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S.A.No.56 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.56 of 2018

Thanjammal

... Appellant

VS.

1.Siva

2.Murugesan

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgement and decree dated 21.09.2017 passed in A.S.No.10 of 2016 on the file of Sub Court, Uthangarai Partly allowed/reversing the judgement and decree in O.S.No.20 of 2013 on the file of District Munsif cum Judicial Magistrate Court, Kochampalli.

For Appellant : Mr.A.Sivaji

For Respondents : Mr.V.Nicholas

ORDER

The plaintiff in the suit is the appellant. She filed a suit seeking declaration of title and permanent injunction. The suit was decreed by the



S.A.No.56 of 2018

Trial Court granting the declaration and permanent injunction. Aggrieved by the same, the 2nd respondent herein preferred an appeal and the First Appellate Court reversed the findings of the Trial Court with regard to declaratory relief and dismissed the suit negating the prayer for declaration of title. The decree for permanent injunction granted by the Trial Court was affirmed by the First Appellate Court. Aggrieved by the said judgement and decree, the appellant/plaintiff has come by way of this second appeal.

2. According to the appellant/plaintiff, she had been in possession and enjoyment of the suit property for more than 25 years and based on her long possession, the Tamil Nadu Government assigned the suit property in favour of the appellant under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act on 12.06.2002. The patta and other revenue documents stand in the name of the appellant. The respondents are sons of 1st wife of appellants' husband and they have no right over the same. However, the respondents without having any manner of right attempted to interfere with possession of the appellant. Hence, she was constrained to file a suit for declaration of title and permanent injunction.

3. The 2nd respondent herein filed a written statement denying the



S.A.No.56 of 2018

right and possession of the appellant over the suit property. It was his case that the suit property originally was in occupation of his paternal grandfather Thirupathi and after his death, the property was assigned in favour of the respondents' father Krishnan on 11.09.1990 and they had been in possession and enjoyment of the suit property along with him. It was further averred that the appellant by making misrepresentation before the Authorities obtained an Assignment in her favour and the same was obtained behind the back of the respondents. Thus, the respondents sought for dismissal of the suit.

4. Before the Trial court, the appellant was examined as PW.1 and her husband T.Krishnan was examined as PW.2. The Village Administrative Officer was examined as PW.3. On her behalf, 8 documents were marked as Exs.A1 to A8. The 2nd respondent was examined as DW.1 and two other witnesses were examined as DW.2 and DW.3 and on behalf of the respondents, 11 documents were marked as Exs.B1 to B11.



S.A.No.56 of 2018

5. The Trial Court on appreciation of oral and documentary evidence

available on record, came to the conclusion that under Ex.A1, suit property was assigned to appellant by the Government and she had been in possession and enjoyment of the same as such. The Trial Court also found that the respondents failed to prove their possession over the suit property after 2002 and consequently, decreed the suit as prayed for. Aggrieved by the same, the 2nd respondent herein preferred an appeal in A.S.No.10 of 2016 on the file of the Sub Court, Uthangarai. The First Appellate Court also concurred with the findings of the Trial court that the appellant has been in possession and enjoyment of the suit property under the Assignment Deed marked as Ex.A1. However, the First Appellate Court found that as per conditions mentioned under Ex.A1, the appellant would become absolute owner of the property only after continuous enjoyment for 20 years and before expiry of that period, the appellant was not entitled to seek a declaration of her absolute title over the suit property and hence, interfered with the findings of the Trial Court with regard to the relief of declaration and partly allowed the appeal setting aside the decree in respect of declaration of title. The decree granted by the Trial Court in respect of injunction was affirmed by the First Appellate Court. Aggrieved by the



S.A.No.56 of 2018

same, the appellant is before this Court.

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6. At the time of admission this Court formulated the following substantial question of law:-

“Whether the Lower Appellate Court was right in its interpretation of the conditions contained in Ex.A1 and refusing the relief of declaration sought for by the plaintiff.”

7. The learned counsel appearing for the appellant submitted that the appellant proved her right over the suit property by producing Ex.A1- Assignment Deed and whereas, the respondents, who claimed assignment in favour of their father Krishnan failed to produce any evidence to show that the property was assigned in favour of Krishnan. Therefore, the First Appellate Court is not justified in interfering with the findings of the Trial Court granting declaration of possessory right in favour of the appellant.

8. The learned counsel appearing for the respondents by taking this Court to the conditions mentioned in Ex.A1 submitted that as per the conditions, the appellant can become owner of the property only after expiry



S.A.No.56 of 2018

of 20 years, but suit has been filed in the year 2013 just one year before expiry of that period. Therefore, the First Appellate Court rightly negated the prayer for declaration of title. The appellant herein claims right over the suit property based on the Assignment Patta issued in her favour, which was marked as Ex.A1.

9. A perusal of conditions mentioned in Ex.A1 would suggest that the Assignee would acquire absolute title over the suit property only after expiry of 20 years and payment of all sums as per the Assignment Deed. In the case on hand, Assignment was made in favour of appellant on 12.06.2002, therefore, the appellant can claim absolute title over the suit property only after expiry of 20 years. However, the present suit has been laid even before expiry of that period. In such circumstances, the appellant is not entitled to get declaration of absolute title over the suit property. However, Ex.A1 clearly establishes the property was assigned in favour of appellant and she was put in possession of the suit property. Ex.A2, is the patta issued in the name of the appellant. The Revenue Inspector of Taluk Office was examined as DW.3 on behalf of the respondents, clearly deposed that the property was assigned in favour of appellant Thanjammal in the year 2002 and she was



S.A.No.56 of 2018

entitled to enjoy the suit property subject to the conditions mentioned therein. Therefore, the possession of the appellant over the suit property is not only established by the documents filed by appellant, the same was also admitted by respondents' own evidence DW.3. In such circumstances, there is no dispute that appellant proved her lawful possession over the suit property. Hence, she is entitled to permanent injunction as prayed for in the suit. Both the Courts below rightly granted injunction in her favour.

10. As far as relief of declaration of title is concerned, the Condition No.8 in Ex.A1 clearly stipulates that Assignee would become absolute owner of the property only after expiry of 20 years period. The suit was laid well prior to the expiry of that period. Therefore, the First Appellate Court is justified in negating the prayer for declaration sought for by the appellant. Hence, the question of law framed at the time of admission is answered accordingly and the second appeal is dismissed with liberty to the appellant to file a fresh suit for declaration by impleading Government as a party.

In Nutshell:-

(a) The Second Appeal is dismissed with the above liberty.



S.A.No.56 of 2018

WEB COPY (b) In the facts and circumstances of the case, there shall be no order as to costs.

22.12.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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S.A.No.56 of 2018

To

1.The Sub Court, Uthangarai.

2.The District Munsif cum Judicial Magistrate Court,
Kochampalli.



WEB COPY



S.A.No.56 of 2018

S.SOUNTHAR, J.

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S.A.No.56 of 2018

22.12.2023