IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

S.A.No.1434 of 2010
and M.P.No.1 of 2010

1.Muthulakshmi @ Muthalu
2.Muthukumar ... Appellants

..Vs..

1.Ramachandran
2.Vasantha
3.Prabakaran
4.Santhosh Kumar
5.Kuppura Bi

6.District Collector,
Villupuram, Office of the Collector.

7.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Thirukovilur.

8.The Tahsildar,
Taluk Office, Thirukovilur. ... Respondents

PRAYER : Second Appeal filed under Section 100 C.P.C., against the decree and judgment dated 29.04.2010 in A.S.No.42 of 2009 on the file of the Sub Court, Villupuram, upholding the decree and judgment in O.S.No.94 of 2005 dated 24.09.2008 on the file of the Principal District Munsif, Thirukovilur.

For Appellants	: Mr.R.Asokan
For RR1 to 4	: Mr.Gnanamurthy for Mr.N.Suresh
For R5	: No appearance
For RR6 & 7	: Dr.S.Suriya, AGP

JUDGMENT

The unsuccessful Plaintiffs before both the Courts below have filed the present second appeal. The plaintiffs filed the suit in O.S.No.94 of 2005 before the Principal District Munsif, Thirukovilur, for declaration of their title to the suit property, morefully described in the plaint as a house site with two thatched houses admeasuring 300 sq.ft. in Gramanatham S.No.610/5 of Thirukovilur Taluk, Villupuram District. The plaintiffs have also prayed for a permanent injunction restraining the defendants 6 to 8, who are the government officials, from cancelling the patta which stands in the name of the second plaintiff and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:

The suit property originally belonged to Chellammal, mother of the first plaintiff and she handed over possession of the suit property in her favour (first plaintiff). Though Chellammal had another daughter by name Poongkovil Ammal, she was not given any right over the suit property. After the death of Chellammal, the first plaintiff has been in possession and enjoyment of the suit property by paying necessary tax to the Government. Thus, she has perfected title to the suit property by way of adverse possession and prescription. The first defendant, who is the husband of the first plaintiff, misrepresented to the Village Administrative Officer, Thirukovilur Town Panchayat and got the house tax receipt changed in his name. Thereafter, the plaintiffs gave a representation to the Village Administrative Officer who after conducting an enquiry changed the patta in the name of the second plaintiff. He also issued the Certificate (Ex.A3) dated 18.05.2004 stating that the second plaintiff is the owner of the suit property. Thereafter, the plaintiff issued a notice to the defendants 1 & 2 for which there was no response from them. Electricity service connection still stands in the name of the first defendant. The fifth defendant, Kuppura Bi is a tenant in respect of Door No.148 for a monthly rent of Rs.200/-. The first defendant is receiving the entire rents from the said defendant. Though notice was issued by the plaintiff to the first defendant in this regard, the first defendant refused to receive the said notice. The defendants 7 & 8, who are the official respondents, are now taking steps to change the patta, which stands in the name of the second plaintiff, in the name of the second defendant. Hence the suit.

4. The written statement of the second defendant was adopted by the defendants 1, 3 & 4. The fifth defendant remained absent and was set *ex parte*. In the written statement it is averred thus :

i. The suit property actually belonged to the State Government of Tamilnadu. The second defendant's mother Jayalakshmi Ammal encroached upon the said land during the year 1962 and since then she has been in possession of the same. The said Jayalakshmi Ammal's daughter (second defendant) was given in marriage to the first defendant about 35 years back and both the first defendant and the second defendant are in possession and enjoyment of the said property and they prescribed their title by way of adverse possession and prescription. The Government of Tamilnadu also issued a patta bearing No.1928 in favour of the second defendant under the Tamilnadu Urban Natham Land Tax Act. The second defendant was actually paying necessary house tax and electricity consumption charges to the Government. Since the patta No.1928 stood in the name of the second defendant, the plaintiffs gave a false representation to the revenue officials and obtained a patta in favour of the second plaintiff. Thereafter, the defendants filed their objections to the revenue officials.

ii. On coming to know of all these facts, the plaintiffs have rushed to the Court seeking for the relief of declaration and permanent injunction. The first plaintiff's mother Chellammal was residing in a different government land and the suit property does not belong to her.

4.1 The eighth defendant filed a written statement on behalf of the Government officials, in which it is stated that the Government officials are not taking steps to change the patta in the name of the second defendant. It is also averred that the revenue department can change the patta only after enquiring the concerned parties and that the Civil Court does not have any jurisdiction in respect of the same.

5. On the basis of the above pleadings, the Trial Court Judge framed the following issues :

i. Whether the suit property originally belonged to the plaintiffs?
ii. Whether the defendants prescribed their title to the suit property by way of adverse possession and prescription?
iii. Whether the plaintiffs are entitled for a declaration as prayed for by them?
iv. Whether the plaintiffs are entitled for the relief sought for by them?
v. Whether the plaintiffs are entitled to get permanent injunction as against the defendants 6 to 8?
vi. To what relief, the plaintiffs are entitled?

6.In the Trial Court, the second plaintiff examined himself and three other witnesses and marked Ex.A1 to Ex.A19. The first defendant examined himself and five other witnesses and marked Ex.B1 to Ex.B7. Ex.X1 to Ex.X22 were marked through Revenue officials.

7.After full contest, the learned Principal District Munsif, Thirukovilur, dismissed the suit filed by the plaintiff, vide decree and judgment dated 24.09.2008 on the following grounds :

i. Jayalakshmi Ammal, who was examined as DW3, admitted that her house is not assessed to tax at any point of time.

ii. The second plaintiff, who examined himself as PW1, also admitted that he did not adduce any documentary evidence like house tax receipt and electricity consumption charges in respect of the suit property.

iii. Ex.X12 to Ex.X22 are in respect of S.No.610/3 of Thirukovilur Village, whereas the suit property is situate in S.No.610/5. Hence, Ex.X12 to Ex.X22 are not useful to the case of the plaintiffs. In Ex.X11, an Adangal extract, the survey number is indicated as 610/5 and the name of the person in possession of the said property is shown as Chellammal. Based on this particular document (Ex.X11) it cannot be said that Chellammal is the owner of the suit property because it is settled position of law that the kist receipts and other documents of Revenue Department would not confer any title upon a person. The patta is also not the document of title.

iv. The plaintiffs had not established their possession over the suit property for 30 years as alleged by them in the plaint. Though it is contended that a report (Ex.A7) was submitted by Tahsildar to the Revenue Divisional Officer in respect of the patta issued in the name of the second plaintiff, no signature of the said person is found in Ex.A7. Therefore, the same cannot be relied upon for any purpose. Thus, the plaintiffs have not established their title and possession over the suit property. Moreover, the plaintiffs cannot seek for permanent injunction restraining revenue officials not to cancel the patta, which stands in the name of the second plaintiff, since the same is against Sections 9 & 14 of the Patta Passbook Act. Thus, the suit is not maintainable.

8. Aggrieved over the decree and judgment passed by the trial Court, the plaintiffs filed an appeal in A.S.No.42 of 2009 before the Principal Sub Court, Villupuram. The learned Principal Subordinate Judge, Villupuram, after analysing the oral and documentary evidence adduced on both sides, upheld the findings of the trial Court and dismissed the appeal vide her decree and judgment dated 29.04.2010.

9. As against the concurrent findings rendered by both the Courts below, now the present second appeal is filed by the plaintiffs. On 29.11.2020, this Court has framed the following substantial questions of law:

i. "Whether the Courts below were right in holding that the suit as against defendants 6 to 8 are not maintainable in the absence of any express bar?

ii. Whether the Courts below were right in holding that the plaintiffs have failed to prove title to the suit property by producing documents of title to the suit property when admittedly the suit property was a natham poramboke for which there will not any document of title?

iii. Whether the Courts below were right in holding that the revenue documents cannot be relied on to decide the title when admittedly the suit property is a grama natham land?"

10. Heard, Mr.R.Asokan, learned counsel for the appellants, Mr.Gnanamurthy, learned counsel for the respondents 1 to 4 and Dr.S.Suriya, learned Additional Government Pleader for the respondents 6 to 8.

11. Mr.R.Asokan, learned counsel for the appellants would contend that since the property is a village natham, no title deeds can be filed and this aspect was not at all considered by both the Courts below. It is also his contention that the first defendant did not take part in the proceedings by way of filing a written statement and that though the plaintiff had adduced patta (Ex.A1), demand notice issued by Executive Officer, Thirukovilur Town Panchayat (Ex.A2), and also a certificate issued by the Zonal Deputy Tahsildar, Thirukovilur (Ex.A3) both the Courts below did not take these documents into consideration and on other hand, had held that the plaintiffs have neither proved their possession over the suit property nor established their title to the same.

12. Per contra, Mr.Gnanamurthy, learned counsel for the respondents 1 to 4 would contend that both the Courts below, after analysing the oral and documentary evidence adduced on both sides, concurrently held that the plaintiffs have not proved their possession and title to the suit property and rightly dismissed the suit filed by the plaintiffs. According to him, there is no substantial question of law involved in the present second appeal.

13. Dr.S.Suriya, learned Additional Government Pleader for the respondents 6 & 7 contended that the Civil Court cannot interfere in the proceedings of the Revenue Department with regard to change of the patta and the suit filed by the plaintiffs is not maintainable. Therefore, prayed for dismissal of the present second appeal.

14. The plaintiffs had prayed for declaration of title to the suit property, which is described in the plaint as a house site over which there are two thatched houses measuring 300 sq.ft. It is pertinent to point out that the boundaries of the suit property have not been described in the plaint schedule. The contention of the plaintiff is that the suit property was originally encroached upon by the first plaintiff's mother and thereafter, it was handed over to the first plaintiff. The first defendant is the husband of the first plaintiff. According to the learned counsel for the appellants, the second defendant did not marry the first defendant.

15. The second defendant, in her written statement, had contended that the suit property originally owned by her mother and after her death, she has been in possession of the same. According to her, the

plaintiffs are in possession of altogether a different property and they are making a false claim with regard to the present suit property. Both the Courts below, after analysing the various documents adduced by the plaintiffs and the Revenue officials had concurrently held that the plaintiffs have not proved their possession over the suit property. In fact, the second plaintiff, who was examined as PW1, had admitted that he has not adduced any documentary evidence to show his possession over the suit property. In the chitta (Ex.A4) issued under Natham Land Tax Act, the name of the second defendant is indicated as the person in possession and subsequently, it was rounded off in red ink and the name of the second plaintiff is added. This chitta was issued on 09.05.2003. Though the survey number is indicated as 610/5 in Ex.A4 it is not known as to why the name of Vasantha was struck down in Ex.A4 by the Revenue officials. The proceedings issued by the revenue officials in this regard have not been marked either by the plaintiff or by the Revenue officials. Similarly, the demand notice issued on 31.12.2004 is in respect of two house tax assessment 2099 & 4653, wherein the door number of the house has been indicated as 148. In the plaint schedule the plaintiff has not indicated the door number of the two houses. Learned counsel for the appellants contended that the house tax assessment number is 4653 for the suit property. However, there are three different properties bearing no.148 and two of the properties belong to the first defendant (Ramachandran) and the remaining properties originally stood in the name of the defendants 1 & 2. Merely based on this demand notice it cannot be stated that the plaintiffs have proved their possession over the suit property especially when the plaintiffs have not indicated either the door number of the house or the boundary description in the plaint schedule. In fact, the suit property has not been described properly. It is settled law that if the suit property is not properly described in the suit, the same is liable to be dismissed. Moreover, the plaintiffs have also sought for permanent injunction restraining the revenue officials from changing the patta from the name of the second plaintiff to the name of the second defendant. In the written statement, it is the specific contention of the second defendant that since the plaintiffs fraudulently changed the patta in the name of the second plaintiff, they had given representation to the revenue officials to change the same in her name and aggrieved over the same, the plaintiffs have filed the present second appeal.

16. It is true that the name of the second defendant is struck down in the chitta (Ex.A4) and the name of the second plaintiff is indicated. As already observed, the reasons for the same have not been explained by the revenue officials. Ex.A3 is a 'ownership certificate' issued by the Zonal Deputy Tahsildar dated 18.05.2004, wherein the survey number is indicated as 610/5 and patta number is indicated as 1928. The person who issued the certificate has not been examined by the plaintiffs. It is settled law that the certificate given by a living person cannot be admitted in evidence, unless the person who issued the said certificate is examined as witness in the Court. Though the contention of the learned counsel for the appellants is that as the suit property is a village natham, there cannot be any document of title, the plaintiff in the instant case had not adduced any acceptable oral / documentary evidence to show that they are in continuous possession of the suit property. Merely based on Chitta and Adangal extract, the suit filed by the plaintiffs seeking the relief of declaration of title to the suit property cannot be granted and both the Courts below had properly appreciated the evidence adduced on both sides. Learned counsel for the plaintiffs did not also state as to how both the Courts below committed an error in assessing the evidence. Suffice it

is to say that all the observations made by both the Courts below are based on sound principles of law and the substantial questions of law are answered against the appellants.

17. In the result,

i. the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

ii. the decree and judgment dated 29.04.2010 in A.S.No.42 of 2009 on the file of the Sub Court, Villupuram and the judgment and decree dated 24.09.2008 in O.S.No.94 of 2005 on the file of the Principal District Munsif, Thirukovilur, are upheld.

12.06.2023

Index : Yes/No
Internet : Yes/No
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R. HEMALATHA, J.

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To

1. The Sub Court, Villupuram.
2. The Principal District Munsif, Thirukovilur.
3. The Section Officer, V.R. Section, High Court, Madras.

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