



S.A.No.398 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON : 20.11.2023

PRONOUNCED ON : 20.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.398 of 2017

1.K.KAMALA

2.K.SEETHARAMA GURUKKAL

3.K.MURTHY

4.K.GANESAN

5.J.VAIDEHI

6.D.VENKATARAMAN

7.D.RAMESH

... Appellants

Vs

1.The Executive Officer,
Arulmighu Nandeeswaraswamy Devasthanam
Adambakkam, Chennai – 600 088.



S.A.No.398 of 2017

2.The Secretary,
Dayananda Anglo Vedic School (DAVS),
No.5, Mohanapuri, Adambakkam,
Chennai-600 088.

3.K.JAYADEVAN

... Respondents

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the Judgement and Decree in A.S.No.35 of 2014 dated 26.08.2016 on the file of the Subordinate Judge, Tambaram confirming the Order and decree in I.A.No.2008 of 2012 in O.S.No.187 of 2012 dated 30.04.2014 on the file of the Principal District Munsif, Alandur.

For Appellants : Mr.P.Gopalan

For R1 : Mr.A.K.Sriram
Senior Advocate
for M/s.A.S.Kailasam & Associates

For R2 : Mr.V.Srikanth
for M/s.E.Ganesh

For R3 : Died

J U D G M E N T

The Second Appeal is arising out of judgement and decree passed by First Appellate Court confirming an order of rejection of the plaint. The appellants and 3rd respondent herein filed a suit for declaration of title and recovery of possession against the respondents 1 and 2 in O.S.No.187 of



S.A.No.398 of 2017

2012. The 2nd respondent herein, who was arrayed as 2nd defendant in the suit filed an application under Order 7 Rule 11 of Civil Procedure Code seeking rejection of the plaint. The said application was allowed by the Trial Court. Challenging the same, the appellants and 3rd respondent herein preferred an appeal and the First Appellate Court confirmed the findings of the Trial Court. Hence, the appellants are before this Court.

2. According to the appellants and 3rd respondent/plaintiffs, the suit property was given to their predecessors-in-interest as a personal grant and they have been in possession and enjoyment of the suit inam lands as such. After notification under Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963, the husband of 1st appellant and father of appellants 2 to 5 and 3rd respondent herein and grandfather of the appellants 6 and 7 namely A.N.Katchabeswara Gurukkal claimed patta for the suit lands under Minor Inams Abolition Act proceedings. The Assistant Settlement Officer by order dated 10.08.2011 granted Ryotwari Patta in favour of 1st respondent/1st defendant. Aggrieved by the same, the 2nd



S.A.No.398 of 2017

WEB COPY

appellant herein preferred an appeal before the Inam Abolition Tribunal/Principal Sub Court, Chengalpattu in Inam C.M.A.No.10 of 2011 and the same was pending on the date of filing of the present plaint. It was claimed by the appellants that dehors the patta granted in favour of 1st respondent, the question of title could be agitated before the Civil Court. The 2nd respondent taking advantage of the dispute between the appellants and 1st respondent had committed trespass into the suit lands and constructed unauthorised construction in the suit properties. Hence, the above suit was filed seeking declaration of plaintiffs' (appellants and 3rd respondent) title to the suit properties and for recovery of possession of suit properties after removal of construction made by the 2nd defendant.

3. The 2nd respondent herein filed I.A.No.2008 of 2012 seeking rejection of the plaint filed by the appellants and 3rd respondent/plaintiffs. In his affidavit filed in support of the said application, it was contended by the 2nd respondent that no document had been produced by the appellants to substantiate their claim of personal grant in favour of their predecessors-in-



S.A.No.398 of 2017

WEB COPY

interest. It was also claimed that 2nd appellant herein pending proceedings before the Assistant Settlement Officer, executed a document in favour of 1st respondent on 16.05.2007 surrendering the suit property in favour of Temple admitting its title. Therefore, the appellants were estopped from claiming title and maintaining the present suit. The 2nd respondent also claimed that it was a lawful tenant of the suit properties under 1st respondent in whose favour patta was granted in inam settlement proceedings. The 2nd respondent also contended that the present suit is hit by principles of *res judicata* and barred by limitation.

4. The Trial Court on enquiry held that appellants having executed a Surrender Deed in favour of 1st respondent cannot come before the Court seeking title over the suit properties and allowed the application. Hence, plaint filed by the appellants and 3rd respondent was rejected. Aggrieved by the said order of rejection of plaint, the appellants and 3rd respondent herein preferred an appeal in A.S.No.35 of 2014 on the file of the Subordinate Court, Tambaram. The First Appellate Court on consideration of exhibits



S.A.No.398 of 2017

marked on behalf of either side, came to the conclusion that suit properties were not personal properties of the plaintiffs as claimed by them but the suit properties were service inam lands attached to the service as Gurukkal. The First Appellate Court also by taking into consideration the Surrender Deed executed by the appellants herein, which was marked as Ex.P4 and the orders passed by the Assistant Settlement Officer, which was marked as Ex.P6, came to the conclusion that the suit filed by the appellants and 3rd respondent was not maintainable and consequently, dismissed the appeal. Aggrieved by the same, the appellants are before this Court.

5. At the time of admission this Court formulated the following substantial questions of law:-

“(a) On the available facts and circumstances of the case, Whether the Learned Judge is right in dismissing the First Appeal without adverting to the law laid down by the Hon'ble Supreme Court of India reported in (2008) 1 Madras Law Journal 1278 that in the case of rejection of plaint, only the plaint averments could be looked into and not the defence of the defendants?;



S.A.No.398 of 2017

(b) Whether the learned Judge is right in rejecting the claim of the plaintiffs without advertting to the law laid down by the Hon'ble Supreme Court of India reported in AIR 1986 Supreme Court 794 followed by the decision of the Full Bench of this Court reported in 1998 (1) CTC 630, wherein, it was held that irrespective of Grant of Ryotwari Patta in favour of the Religions Institution, Civil Suit for declaration of title to the inam lands and for other reliefs' is maintainable before the Civil Court?"

6. Mr.P.Gopalan, learned counsel appearing for the appellants vehemently contended that in an application for rejection for plaint, the Court shall only look into the plaint averments and the plaint documents and it shall not take into consideration the defence raised by the defendants and the documents produced by the defendants in support of their defence. The learned counsel further contended that the Courts below by taking into consideration the documents filed by the 2nd respondent in support of it's petition for rejection of the plaint, non-suited the appellants by deciding the suit claim on merits and the same is beyond the scope of Order 7 Rule 11 of



S.A.No.398 of 2017

Civil Procedure Code. The learned counsel further submitted that notwithstanding order passed in the settlement proceedings initiated under Inam Abolition Act, 1963 or patta granted in such proceedings, the Civil Court's jurisdiction to decide the title is not ousted and therefore, the appellants are entitled to maintain the suit for declaration of title by claiming independent right over the suit properties. In support of his contention, the learned counsel relied on the following judgements:-

- (i) ***M.Prince Manohar vs. Bhima Lakshmi Narasammah*** reported in ***2014 (1) CTC 160.***
- (ii) ***Sri-La-Sri Sivaprakasa Pandara Sannadhi Avargal vs. T.Parvathi Ammal*** reported in ***1998 (1) CTC 585.***
- (iii) ***Srinivasan and 6 others vs. Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirapalli Dist.,*** reported in ***1998-2-L.W.189.***
- (iv) ***R.Manicka Naicker vs. E.Elumalai Naicker*** reported in ***(1995) 4 SCC 156.***
- (v) ***C.Natrajan vs. Ashim Bai and others*** reported in ***(2008) 1 MLJ 1278 (SC).***



S.A.No.398 of 2017

WEB COPY

7. Mr.A.K.Sriram, learned Senior Counsel appearing for the 1st respondent and Mr.V.Srikanth, learned counsel appearing for the 2nd respondent in support of the judgement and decree passed by the Courts below, submitted as follows:-

7. (i) The cause of action for filing the present suit is erroneous order passed by Assistant Settlement Officer dated 10.08.2011 and the same was subject matter of the appeal in Inam C.M.A.No.10 of 2011 on the date of filing of the plaint. Therefore, when effective remedy of appeal provided under Minor Inam Abolition Act, 1963 against the order passed by the Assistant Settlement Officer, the present suit on the cause of action pleaded is not maintainable. In other words, it is the submission of the learned counsel for the respondents 1 and 2 that the plaintiffs are not entitled to canvass the correctness of the order passed by Assistant Settlement Officer by filing a suit for declaration of title and therefore, there is no cause of action for the present suit and consequently, it is liable to be rejected under Order 7 Rule 11 (b) of Civil Procedure Code.



S.A.No.398 of 2017

WEB COPY

7. (ii) The learned counsel further submitted that order passed by the Assistant Settlement Officer granting Ryotwari Patta in favour of the 1st respondent was challenged by the 2nd appellant/2nd plaintiff in Inam C.M.A.No.10 of 2011 on the file of the Inam Abolition Tribunal/Principal Sub Court, Chengalpattu and the same was dismissed subsequent to filing of the suit. Challenging the said order, the appellants preferred STA and the same is pending on the file of this Court. In such circumstances, when the claim of the appellants for patta under the provisions of Inam Abolition Act, is very much alive in STA pending before this Court, the present suit for declaration of title filed by the appellants before the Civil Court is premature and hence, liable to be rejected.

8. It is settled law that while considering the application for rejection of the plaint, the Court shall only refer to the plaint averments and the documents filed in support of the plaint averments. Only in cases where plaint is liable to be rejected on any one of the grounds enumerated under Order 7 Rule 11 of Civil Procedure Code on the face of the averments made



S.A.No.398 of 2017

in the plaint and the plaint documents, the plaint can be rejected. The Court is not entitled to refer to the defence and the defendants' document while considering the petition for rejection of the plaint. If I look at the order passed by the Courts below, both the Courts below referred to the documents filed by the 2nd respondent in support of the application for rejection of the plaint. The Courts below mainly relied on Ex.P4-Surrender Deed executed by 2nd appellant herein in favour of the 1st respondent. The learned counsel appearing for the appellants submitted that Ex.P4 was unregistered and insufficiently stamped document and hence, it was inadmissible in evidence. I do not want to go into the question of admissibility of Ex.P4 at this stage. In view of settled law, the Courts below ought not to have referred to Ex.P4 document filed by the 2nd respondent while considering the application for rejection of the plaint. Therefore, the first question of law framed at the time of admission is answered by holding the Courts below are not justified in referring the various documents filed by the 2nd respondent in support of his application for rejection of the plaint.



S.A.No.398 of 2017

WEB COPY

9. The Civil Court's jurisdiction to decide independent title of the parties, dehors the order passed in settlement proceedings initiated under Inam Abolition Act, is very well settled by the Full Bench of this Court in ***Srinivasan and 6 others vs. Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirapalli Dist.***, reported in ***1998-2-L.W.189***.

“14. A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislations are subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basis and fundamental rights which entitle a person to preferentially get patta under these legislations and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under



rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intended to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claim, in their attempt to project a claim for patta. Consequently, in our view, the ratio of the decisions of the Apex Court reported in AIR 1986 SC 794=98 L.W. 849 (supra), (1995) 4 SCC 156=1995-1-L.W.731 (supra) and (1998) 2 SCC 642 (supra) and that of a Division Bench of this Court in 1988-2-L.W..513 (supra) and of a learned single Judge of this Court in 1992-1-L.W.207 (supra) would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which has, as their objection and aim, to implement ryotwari



WEB COPY



S.A.No.398 of 2017

settlement in the areas governed by them.

15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata, does not have the effect of ousting the jurisdiction of the Civil Court once and for all. It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved and existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Similarly, even in cases where the principles of res judicata are rendered applicable, the jurisdiction of the competent Civil Court to go into the question and find out whether the necessary ingredients to apply the principles of res judicata exist in a given case or not cannot be denied to the Civil Courts and from the mere fact of according finality to the orders or decisions rendered under the Act or the application of the principles of res judicata, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any



S.A.No.398 of 2017

purpose cannot be automatically inferred or implied. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings also are identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or Court of competent jurisdiction.

... ..

... ..

18. For all the reasons stated above, we answer the question referred to the Full Bench in the negative by holding that the jurisdiction of the Civil Court to entertain a suit for declaration of title and injunction is not barred by reason of the grant of patta under the provisions of Tamil Nadu Act 30 of 1963.”

10. A reading of the above judgement of the Full Bench of this Court makes it clear that even if the order passed in the settlement proceedings attained finality still the Civil Court has got jurisdiction to decide the



S.A.No.398 of 2017

question of title. In the case on hand, the appellants seek declaration of title on the ground that the suit properties are a personal grant in favour of their predecessors-in-interest. The Courts below by referring to various documents filed by both the parties, gave a finding that suit property was not a personal grant but it was a Service Maniyam Land (Gurukkal Maniyam) and therefore, the suit properties could not be treated as personal grant in favour of the plaintiffs.

11. Whether the suit properties are a personal grant in favour of the plaintiffs' predecessor or it is a service inam land granted to predecessor of plaintiffs is a matter to be decided after full fledged trial. The Courts below ought not to have referred to the exhibits marked on behalf of the 2nd respondent and rendered a finding on merits that suit property was a service inam and not the personal grant in favour of the appellants' predecessors-in-interest. This Court is also conscious of the fact that patta proceedings under Inam Abolition Act, is not yet culminated and the STA filed by appellants questioning the orders passed by Assistant Settlement Officer and Inam



S.A.No.398 of 2017

WEB COPY

Abolition Tribunal is pending on the file of this Court. When it was held by the Full Bench of this Court in the case law cited supra, even if the order passed under settlement proceedings attained finality, the Civil Court can exercise jurisdiction to decide the question of title independently, mere non-culmination of settlement proceedings under Inam Abolition Act, would not put an embargo on the Civil Court from entertaining a suit for title which is otherwise maintainable by virtue of Section 9 of Civil Procedure Code. Both the Courts below by referring to the documents filed by the 2nd respondent rendered a finding on the merits of the case without deciding the application for rejection of the plaint purely based on the averments found in the plaint and plaint documents. Therefore, both the questions of laws framed at the time of admission are answered in favour of the appellants and against the respondents.

12. Now, I turn to the submission of learned Senior Counsel for 1st respondent that cause of action for suit is erroneous order passed by Assistant Settlement Officer and STA is pending regarding correctness of the



S.A.No.398 of 2017

same and consequently, there is a failure of cause of action for this suit.

Though in cause of action paragraph appellants mentioned erroneous order of Assistant Settlement Officer as main cause of action, in the body of plaint (para 11 of plaint), it was clearly averred that taking advantage of dispute between appellants and 1st respondent, the 2nd respondent trespassed into suit property and put up unauthorised construction. Hence, there is a challenge to title of appellants/plaintiffs and hence, they approached Civil Court for declaration of title, which according to Full Bench decision cited above is maintainable dehors settlement proceedings. It is settled law cause of action is bundle of essential facts based on which right accrued to plaintiff to seek a remedy. Here, challenge to title of appellants/plaintiffs by act of 2nd respondent is essential fact constituting cause of action. The cause of action has to be found by reading whole of plaint and the lens of scrutiny need not be confined to cause of action paragraph alone. Hence, the said submission of learned Senior Counsel for 1st respondent is rejected.

13. As a consequence to above discussion, the Second Appeal is



S.A.No.398 of 2017

WEB COPY

allowed by setting aside the judgement and decree passed by the First Appellate Court confirming the order of rejection of the plaint. The suit in O.S.No.187 of 2012 on the file of the Principal District Munsif, Alandur is restored to the file and the Trial Court is directed to dispose of the same in accordance with law.

In Nutshell:-

- (a) The Second Appeal is Allowed.
- (b) The judgement and decree passed by the First Appellate Court confirming the order of rejection of the plaint passed by the Trial Court is set aside.
- (c) The suit in O.S.No.187 of 2012 on the file of the Principal District Munsif, Alandur is restored to the file with direction to dispose of it in accordance with law.
- (d) In the facts and circumstances of the case, there shall be no order as to costs.

20.12.2023



S.A.No.398 of 2017

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm



WEB COPY



S.A.No.398 of 2017

S.SOUNTHAR, J.

dm

To

- 1.The Subordinate Judge, Tambaram.
- 2.The Principal District Munsif, Alandur.

Pre-delivery judgement in
S.A.No.398 of 2017

20.12.2023