



S.A(MD)Nos.435 & 436 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2023

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)Nos.435 & 436 of 2016
and
C.M.P(MD)Nos.4699 & 4700 of 2016

(In S.A(MD)No.435 of 2016)

Fathima Beevi (Died)

... Appellant/
Appellant/
Defendant

2.Sharmila

... Appellant

(Second appellant is brought on record as legal heir of the deceased sole appellant vide Court order, dated 08.12.2022, made in C.M.P(MD)Nos. 10012 and 10013 of 2022 in S.A(MD)No.435 of 2016)

Vs.

Sri Neelakanda Pillaiyar Koil Devasthanam Enthal
Mudapulikadu, Peravurani Taluk,
Represented by its Executive Officer,
Peravurani Town & Taluk,
Pattukkottai Munsif.

... Respondent/
Appellant/
Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 26.06.2015 and



S.A(MD)Nos.435 & 436 of 2016

made in A.S.No.13 of 2012 on the file of the III Additional District Judge, Thanjavur at Pattukkottai reversing judgment and decree, dated 07.04.2011, made in O.S.No.9 of 2007 on the file of the Subordinate Judge, Pattukkottai.

(In S.A(MD)No.436 of 2016)

M.Ravi alias Ravichandran

... Appellant/
Appellant/
Defendant

Vs.

Sri Neelakanda Pillaiyar Koil Devasthanam Enthall
Mudapulikadu, Peravurani Taluk,
Represented by its Executive Officer,
Peravurani Town & Taluk,
Pattukkottai Munsif.

... Respondent/
Appellant/
Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 26.06.2015 and made in A.S.No.14 of 2012 on the file of the III Additional District Judge, Thanjavur at Pattukkottai reversing judgment and decree, dated 07.04.2011, made in O.S.No.19 of 2007 on the file of the Subordinate Judge, Pattukkottai.

(In both S.A.s)

For Appellants : Mrs.N.Krishnaveni
Senior Counsel

For Respondent : Mr.V.S.Kumaraguru



S.A(MD)Nos.435 & 436 of 2016

COMMON JUDGMENT

WEB COPY

The defendants in the suit are the appellants in these appeals.

2. The respondent / plaintiff filed a suit for recovery of possession in O.S.No.9 of 2007 and O.S.No.19 of 2007 on the file of the Subordinate Court, Pattukottai against the appellants in S.A(MD)Nos. 435 and 436 of 2016 respectively. The suit was dismissed by the trial Court. The appeal filed by the respondent was allowed and aggrieved by the same, the respective defendants filed these appeals.

3. According to the respondent Temple, the entire extent of 36 cents in S.No.138/6 situated in Naatanikottai, Neelakanda Pillaiyar Enthall Village in Peravurani Taluk belongs to the respondent Temple. The name of the respondent Temple was shown as title holder even in Record of Rights Register in the year 1933, Re-Survey and Settlement Register. Even though the suit Village was taken over by the Government under Act 26 of 1948, the lands in S.Nos.135 to 153 in the above said Village was not taken over by the Government. It was further averred in the plaint that in all old documents like R.O.R, R.S.R, Village



S.A(MD)Nos.435 & 436 of 2016

Re-Survey and Settlement Register of Nattanikottai Village, the respondent Temple's name had been duly registered as the title holder of the entire extent of 36 cents in S.No.138/6. The said old documents were marked as Exhibits A1 to A3. It was also averred that much later when UDR survey was undertaken, the names of three persons were included in respect of S.No.138/6 along with the name of the respondent Temple, even though no other person had got any right, title or interest over the lands in the said survey number other than the respondent Temple. It was further averred in the plaint that the right of the Temple cannot be defeated by illegally including the name of other persons in respect of the survey number and the UDR Scheme. It was further averred that one S.Karuppaiah Thevar and some other person claimed rights in respect of some portions of land in the said survey number and consequently, the respondent Temple filed a suit for declaration of title and recovery of possession against them in O.S.No.491 of 1964 on the file of the District Munsif Court, Mannargudi and the same was decreed. The respondent further averred in his plaint that the appellants purchased the suit property, which is a portion of land in the above said survey number from some persons, who are not having any manner of right over the same and started claiming right and possession over the suit property. On



S.A(MD)Nos.435 & 436 of 2016

these pleadings, the respondent filed a suit for recovery of possession against the appellants. In O.S.No.9 of 2007 out of which S.A(MD)No. 435 of 2016 arises a suit for recovery of possession was filed against the appellants. In the other S.A(MD)No.436 of 2016, a suit for recovery of possession of vacant site after removal of superstructure was filed.

4. The appellants herein filed a written statement and resisted the suit by denying the title of the respondent Temple over the suit property. It was further averred that any judgment obtained by the respondent Temple in the suit referred to in their plaint will not bind the appellant as they were not party to the said suit.

5. The appellant in S.A(MD)No.435 of 2016 claimed that she purchased the suit property from one Jayalakshmi under Exhibit A2, dated 06.10.2004 and the said Jayalakshmi purchased the same from one Ganesa Thevar under Exhibit A3, dated 31.01.1972. It was also submitted that the patta for the suit property had been transferred from the name of Jayalakshmi to that of appellants. It was further averred by the appellants that the appellant had been in possession and enjoyment of the suit property as its owner from the date of purchase and the



S.A(MD)Nos.435 & 436 of 2016

respondent Temple which had no right over the suit property cannot maintain a suit for recovery of possession.

6. In S.A(MD)No.436 of 2016, the appellant claimed that he got the suit property under a settlement executed by Vaidya Lingam under Exhibit B2, dated 13.06.1977 and the said Vaidya Lingam purchased the suit property from Ramasamy Thevar and his son Kulandai Samy under Exhibit B3, dated 05.08.1976. Thus the appellant in that second appeal also claimed that he had been in possession and enjoyment of the suit property from the date of settlement by putting up a building thereon. On these pleadings, the parties went to the trial.

7. The trial Court on consideration of oral and documentary evidences came to the conclusion that the suit property was taken over by the Government under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Hereinafter referred as 'Act 26 of 1963') and patta was given to the predecessors of appellants. Therefore, the trial Court came to the conclusion that by virtue of coming into force of Act 26 of 1963, the right of the Temple over the suit property got obliterated and the predecessors of the appellants got patta under Act 26



S.A(MD)Nos.435 & 436 of 2016

of 1963. The trial Court also found that a suit for recovery of possession filed by the respondent Temple was hit by Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, in view of the alternative remedy available before the authorities under the Act for recovery of possession. On this findings, the trial Court dismissed the suits filed by the respondent Temple.

8. Aggrieved by the same, the respondent Temple filed first appeals in A.S.Nos.13 of 2012 and 14 of 2012 on the file of the III Additional District Court, Tanjavore at Pattukottai. The First Appellate Court came to the conclusion that the respondent Temple by producing old documents, Exhibits A1 to A3 from the year 1936 to 1964 proved his title and pre-existing right over the suit property. Hence, even assuming the suit property was taken over by the Government under Act 26 of 1963 in the absence of any evidence to show, the pre-existing right over the suit property, the appellants predecessor were not entitled to get patta. Thus the First Appellate Court upholding the title of the respondent on the basis of the old documents from 1936 reversed the findings of the trial Court and decreed the suit for recovery of possession as prayed for.



S.A(MD)Nos.435 & 436 of 2016

WEB COPY

9. Aggrieved by allowing of the first appeal by the First Appellate Court, the appellants / defendants are before this Court.

10. At the time of admission, this Court had formulated the following Substantial Questions of Law:

"(A) When the defendant has proved his title to the suit property as per Exhibits B1 to B3 is the learned District Judge correct in his finding that the defendant has not proved his title to the suit property by tracing his title to persons named in Exhibit A3 and decreeing the suit filed by the plaintiff for recovery of possession?"

(B) When the property mentioned in Exhibits A4 and A5 are different property is the learned District Judge correct in declaring the title of the plaintiff to the suit property?"

(C) Is the suit for recovery of possession is maintainable without giving particulars of the properties as per Order 7 Rule 4 of C.P.C?"



S.A(MD)Nos.435 & 436 of 2016

WEB COPY

11. Mrs.N.Krishnaveni, learned Senior Counsel appearing for the appellants submitted that though respondent filed old documents to prove the right over the suit property, the said right of the respondent Temple got obliterated by coming into force of Act 26 of 1963 and in the settlement proceedings under the Act, appellants' predecessor were given patta in recognition of their possession. The appellant Temple having failed to challenge the issuance of patta in favour of predecessors of the appellants before the hierarchy of authorities constituted under Act 26 of 1963, is not entitled to maintain a suit for recovery of possession. The learned Senior Counsel further submitted that the suit for recovery of possession simpliciter is not maintainable in the absence of prayer for declaration of title of respondent Temple, in view of intervention of Act 26 of 1963. The learned Senior Counsel further submitted that the judgment and decrees obtained by the respondent Temple under Exhibits A4 and A5 as against different individuals will not bind this appellant and consequently, the First Appellate Court ought not to have given any weightage to said documents.



S.A(MD)Nos.435 & 436 of 2016

12. Mr.V.S.Kumaraguru, learned Counsel appearing for the respondent Temple submitted that the respondent proved his title over the suit properties by producing old documents from the year 1936 onwards and the appellants' whose predecessors got patta under UDR Scheme at a later point of time are not entitled to claim any better title than the respondent Temple. The learned Counsel stoutly contended that the appellants have not produced any acceptable evidence to show that the suit property was taken over by the Government under Act 26 of 1963 and in the settlement proceedings initiated under the Act, the predecessors' of the appellants got patta. The learned Counsel further submitted even assuming any patta had been granted to the respondent Temple behind its back in the Inam Abolition proceedings, in view of establishment of pre-existing right of the Temple over the suit properties. It is always open to the Temple to maintain a suit for recovery of possession based on title.

13. The learned Counsel by referring to the judgment reported in ***1998 (1) CTC page 630 (Srinivasan and 6 Others Vs. Sri Madhyarjuneswaraswami Pattaviathalai, Tiruchirapally District by its Executive Officer at Pettavaithalai Devasthanam and 5 Others)***



S.A(MD)Nos.435 & 436 of 2016

submitted that the civil Courts jurisdiction to decide the question of title is not ousted by the Inam Abolition Act and hence, the present suit for recovery of possession is maintainable even assuming the predecessors of appellants were issued with patta under Inam Abolition Act.

14. Heard the arguments of the learned Senior Counsel appearing for the appellants and that of the learned Counsel appearing for the respondents. I have perused the typed set of papers and other records.

15. The respondent Temple has filed a suit for recovery of possession based on title. In order to prove its title, the respondent Temple filed very old documents, namely, R.O.R Register of Natanikottai Village of the year 1936, R.S.R Register of Natanikottai Village, dated 02.06.1961 and its Property Register approved by the Deputy Commissioner of HR&CE in the year 1952 as Exhibit A6. In Exhibits A1 and A2, The entire extent in suit survey number 138/6 had been shown as the property of respondent Temple. The entire extent in the said survey number is also shown as the property of the respondent Temple in its Property Register prepared long back and approved by the competent authority, namely, the Deputy Commissioner of HR&CE.



S.A(MD)Nos.435 & 436 of 2016

Therefore, the title of the respondent Temple over the entire extent of land in the old survey number relating to the survey number of the suit property is established. Though the learned Senior Counsel appearing for the appellants submitted that the respondent Temple lost its right over the suit property by virtue of coming into force of the Act 26 of 1963 and in the settlement proceedings initiated under the said Act, patta for the suit property was granted in favour of appellants' predecessor in title, there is no plea in support of the said contention in the written statement filed by the appellants. In their pleadings, the appellants have not raised a plea that the suit property was taken over by the Government under Inam Abolition Act and patta had been given to the predecessors' of appellants in the proceedings initiated under Inam Abolition Act. It is a settled law, a party is not entitled to lead any evidence or put forth arguments without a foundation in his pleadings. In the case on hand, no plea had been raised as if the suit property was taken over by the Government under Inam Abolition Act and title of the respondent Temple got obliterated due to vesting of the property with the Government under Inam Abolition Act and subsequently patta was given in favour of predecessors' of appellants.



S.A(MD)Nos.435 & 436 of 2016

WEB COPY

16. The appellants have not produced any documents to show that under provisions of Inam Abolition Act their predecessor's have been issued with patta for the suit property that too after hearing the respondent Temple. First of all, in the pleadings, the appellants have not claimed that their predecessors' got patta for the suit property under the provisions of Inam Abolition Act and secondly, they have not produced any patta in favour of their predecessors', who had sold the suit property to the appellants. In the circumstances, the sale deeds produced by the appellants will not bind the respondent Temple, which established it's title by producing documents from the year 1936. Further, in order to claim patta under Inam Abolition Act, the appellants have not shown any pre-existing right over the suit property before coming into force of Act 26 of 1963. However, the respondent Temple by producing Exhibits A1, A2 and A6, proved its pre-existing right over the suit property even prior to coming into force of Act 26 of 1963. In the circumstances, the finding arrived at by the First Appellate Court that the respondent Temple proved its title over the suit property and hence, it is entitled to recover possession from the appellants requires no interference by this Court.



S.A(MD)Nos.435 & 436 of 2016

WEB COPY

17. The contention raised by the learned Senior Counsel for the appellants that in the absence of prayer for declaration of title, the suit for recovery of possession simpliciter is not maintainable cannot be accepted, in the light of the fact that present suit had been filed by the respondent Temple based on its title. It is always open to the respondent Temple to maintain a suit for recovery of possession based on its title.

18. In view of the discussions made earlier, the substantial questions of laws framed at the time of admission are answered against the appellants and consequently, I concur with the findings recorded by the First Appellate Court. Both the second appeals stand dismissed.

19. In fine,

"(i) Both the second appeals are dismissed by confirming the judgment and decree passed by the First Appellate Court.

(ii) In the facts and circumstances of the case there will be no order as to costs.



S.A(MD)Nos.435 & 436 of 2016

*(iii) Civil Miscellaneous Petition Nos.4699 and 4700 of
2016 are closed."*

WEB COPY

06.01.2023

NCC : Yes
Index : Yes
Internet : Yes / No
Btr

To

The Executive Officer,
Sri Neelakanda Pillaiyar Koil Devasthanam Enthal
Mudapulikadu, Peravurani Taluk,
Peravurani Town & Taluk,
Pattukkottai Munsif.



WEB COPY



S.A(MD)Nos.435 & 436 of 2016

S.SOUNTHAR, J.

Btr

Judgment made in
S.A(MD)Nos.435 & 436 of 2016

Dated:
06.01.2023