IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No.268 of 2021

1.N.Venkatasamy
2.N.ponnusamy
3.Kamalammal
4.Vanaja
5.Sasikala ... Appellants

Vs.

1.Ambujammal
2.Dasarathan
3.Rajammal
4.The District Collector
Collectorate,
Krishnagiri-636 116.
5.The Tahsildar,
Taluk Office,
Krishnagiri-636 001.
6.The Sub-Registrar,
Sub-Registrar's Office
Veppanapalli,
Krishnagiri Taluk and District. .. Respondents

Appeal suit is filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree of the learned Additional District Judge, Krishnagiri made in O.S.No.132 of 2018, dated 07.07.2021.

For Appellants : Mr.M.MuraliDharan
For R1 to R3 : Mr.P.Valliappan, Senior Counsel
for Mr.J.Bharathiraja
For R4 to R6 : Mr.T. Chandrasekaran
Special Government Pleader

J U D G M E N T

The appellants have preferred this appeal suit against the Judgment and Decree passed by the learned Additional District Judge, Krishnagiri made in O.S.No.132 of 2018, dated 07.07.2021.

2. Heard, Mr. M. MuraliDharan, learned counsel for the appellants and Mr. P. Valliappan, learned Senior Counsel for Mr. J. Bharathiraja for the respondents 1 to 3 and Mr. T. Chandrasekaran, learned Special Government Pleader appearing for the respondents 4 to 6 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The respondents herein are the defendants 1 to 6 in O.S.No.132 of 2018. Before the trial Court, the plaintiffs who are the legal heirs of one Nagaraj, filed the suit for partition claiming half share in the land in S.No.255/5, to the extent of 33.5 cents, with other consequential reliefs against the defendants who are the legal heirs of Venkatesan, brother of their father Nagaraj. Defendants denied the plaintiffs claim and contended that the said suit property absolutely belongs to Ambujammal which was assigned by the defendants 4 to 6 by the Revenue Authorities, by issuing conditional patta in her name during the year 1998, considering her long possession and enjoyment. Thereafter, she enjoyed the same as absolute owner of the property in which, the plaintiffs have no rights, thereby, prays to dismiss the suit.

5. Before the trial Court both the parties adduced oral and documentary evidence and the trial Judge framed the issues for consideration. The District Collector, Tahsildar and the Sub-Registrar/ defendants 4 to 6 remained ex-parte before the trial Court. The plaintiffs and the defendants 1 to 3 contested the case. The learned trial Judge framed three issues and considering the

evidence on record held that originally the land was classified as Anadheenam and belongs to the Government. In the year 1998, assignment conditional patta was issued in favour of the first defendant / Ambujammal. Thereafter, she enjoyed the property as her absolute property and the plaintiffs failed to prove that it was enjoyed by his grandfather / Venkatasamy and thereafter, his two sons Venkatesan and Nagaraj, in respect of the suit property an extent of 85 cents in S.No.255/5 nor the documents produced by the plaintiffs, supporting their claim. Thereby it was held that the suit property is absolute property as per assignment patta stands in the name of Ambujammal/ first defendant and the learned trial Judge dismissed the suit holding that, the plaintiffs have no right in the Anadheenam property. Challenging the said findings the plaintiffs have preferred this appeal.

6. The learned counsel for the plaintiffs submitted that the learned trial Judge failed to consider several important documents relied by the plaintiffs more particularly Ex.A8 and Ex.A9 are the oldest documents, through which they were able to establish that originally the suit land in S.No.255/5 was classified as Anadheenam land and enjoyed by his grandfather / "வெங்கடசாமி நாயுடு" along with his patta land and the same was not

properly appreciated by the learned trial Judge and erroneously dismissed the suit, as if the plaintiffs have not proved their case. Further he submitted that after the demise of Venkatasamy Naidu, his two sons Venkatesan and Nagaraj orally divide the joint family patta land and also the Anadheenam land which is in their enjoyment. While so, clandestinely the first defendant gave a false information to the authorities and obtained patta from the revenue officials and the same was also established by the plaintiffs during cross-examination of D.W.1 / first defendant. But their evidence was not been properly appreciated by the learned trial Judge and erroneously held that first defendant is the absolute owner of the property which is unjustified and liable to be set aside. Further he would submit that as per the Panchayat Muchalikka plaintiffs were able to establish that before the Panchayat, defendants agreed to give half share in the suit property i.e., 33.5 cents, out of total extent of 85 cents in the suit property and the same was proved by the plaintiffs by examination of independent witnesses. But without appreciating those evidence the learned trial Judge unbelieved the plaintiffs evidence and passed an order, hence he prayed to set aside the findings by allowing this appeal.

7. By way of reply the learned counsel for the defendants 1 to 3 argues that before the trial Court the first defendant established that, after due enquiry considering her long possession, conditional assignment patta was granted in favour of the first respondent by the Revenue Authorities in the year 1998 itself. Thereafter she alone enjoyed the property and having known the said fact much earlier the plaintiffs have not approached the Court immediately. They filed the suit only in the year of 2018 and also created documents among themselves in order to grab the property. To that effect the evidence adduced on the side of the defendants was properly appreciated by the learned trial Judge and dismissed the suit as such it is valid, thereby he prays to dismiss the appeal as devoid of merits.

8. The brief fact of the case is one Venkatasamy Naidu had two sons namely Venkatesan and Nagaraj, now all the three persons died. The plaintiffs are the legal heirs of the said Nagaraj and defendants are the legal heirs of the said Venkatesan. According to the plaintiffs their grandfather Venkatasamy Naidu owned patta land in S.No.255/1 - 23 cents, in S.No.255/2C - 69 cents,in S.No.255/2A - 44 cents,in S.No.255/2B - 27 cents and in S.No.255/2D - 82 cents, apart from the patta lands, he also possessed and

enjoyed the Anathinam land belongs to the Government in S.No.255/5 an extent of 85 cents adjacent to his patta land which he possessed and enjoyed from time memorial. After the demise of said Venkatasamy Naidu his two sons namely Venkatesan and Nagaraj entered into oral partition. As per oral partition, for Venkatesan, properties in S.No.255/1-23 cents in patta No.24, in S.No.255/2C - 69 cents and in S.No.255/5 Anathinam property - 42.5 cents were allotted. For Nagaraj properties in S.No.255/2B -27 cents in patta No.387, in S.No.255/2D - 82 cents in patta No.387 and in S.No.255/5 Anathinam property - 42.5 cents were allotted. Accordingly both of them, till their life time enjoyed the properties. After their demise the plaintiffs and the defendants have left their legal heirs to enjoy their respective share of the partitioned properties as per earlier oral partition. With regard to oral partition as well as the division of the property in respect of the patta land belongs to Venkatasamy Naidu, there is no dispute. The dispute between the parties is pertaining to the Anadheenam land in S.No.255/5 with an extent of 0.85 cents. Both the parties admitted that it is classified as Anadheenam, belongs to the Government and it is not their ancestral property.

9. The contention of the plaintiffs is that after the demise of their father the first defendant by giving false information, clandestinely obtained patta in her name in the year 1998 for the entire extent of 85 cents of Anadheenam land in S.No.255/5 and the same was objected by the plaintiffs. Hence, Panchayat was arranged, in which defendants agreed to give 33.5 shares in their favour. To that effect Panchayat Muchalikka was also executed on 28.02.2011. But ignoring the same, the defendants attempted to sell the property. Hence they filed the suit.

10. The defendants admitted the relationship as well as the oral partition inrespect of patta land of Venkatasamy Naidu, but not admitted the plaintiffs claim over the suit property. The first defendant contended that it is her absolute property and by considering the long possession, the revenue officials assigned patta in her name in the year 1998 and from then on she is the absolute owner of the property. To prove her claim she produced the documents namely assignment patta, marked as Ex.B1 and computerised patta marked as Ex.B2, Kist receipt marked as Ex.B4. Panchayat Muchalikka executed on 28.02.2011, which was marked on the side of the plaintiff, through Panchayathar P.W.4 and the same was marked as Ex.A4, but the

thumb impression in the document is totally denied by the defendants. Plaintiffs have not taken any steps to prove the document and not sent the alleged document to expert opinion. Therefore, the learned trial Judge not accepted the validity of the said document and held the same as not proved.

11. On bare perusal of the Ex.B1, it reveals that the assignment patta was granted in the name of first defendant on 06.05.1998 to the extent of 0.34.5 arc in S.No.255/5. Now the said patta is challenged by the plaintiffs by stating that, by giving false information before the Revenue officials, as a wife of Venkatasamy Naidu, she obtained said patta behind their back, hence immediately they raised objection.

12. The learned counsel for the plaintiffs / appellants submitted that the husband of the first defendant is Venkatesan/ வெங்கடேசன், but taking into advantage of the same she gave application, as if she is the wife of Venkatasamy Naidu / வெங்கடசாமி நாயுடு, Since the property was enjoyed by their grandfather / Venkatasamy Naidu, on that hold, the revenue officials might have presumed that she is the wife of said Venkatasamy Naidu

and assigned patta in her name mistakenly. However with ulterior motive the legal heirs of the Venkatesan / defendants obtained patta in the name of first defendant, as if the said property was under her long and continued enjoyment. In fact the said property was under the enjoyment of their grandfather / Venkatasamy Naidu and after his demise his two sons have enjoyed the property and not by Ambujammal/ D1, exclusively. To prove the same they produced the documents Ex.A2, the order of Revenue Department as well as A-Register - Ex.A6, FMD - Ex.A7, another true copy of A.Register -Ex.A8.

13. Now the point to be decided is as follows:

(i) Whether the suit property in S.F.No.255/5 an extent of 0.85 cents is a Anadheenam land under the enjoyment of Venkatasamy Naidu? or

(ii) Whether the first defendant is the wife of Venkatasamy Naidu? or

(iii) Whether the wife of Venkatesan obtained the assignment patta by giving false information to the Revenue official?

14. Though the Revenue Officials, District Collector and Tahsildar / D4 to D6 are added as parties, they did not appear before the trial Court, and

remained ex-parte. However, on the side of the plaintiffs the proceedings of the Revenue Authorities was marked as Ex.A2 as well as the Deputy Registrar was examined as P.W.5. He gave the evidence based on the available records. As per his evidence the land in S.No.255/5, an extent of 0.85 cents, was originally classified as Anadheenam land, as per the Revenue records. But he was not aware that the patta land of the Venkatasamy Naidu is situated, adjacent to the Anadheenam land. Admittedly, Venkatasamy Naidu was grandfather of plaintiffs and the defendants 2 and 3. It is also admitted fact that Venkatasamy Naidu had two sons namely Venkatesan and Nagaraj, The plaintiffs are the legal heirs of the Nagaraj and defendants are the legal heirs of Venkatesan. The first defendant / Ambujammal is wife of the Venkatesan. Now the first defendant contended that her husband name is Venkatesan @ Venkatesan Naidu. During the trial, she stated that her father-in-law name is not Venkatasamy Naidu, but his name is Ponnusamy Naidu. But on careful perusal of the entire written statement filed before the trial Court the defendants as if they were not aware that Venkatasamy Naidu was their grandfather and not pleaded that their grandfather name is Ponnusamy Naidu. In the plaint the first defendant was addressed as wife of Venkatesan but it was not denied by the first defendant nor she pleaded that her husband name is Venkatesan @ Venkatasamy Naidu. Therefore, the silence on the part of the defendant to make specific denial as contemplated under Order VIII of Code of Civil Procedure is absent. If her father-in-law name is not Venkatasamy Naidu or her husband name is Venkatasamy Naidu @ Venkatesan, the first defendant, who was aware of the same has remained silent itself amount to admission. Therefore, her evidence, that her father-in-law is Ponnusamy Naidu is neither acceptable one, nor supporting with her pleadings, nor she established that her husband had two names Venkatesan @ Venkatasamy Naidu.

15. As per the plaintiffs contention by giving wrong information the first defendant obtained patta. On a perusal of Ex.A2 Revenue proceedings, the first defendant had sent a un-dated letter to the District Collector, Tahsildar, Krishnagiri, praying to issue patta for the land in S.No.255/5 to the extent of 0.34.5 hector. In that letter she mentioned her name and address as follows: " Ambujammal, W/o.Late Vengadasamy, Pollupalli". In that letter she stated that she has not possessed any patta land and belongs to poor agriculturist family but she enjoyed the property for 35 year so she prayed to issue patta in her name. Based on that the assignment order was passed. All

the particulars given by her to get the said conditional assignment patta also enclosed with that order. On perusal of Ex.A2 in column No.10, in respect of "whether the applicant possessed any land in that village" it was detailed with land in S.No.255/1, 255/2C measuring an extent of 0.37.5. So the particulars of the patta land was enclosed, but in another column whether they possessed any land in that village, the endorsement made was "No" as if she has not possessed any land, contrary to the particulars, that they possessed patta land in that village. The Revenue Authorities also stated that they conducted enquiry and Ambujammal is the wife of the late Venkadasamy and she was in possession of the property, but she has no other property belongs to poor family, accordingly land was assigned to her name on 07.05.1998. Admittedly, on that date, she was not landless poor lady, she was possessed patta land nearby the said property but it was totally ignored by the Revenue Authorities and assigned patta in her name as if she is landless poor lady.

16. In fact, the said Anadheenam land is situated adjacent to the National High ways which is now more valuable property worth about more than crores. Furthermore, while issuing assignment patta the statement was recorded from her and other defendants / D1 to . The Revenue Officials

concluded that applicant and her family members has no patta land, hence they assigned the conditional patta in her name. As discussed above they possessed patta land near to this property. But the conduct of the Revenue Officials also shows that they have not conducted proper enquiry or with same ulterior motive assigned patta in favour of the said Ambujammal without ascertaining her correct husband name. In all the Revenue proceedings Ambujammal was addressed as Ambujammal W/o. Venkadasamy. The said assignment patta and Kist receipt were also marked on the side of the defendants as Ex.B4, in that Kist receipt, her husband name was mentioned as Venkatesa Naidu. Therefore the oldest A-Register pertaining to the suit land in S.No.255/5 which was marked as Ex.A8 of the year 1960, shows that S.No.255/1& 2 stands in the name of Venkatasamy Naidu, adjacent to that patta land i.e., suit property in S.No.255/5 existed and the same was classified as Anadheenam land since 1960. The patta land was enjoyed by Venkatasamy Naidu grand father of plaintiff as claimed by the plaintiffs and the said documents also established that, Anadheenam land was adjacent to their family properties. Furthermore, Venkatasamy Naidu is father-in-law of first defendant, original owner of the patta lands. After his demise, in order to get the Anadheenam land in her possession the defendants

1 to 3 submitted false information before the Revenue Authorities, in order to get assignment patta for the said land under the guise of legal heirs of Venkatasamy Naidu. So that only in all the applications the first defendant claimed, she is the wife of Venkadasamy but her husband name is Venkatesan, both are two different names. Therefore taking advantage of the similarity of her husband name and father -in-law name, the first defendant clandestinely gave the husband name as Venkatasmay Naidu in the A-Register extract, during 1960 marked as Ex.A8. This clearly establish that the plaintiffs' grandfather name is Venkatasamy Naidu. Therefore, by giving false information the first defendant got the assignment patta in the year 1998 and it is proved by the plaintiffs, but the learned trial Judge failed to appreciate the Revenue records and erroneously held that the patta stands in the name of the first defendant is valid one. Therefore, the findings given by the learned trial Judge in issue No.1 and 2 are liable to be set aside.

17. Considering the relief claimed in the suit that the plaintiffs have prayed for half partition in respect of the share in the said Anadheenam land to the extent of 85 cents as if already the Panchayat was held in which the defendants 1 to 3 agreed to give 33.5 cents, based on the Panchayat

Muchalikka dated 28.02.2011. Now they are claiming right over the property but the said Panchayat Muchalikka was disputed by the defendants but it was not been properly established by the plaintiffs by proving the thumb impression found in the said document.

18. By considering the long possession has empowered to obtain conditional assignment in favour of those persons as discussed above. The first defendant clandestinely obtained patta in her name by giving false information therefore the patta issued by the Revenue Authorities / D3 and D4 is invalid as it is obtained with false information. Accordingly, the assignment patta issued in favour of the first defendant, given by the Revenue Authorities, is set aside. Though there is no prayer to that effect, considering the conduct of the defendant 4 to 6, who remained ex-parte before the trial Court, it implies that they were sailing with the first defendant and not interested to save the property belongs to the Government. As on date it is a valuable property but the Revenue Officials remained ex-parte before the trial Court which shows that they have exhibited lethargic attitude to deal with the property belongs to the state.

19. Therefore a copy of this judgment copy is directed to be sent to the District Collector to take further action in respect of the said Anadheenam land. Liberty is given to the plaintiffs to approach the Revenue Officials.

20. Accordingly, the Appeal Suit is partly allowed. There shall be no order as to costs.

09.10.2023

Index : Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

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To,

1. The Additional District Judge,
   Krishnagiri.

2. The District Collector,
   Krishnagiri.

3. The Section Officer, VR-Section,
   High Court of Madras, Chennai.

T.V.THAMILSELVI,J.

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