



S.A.Nos.86 & 87 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.86 & 87 of 2000

and

C.M.P.No.1 of 2007

W.P(MD)No.3534 of 2021

and

W.M.P(MD)No.2862 of 2021

S.A.Nos.86 and 87 of 2000

Eseq

....Defendant/Appellant
Appellant in both S.As

-Vs-

A.Selvaraj

...Plff./Respondent/
Respondent in both S.As

PRAYER in S.A.No.86 of 2000: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 11.10.1999 passed in A.S.No.12 of 1998 by the Principal District Judge, Ramanathapuram, confirming the judgment and decree dated 16.12.1997 passed in O.S.No.244 of 1994 by the Principal District Munsif, Ramanathapuram.



S.A.Nos.86 & 87 of 2000

PRAYER in S.A.No.87 of 2000: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 11.10.1999 passed in A.S.No.46 of 1999 by the Principal District Judge, Ramanathapuram, reversing the judgment and decree dated 16.12.1997 passed in O.S.No.244 of 1994 by the Principal District Munsif, Ramanathapuram.

W.P(MD)No.3534 of 2021

Selvaraj

....Petitioner

-Vs-

1.The Additional Chief Secretary and
Commissioner of Land Administration
Chepauk, Chennai 600 005

2.The District Revenue Officer cum
District Additional Magistrate,
Ramanathapuram.

3.The Revenue Divisional Officer,
Ramanathapuram.

4.The Tahsildar,
Kizhakarai,
Ramanathapuar District.

5.Eashak

6.Thangaraj

7.Sakunthala

8.Asirvatham

...Respondents



S.A.Nos.86 & 87 of 2000

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 24.12.2019 passed by the 1st respondent vide his proceedings in G2/20774/2010, quash the same and consequently, direct the 1st respondent.

For Appellant/petitioner in
all the cases : Mr.S.Vellaisamy

For Respondent/Respondent in
all the cases : Mr.A.Sivaji

COMMON JUDGMENT

The respondent herein is the plaintiff has filed a suit in O.S.No. 244 of 1994 before the Principal District Munsif Court, Ramanathapuram, for declaration and permanent injunction, based on the assignment granted in his favour. In respect of the suit property, the trial Court dismissed the relief of declaration and granted an order of injunction based on the possession. Against the grant of permanent injunction, the



S.A.Nos.86 & 87 of 2000

appellant/defendant filed an appeal in A.S.No.12 of 1998 before the Principal District Court, Ramanathapuram. Against the dismissal of the claim for declaration, the respondent/plaintiff filed an appeal in A.S.No.46 of 1999 before the same Court. After hearing the arguments, the lower Appellate Court dismissed the appeal in A.S.No.12 of 1998 and allowed the appeal in A.S.No.46 of 1999. Aggrieved by the said judgment and decrees, these Second Appeals have been filed by the appellant/defendant in the suit.

2.The learned counsel appearing for the appellant/defendant would submit that the suit property is a water-body and a portion of water flow from the channel into the tank. Taking advantage of the non-rainy season, the respondent/plaintiff made a false representation as if he is a landless poor and got a assignment, despite having own land. Therefore, even on an earlier occasion, he filed a suit for adjacent land, wherein, it was decided that it is a tank and channel area and the present suit also, which is adjacent to the said land, is also a water body and a channel. Though the trial Court appreciated the assignment is not valid and also the



S.A.Nos.86 & 87 of 2000

respondent/plaintiff cannot claim title over the assignment, since it is a water body. However, considering the possession the trial Court granted injunction and the lower Appellate Court failed to consider the nature of the land and decreed the suit title. Therefore, the present appeal.

3.Further, the learned counsel would submit that the appellant/defendant filed a petition before the Tahsildar for cancellation of the assignment and the same was dismissed and subsequently, he filed an appeal before the Revenue Divisional Officer, Ramanathapuram, and the said appeal was allowed and cancelled the patta. Thereafter, the respondent/plaintiff filed further appeal before the District Revenue Officer, Ramanathapuram, and the same was dismissed. Further, he approached the Land Commissioner, Chennai. The Land Commissioner also dismissed the appeal and confirmed the order of the Revenue Divisional Officer, Ramanathapuram. As such, there is no assignment patta in favour of the respondent/plaintiff. Therefore, the respondent/plaintiff has no right and title in the suit property and the judgment of the lower Appellate Court is to



S.A.Nos.86 & 87 of 2000

be set aside. Further, the learned counsel would submit that during the pendency of the second appeal, he has filed a petition under Order 41 Rule 27 of C.P.C to receive the document as additional evidence in the second appeal, which clearly proved that as on date, there is no assignment patta in favour of the respondent. Therefore, the foundation of the suit itself would go and the respondent/plaintiff is not entitled for any declaratory relief, since as on date there is no assignment in his favour and hence, the present second appeal is to be allowed.

4.The learned counsel for the respondent/plaintiff would submit that the suit property in the earlier suit is entirely different. The present suit was only based on the assignment. The Tahsildar, after a detailed enquiry, has rightly dismissed the petitions filed by the appellant/defendant. However, the RDO, DRO and the land Commissioner, without giving opportunity to him to take any evidence and without considering the materials, simply allowed the petition and also cancelled the patta. Against the order of the land Commissioner, he filed a writ petition before this Court



S.A.Nos.86 & 87 of 2000

and the same is pending. The learned counsel would further submit that the impugned order dated 24.12.2019, passed by the land Commissioner, Chennai, clearly shows that without taking any evidence or materials and without giving sufficient opportunity to the writ petitioner, cancelled the assignment, which is against the law. Therefore, the writ petition is to be allowed and the second appeal is to be dismissed.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

6.The specific case of the respondent/plaintiff in the second appeal is that since he is landless poor, obtained assignment regarding the suit property in his favour from the competent authority and he was enjoying the property. whereas, the appellant/defendant tried to dispossess and disturbed him. Therefore, the respondent/plaintiff filed a suit for declaration and the relief of injunction. The said suit was dismissed by the



S.A.Nos.86 & 87 of 2000

trial Court in respect of declaratory relief and granted injunction. Against which, the appellant/defendant has filed an appeal and the same was dismissed. Aggrieved over the same, he filed an appeal before this Court. Pending the second appeal, the appellant/defendant filed a petition under Order 41 Rule 27 C.P.C to receive the documents as additional evidence wherein stating that the assignment patta granted in favour of the respondent/plaintiff was cancelled by the proceedings of the Revenue Divisional Officer, Ramanathapuram. Both the counsel have admitted that there is further appeal and also went up to the land Commissioner, Chennai, and finally, patta was cancelled and the writ petition is also pending.

7. Therefore, whether the land is a water-body or channel which obstructs the flow of water from the channel to the tank, is a subject matter of dispute and it has to be decided in accordance with law. However, the suit was only based on the assignment patta, which is said to have been cancelled and no materials regarding the cancellation of assignment patta were produced either before the trial Court or the lower Appellate Court,



S.A.Nos.86 & 87 of 2000

which is a subsequent proceedings. Therefore, the appellant/defendant has invoked the provisions under Order 41 Rule 27 CPC, that is to be taken into consideration and also the evidence has to be let in whether the cancellation of patta is valid or not, or based on the evidence recorded and the evidence is required to be recorded.

8. Therefore, the judgments and decree passed by the Lower Appellate Court are set aside and the appeal suits are remitted back to the lower Appellate Court, for fresh consideration. The lower Appellate Court, is directed to take the application in C.M.P.No.1 of 2007 along with the appeal suits and renumber the application and hear the application filed under Order 41 Rule 27 C.P.C and also afford an opportunity of hearing to both the parties and if necessary take the evidence. The lower Appellate Court may send the matter to the trial Court for the limited purpose of recording the evidence regarding the assignment and the nature of land and after taking evidence forward to first appellate Court and the lower Appellate Court is directed to decide the first appeals in accordance with



law.

9. Therefore, as far as the writ petition is concerned, it is challenging the order of the Land Commissioner, Chennai. The Land Commissioner has held that it is the land for irrigation and therefore, cancelled the patta. Since the respondent/plaintiff has filed the suit for declaration only based on the assignment, the Appellate Court is directed to take the evidence regarding the nature of the land in accordance with law and decide the appeal suits on merits. Therefore, the writ petition is disposed of. Both the parties are directed to appear before the first appellate Court, on 07.06.2023, without fail.

10. In the result, these second appeals are allowed and the writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

19.04.2023

NCC: Yes/No

Index: Yes/No

Internet: Yes/No



S.A.Nos.86 & 87 of 2000

Note: Issue order copy on 27.04.2023

To

1. The Principal District Judge,
Ramanathapuram.
2. The Principal District Munsif,
Ramanathapuram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.Nos.86 & 87 of 2000

P.VELMURUGAN,J.

Ns

**S.A.Nos.86 & 87 of 2000
and
C.M.P.No.1 of 2007
W.P(MD)No.3534 of 2021
and
W.M.P(MD)No.2862 of 2021**

19.04.2023