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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.96 of 2018
in CMP.No.2090 of 2018

Thangasamy

...Appellant

Vs.

1.Chellammal

2.Govindammal (deceased)

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 13.10.2015 made in A.S.No.27 of 2015 on the file of Additional District Munsif cum Principal Sessions Court, Ariyalur, reversing the judgement and decree dated 14.09.2012 made in O.S.No.176 of 2006 on the file of District Munsif Court, Jayankondam.

For Appellant : Mr.S.Mukunth
for Ms.T.R.Gayathri

For Respondents : Mr.M.Senthil Vadivu for R1
R2-died



JUDGMENT

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The second defendant in the suit is the appellant. The first respondent filed a suit for bare injunction against the appellant and other respondents. The suit was dismissed by the trial Court and the appeal filed by the first respondent was allowed by reversing the findings of the trial Court. Aggrieved by the same, the second defendant has come up by way of this second appeal.

2. According to the first respondent/plaintiff, the suit property was classified as a Natham and first respondent has been enjoying the same by putting up a house thereon from the year 1984. A patta was also given in the name of the first respondent under Natham Nilavari Thittam.

3. The appellant/second defendant without having any right over the suit property attempted to interfere with the possession of the first respondent and hence the first respondent was constrained to file a suit for injunction.



4. The appellant/second defendant filed a written statement denying the title as well as the possession of the first respondent over the suit property. It was the case of the appellant that the old survey number of the suit property was 175/1 and the larger extent in 175/1 was acquired by the Government for providing house site to the Scheduled Caste persons. The Survey No.175/1 was divided into 62 plots and layout was prepared. The Scheduled Caste Welfare Department of Government of Tamil Nadu has also prepared a Register of beneficiaries and as per the said list, plot No.57 was allotted to the appellant/second defendant. However, the first respondent managed to get revenue patta in his name in respect of Plot No.57 which is relevant to the suit survey No.420/28. It was also claimed by the appellant that the adjacent plot in Survey No.420/29 was given to husband of first respondent and as per the welfare scheme, each family is entitled to only one plot. Hence,, the first respondent family cannot claim two plots. Hence, it is the specific case of the appellant that the patta issued by the revenue department in favour of first respondent was not in accordance with law and therefore, the suit filed by the first respondent based on that wrongly issued patta is liable to be dismissed.



5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that as per Ex.B2 beneficiary list prepared by Scheduled Caste Department of Government of Tamil Nadu, Plot No.57 relevant to S.No.420/28 was allotted to Thangasamy, the appellant/second defendant and therefore, the first respondent cannot maintain a suit for bare injunction against the original owner of the property. Therefore, the suit filed by the first respondent was dismissed. Against the same, the 1st respondent filed an appeal in A.S.No.27 of 2015, on the file of the Additional District Munsif cum Principal Sessions Court, Ariyalur. The First Appellate Court came to the conclusion that the first respondent/plaintiff was issued with a patta under Ex.A5. In case the patta was issued against the rules, it was for the appellant to approach the appropriate authority to cancel the patta and he could not interfere with the possession of the first respondent, who was enjoying the property under the patta issued in her name. Therefore, the first Appellate Court allowed the appeal and aggrieved by the same, the appellant has come up by way of this second appeal.



6. At the time of admission, this Court formulated the following substantial question of law by order dated 27.11.2023:

“Whether the suit for bare injunction filed by the 1st respondent is maintainable, when there is a clear serious cloud over the title of the first respondent”?

7. The learned counsel appearing for the appellant submitted that the suit for bare injunction filed by the first respondent is not maintainable as there is a serious cloud over the title of the property. The learned counsel further submitted that under Ex/B2, plot No.57 was allotted to the appellant viz. Thangasamy by the Scheduled Caste Welfare Department, Government of Tamil Nadu. The Revenue Department wrongly issued patta in the name of first respondent and therefore, the first respondent is not entitled to maintain a suit based on the patta which was not issued in accordance with law. In this regard, the learned counsel appearing for the appellant also had taken this Court to the evidence of DW.2 who deposed that patta was wrongly issued in the name of first respondent.



8. The first respondent has filed a suit for bare injunction to protect her possession based on the patta issued in her name under Ex.A5. A Perusal of Ex.A5 would suggest patta was issued in the name of first respondent in New S.No.420/28, Old Survey No.175/1 with an extent of 1.83 ares. The classification of the land was also mentioned as Natham in Ex.A5 patta issued in favour of first respondent on 19.05.1995, Ex.A2 is the land tax paid by first respondent on 19.11.2002 for Patta No.375 issued to her under Ex.A5. Therefore, it is clear the possession of the first respondent was recognised by the Government patta issued in her favour under Ex.A5 in the year 1995. She also produced land tax receipt for having paid tax subsequent to the issuance of patta in her name. Therefore, in the light of Exs.A2 and A5, the first respondent has proved her lawful possession over the suit property.

9. It was seriously argued by the learned counsel for the appellant that under Ex.B2 plot No.57 relevant to suit survey No.420/28 was recommended for allotment of appellant, but contrary to the recommendation, patta was wrongly issued in the name of first respondent. A perusal of Ex.B2 would suggest the same is only a beneficiary list



prepared by the Scheduled Caste Welfare Department of Tamil Nadu Government. In the above said list only the serial numbers, names of the beneficiaries and their father name alone are mentioned and the details of the plots allotted to respective beneficiary was not at all mentioned. Though DW.2 in his evidence, during cross examination, deposed that plot number 57 was recommended for allotment to appellant and the patta was granted in favour of first respondent, he also deposed the revenue department has not received any order regarding recommendations. The appellant side witness DW.2 clearly deposed that patta for plot number 57 relevant to suit survey No.420/28 was issued in the name of first respondent/plaintiff. In such circumstances, the conclusion reached by the First Appellate Court that the first respondent proved her enjoyment pursuant to patta issued in her name is acceptable and the same requires no interference from this Court.

10. If it is the case of the appellant that patta issued in the name of first respondent was not in accordance with law, it is for her to take appropriate steps for cancelling the patta in the manner known to law. As rightly observed by the First Appellate Court, the appellant is not entitled to



interfere with lawful possession of the first respondent, who is enjoying the property under patta issued in her name without following due process of law.

11. The learned counsel appearing for the appellant vehemently contended that there is a cloud over the title of the first respondent and therefore she has to file a suit for declaration of title. The appellant has not produced any document to show that he has got right over the suit survey number. In Ex.B2 relied on by the appellant, there is no reference about plot number or suit survey number. In such circumstances, the appellant is not able to create any cloud over the title of the first respondent.

12. In such circumstances, there is no necessity for the first respondent to seek declaration of title.

13. In view of the discussions made earlier, the substantial question of law framed at the time of admission is answered against the appellant.



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14. In nutshell,

a) The Second Appeal is dismissed by confirming the judgment and decree passed by First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs;

c) consequently, connected Miscellaneous Petition is closed.

15.12.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.
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To

1. The Additional District Munsif cum Principal Sessions Court,
Ariyalur.
2. The District Munsif Court, Jayankondam.

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