



S.A.(MD).No.295 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.295 of 2021

and

C.M.P.(MD).No.4015 of 2021

1.Pooranam (Died)

2.Ramamoorthi

3.Neelamegam

4.Nagajothi

... Appellants/Appellants/Plaintiffs

(Appellants 3 and 4 are brought on record as LR's of the deceased 1st appellant vide Court order dated 23.12.2021 made in C.M.P.(MD).Nos.10805, 10807 and 10809 of 2021 in S.A.(MD).No.295 of 2021)

Vs.

Malik

...Respondent/Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the Judgment and Decree dated 27.11.2020 passed in A.S.No.5 of 2017 on the file of the Honourable Subordinate Judge, Ramanathapuram confirming the Judgment and Decree dated 22.12.2016 passed in O.S.No.124 of 2010 on the file of the learned District Munsif Cum Judicial Magistrate Court, Rameswaram.



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For Appellants : Mr.P.Mani Anandh
For Respondent : Mr.Vashik Ali
for Mr.D.Nallathambi

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The plaintiffs in the suit in O.S.No.124 of 2010 on the file of the District Munsif Cum Judicial Magistrate Court, Rameswaram are the appellants herein. During the pendency of the Second Appeal, the first appellant died and the third and fourth appellants were brought on record as her legal representatives.

2. The suit was filed for declaration and for permanent injunction in respect of the suit schedule property. The said suit was dismissed by the Trial Court, namely, the District Munsif Cum Judicial Magistrate Court, Rameswaram by its judgment and decree dated 22.12.2016. Aggrieved by the same, the plaintiffs in the suit filed a first appeal before the Lower Appellate Court, namely, the Sub Court, Ramanathapuram in A.S.No.5 of 2017. The Lower Appellate Court also confirmed the findings of the Trial Court by dismissing the first appeal. Aggrieved by the concurrent findings of the Courts below, this Second Appeal has been filed.



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3. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit. The plaintiffs trace their title over the suit schedule property by virtue of a patta issued in favour of Karuppiyah by the revenue authorities on 27.11.1992. According to the plaintiffs, the suit schedule property was settled in their favour and their other son, namely, the third appellant herein by a registered inam settlement deed dated 22.10.1999. According to the plaintiffs, ever since the execution of the inam settlement deed dated 22.10.1999, they are in possession of the suit schedule property as the absolute owners. According to them, based on an application submitted by the defendant, the Revenue Divisional Officer, Ramanathapuram during the year 2006, without conducting proper enquiry, erroneously ordered for issuance of patta in the name of the defendant based on the judgment and decree passed in O.S.No.233 of 1999 on the file of the Sub Court, Ramanathapuram. The plaintiffs claim that they are not the parties to the said suit and that they had preferred appeal before the District Revenue Officer and that by taking advantage of the order of the Revenue Divisional Officer, the defendant is attempting to evict the plaintiffs unlawfully from the suit schedule property. In such circumstances, the suit was filed for declaration and for permanent injunction.



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4. However, as seen from the written statement filed by the defendant, he categorically contended that the suit schedule property absolutely belongs to him. According to the defendant, as per the judgment and decree passed by the Sub Court, Ramanathapuram in O.S.No.223 of 1999, his father Abdul Rahuman is the absolute owner of the suit schedule property. The defendant has contended that the suit schedule property is part of a larger area measuring a total extent of 7.45.5 hectares comprised in Survey No.10/2 originally which belonged to his father Abdul Rahman ancestrally. According to him, since his father was living abroad, the first plaintiff's husband Karupiah was appointed to manage Abdul Rahuman's property comprised in Survey No.10/2 and he has misused his authority by including his name in the patta and therefore, according to the defendant, rightly the Revenue Divisional Officer, Ramanathapuram on 05.05.2008 has ordered for issuance of patta for the suit schedule property in the name of the defendant after the death of his father, Abdul Rahuman.

5. The Trial Court after framing issues based on the pleadings of the respective parties and after giving due consideration to the oral and documentary evidence available on record has dismissed the suit. Before the



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Trial Court, the plaintiffs filed eight documents, which were marked as exhibits A1 to A8 and the first plaintiff was examined as a witness (P.W.1). On the side of the defendant, 16 documents were filed, which were marked as exhibits B1 to B16 and two witnesses were examined on his side, namely, the defendant himself as D.W.1 and one Sulaiman as D.W.2. The Advocate Commissioner was also appointed during the pendency of the suit and the reports of the Advocate Commissioner were marked as Court exhibits, namely, Ex.C1 and Ex.C2.

6. The Trial Court has rightly dismissed the suit on the ground that since the patta through which the plaintiffs claim title over the suit schedule property has been cancelled as per the order of the Revenue Divisional Officer, the plaintiffs are not entitled for the relief of declaration. Even in the oral evidence of the plaintiffs' witness (P.W.1), she admits that patta has been cancelled and it has been re-issued in the name of the defendant pursuant to an application filed by the defendant before the Revenue Divisional Officer. Even though in the plaint, the plaintiffs have pleaded that an appeal was filed against the order of the Revenue Divisional Officer cancelling the patta, no documentary evidence has been produced as to what transpired in the appellate proceedings of the plaintiffs. On the other hand, the defendant has traced his title from 1912



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onwards, as seen from Ex.B10, the certified copy of the sale deed dated 21.08.1912 executed in favour of Syed Kathi Rawuthar. Subsequent to the said document, the defendant has traced his title by virtue of other documents, which include revenue records, which have been marked as exhibits on the side of the defendant. The defendant has also filed the patta standing in his name for the suit schedule property, which has been marked as Ex.B9, which was issued pursuant to the patta transfer order passed by the Revenue Divisional Officer, Ex.B13. Therefore, the Trial Court has rightly held that the plaintiffs have not proved their title and therefore, they are not entitled for the relief of declaration and permanent injunction. This Court does not find any infirmity in the findings of the Trial Court.

7. The Lower Appellate Court, namely, the Sub Court, Ramanathapuram in its judgment and decree dated 27.11.2020 passed in A.S.No.5 of 2017 has also rightly confirmed the findings of the Trial Court by dismissing the first appeal filed by the plaintiffs.

8. The issues raised in this Second Appeal by the appellants in the grounds of appeal have all been rightly considered by the Courts below only in accordance with law and only based upon the oral and documentary evidence



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placed on record by both the parties. There are no substantial questions of law involved in this Second Appeal and the substantial questions of law raised in the grounds of the Second Appeal by the appellants are only factual issues which have been correctly considered by the Courts below. In the result, there is no merit in this Second Appeal.

9. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

30.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Sub Court,
Ramanathapuram.
- 2.The District Munsif cum Judicial Magistrate Court,
Rameswaram.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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