere suit for mandatory injunction without the relief of declaration, is not maintainable. The learned Senior Counsel would also submit that the suit is barred under Section 14 of the Tamil Nadu Patta Pass Book Act. In support of his case, the learned Senior Counsel relied upon the judgment of this Court, in the case of ***C.Arulsamy Vs. State of Tamil Nadu [2003 (4) CTC 670]*** and the judgment of the Apex Court in the case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) [2008 (6) CTC 237]***.



SA.No.75 of 2007

10. This Court has given its anxious consideration to the either side submissions.

Substantial Question of Law:

11. On 22.01.2007, the Second Appeal was admitted on the following substantial questions of law:-

1. Is the learned Sub Judge right in dismissing a suit for injunction to remove the names of the defendants 1 and 2 when the defendants have failed to establish their title to the suit property to be the ancestral property of the plaintiffs?

2. Is the learned Sub Judge right in dismissing the suit, when the sale deed of the defendant is non-est in the eye of law, as his vendor had no absolute right to alienate the ancestral property? and

3. Having granted joint patta, without giving an opportunity for the plaintiff of being heard, is the learned Sub Judge right in dismissing suit?

Analysis of the Submission:-

12. The learned Senior Counsel appearing on behalf of the appellant has invited the attention of this Court to Ex.A9 and would contend that Ex.A9 is in the nature of an order. Therefore, the finding of the First Appellate Court in respect of Ex.A9 is perverse. But, before we embark into



SA.No.75 of 2007

WEB COPY

that aspect, it is imperative upon this Court to look at the defence of respondents 1 ,5 & 8.

13.The learned Senior Counsel appearing on behalf of respondents 1,5 & 8 has invited the attention of this Court to the legal notice issued by the plaintiffs under Ex.A2 and Ex.A5, by and in which, it has been categorically stated that if the names of defendants 1 and 2 were not removed, then they would be constrained to file a suit for the relief of declaration. Therefore, even according to the plaintiffs, they were well aware of the fact that in the absence of any action taken by the official respondents namely defendants 3 and 4, the only remedy available to them would be to file a suit for declaration. It is pertinent to mention here that even in the written statement, the 1st defendant specifically pleaded that the plaintiff ought to have sought for the relief of declaration.

14. On a harmonious reading of the written statement, the 1st defendant set up title in his favour, which factum was admitted by the plaintiffs' in paragraph No.4 of the plaint. When the first defendant began to lay a claim



SA.No.75 of 2007

WEB COPY

over the suit properties, and when the plaintiffs themselves were aware that the 1st defendant was claiming right over the suit properties, the plaintiffs ought to have filed a suit for a declaration.

15. It is relevant to mention here that the plaintiffs disputed the sale deed stands in the name of the 1st defendants father dated 10.04.1962, which was allegedly executed by the said Mr.Subban Pandithar, as forged and created by way of impersonation. The fact remains that there is a registered sale deed dated 10.04.1962, which was allegedly executed by the said Mr.Subban Pandithar. Therefore, in such circumstances, when the plaintiff dispute the sale deed on the ground of forgery and impersonation, it is imperative upon the plaintiffs to seek for the relief of declaration. At this juncture it is useful to refer the judgment of the Apex Court in the case of **Anathula Sudhakar** (cited supra).

16.The learned Senior Counsel appearing on behalf of the appellants, by relying on the judgment of the Apex Court rendered in the case of **Edelweiss Asset Construction Company Limited** (cited supra), would



SA.No.75 of 2007

WEB COPY

contend that the revenue authorities cannot adjudicate upon the title of the property. The relevant portion is extracted hereunder:

“21. The narration of facts in the earlier part of the Judgment makes it clear that on 26.02.1964, the state of Tamil Nadu executed a deed of assignment in favour of WSIL. The deed of assignment specifically records that the lands vested in the State of Tamil Nadu free of all encumbrances and were allotted to WSIL. The entire case of the first respondent was founded on an alleged sale deed of 09.10.1929, under which his father acquired the land and an alleged oral lease, by which the land was leased in favour of WSIL in 1963. Neither the sale deed nor the terms of the alleged oral lease have been produced in the course of the proceedings. Once the lands were acquired by the State of Tamil Nadu, any pre-existing claim of the first respondent would stand extinguished. The purpose of the Government Order dated 17.08.2004 is to enable the DRO to rectify the defects in the land registry. The DRO exceeded his jurisdiction by engaging in an exercise of investigating the title to the disputed land and substituting the first respondent with the appellant in the land records. The learned single Judge was correct in holding that the DRO in the guise of acting in accordance with the said Government Order, wrongly adjudicated upon the question of title which was beyond jurisdiction.”

17. There is no quarrel in respect of the above proposition. Admittedly, the Revenue Authorities cannot go into the title of the property.

18. It is also a well settled principle of law that the Revenue entries



SA.No.75 of 2007

WEB COPY

cannot confer any title. In this regard, it is also useful to refer the judgment in the case of *Vasavi Co-operative Housing Society Limied* (cited supra).

19. Therefore, the finding recorded by the First Appellate Court that the suit for the relief of mandatory injunction, is not maintainable in the absence of declarative relief, is well considered and well merited, and this Court does not find any justifiable reason to interfere with the said finding.

20. At this juncture, the learned Senior Counsel appearing on behalf of respondents 1, 5 & 8 would invite the attention of this Court in respect of Section 14 of the Tamil Nadu Patta Pass Book Act. Under Section 14 of the Tamil Nadu Patta Pass Book Act, there is a bar of jurisdiction to approach the Civil Court. Here, while looking at the prayer in the plaint, the plaintiffs wanted to remove the names of defendants 1 and 2 from the patta. Section 14 of the Tamil Nadu Patta Pass Book Act is a clear bar to file such suit.

21. For ready reference, Section 14 of the Tmil Ndu Patta pass Book



SA.No.75 of 2007

Act is extracted hereunder:

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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.

22.As per the Tamil Nadu Patta Pass Book Act, an appeal remedy is also provided under Section 12, and against the order in appeal, a remedy of revision has been provided. The proviso to Section 14 of the Tamil Nadu Patta Pass Book Act is so specific that if any person is aggrieved, as to any right of which he is in possession, by an entry made in patta pass book, he may institute a suit against any person denying or interested to deny his title for declaration.

23. In this regard, the Senior Counsel appearing on behalf of respondents 1, 5 & 8 has also relied upon the Judgment of this Court



SA.No.75 of 2007

rendered by a learned Single Judge in the case of **C.Arulsamy** (cited supra).
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24. Therefore, from the narration made herein above, this Court is of the indubitable view that the order of the first Appellate Court is well considered order and this Court could not find any perversity over the same. Hence, in view of the above detailed discussions, the substantial questions of law are answered in favour of the respondents.

25. In the result, this second appeal is dismissed by confirming Judgment of the First Appellate Court. There is no order as to costs.

12.12.2023

smn

Index: yes / no

Neutral citation

Speaking / Non speaking order



SA.No.75 of 2007

WEB COPY

To

- 1.The Principal Sub-Court, Tiruvannamalai
2. The District Munsif Court, Chengam.

C.KUMARAPPAN, J

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WEB COPY



SA.No.75 of 2007

S.A.No.75 of 2007

12.12.2023