



WEB COPY



S.A.Nos.12 & 13 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.01.2024	Pronounced on: 23.02.2024
-------------------------	---------------------------

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.Nos.12 & 13 of 2018

Mr.Jayaraman

...Appellant in both S.As.

Vs.

1.Tamil Nadu Government
represented by
The District Collector,
Cuddalore.

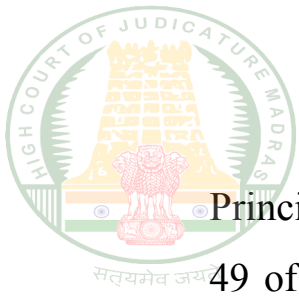
2.The Tahsildhar,
Virudhachalam.

.. 1st and 2nd respondents in S.A.
No.12 of 2018

3.Kuppusamy

... 3rd Respondent in S.A. No.12 of 2018 and
Respondent in S.A. No.13 of 2018

COMMON PRAYER: Second Appeals filed under Section 100 of the
Code of Civil Procedure, against the Judgment and Decree of the



S.A.Nos.12 & 13 of 2018

Principal Subordinate Judge, Virudhachalam, passed in A.S. Nos.45 & 49 of 2011 dated 09.03.2012 confirming the Judgment and Decree of the learned the 2nd Additional District Munsif Court, Virudhachalam passed in O.S. Nos.141 of 2006 and O.S. No.289 of 2003 dated 30.07.2010.

For Appellant : Mr.J.Antony Jesus

For Respondents : Dr.S.Suriya,
Additional Government Pleader
for R1 and R2 in S.A.No.12 of 2018
Mr.C.D.Sugumar for R3 in
S.A. No.12 of 2018 &
Respondent in S.A. No.13 of 2018

COMMON JUDGMENT

The unsuccessful defendant in a suit for declaration and injunction is the appellant herein.

2. The parties are described as per their litigative status before the trial Court.

3. Before the trial Court, the plaintiff filed a suit for declaration and injunction, claiming title and interest over the suit property viz., 5 cents



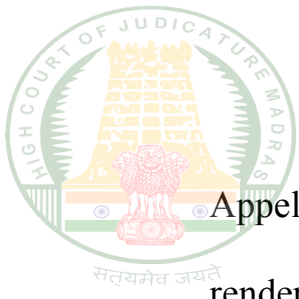
comprised in S.No.196/20, (Old Patta No.668, New Patta No.188).

WEB COPY

4. The said suit was resisted by the defendants on the ground that the suit property has been in the physical possession and enjoyment of the third defendant for the past several years and that the plaintiff had no right over the same. The trial Court found that the plaintiff had not established his title or factum of possession and proceeded to dismiss the suit.

5. The defendant in the above suit in O.S. No.289 of 2003, filed O.S. No.141 of 2006, in which, the plaintiff in O.S. No.289 of 2003 was shown as the third defendant and the District Collector, Cuddalore and Tahsildar, Virudhachalam were arrayed as defendants 1 and 2. In the said suit, the plaintiff sought for a mandatory injunction to issue patta in his name, after effecting sub-division. The suits were tried together and the trial Court, dismissed both the suits.

6. Aggrieved by the dismissal of the suits, the appellant herein alone has preferred two First Appeals in A.S. Nos.45 of 2011 (against O.S. No.141 of 2006) & 49 of 2011 (against O.S. No.289 of 2003). The First



WEB COPY

Appellate Court, dismissed A.S. No.45 of 2011, confirming the findings rendered by the trial Court. However, the First Appellate Court allowed A.S. No.49 of 2011 and granted a declaration and consequential injunction as prayed for.

7. Aggrieved by the dismissal of the Appeal filed by the appellant herein and the Appeal filed by the respondent being allowed by the First Appellate Court, the above two Second Appeals have been filed.

8. On 30.01.2024, these Second Appeals were admitted on the following substantial questions of law:-

“ (i) Whether the appellate Court erred in law in dismissing the suit on the ground that the suit was not filed within a period three years from the date of sub division in the year 1927, without adverting to the law that the bar of a suit under Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923, would only apply to suits pertaining to correction of boundaries and not to questions of title.

(ii) Whether the Courts below erred in law in holding that the appellant did not produce patta for 28 cents R.S. No.286/3 and non suited the appellant, without adverting to the fact that the title for the said extent has been admitted and was not required to be proved in terms of Section 58 of the Indian Evidence Act, 1872?”



WEB COPY

9. Heard Mr.J.Antony Jesus, learned counsel for the appellant in both the Second Appeals and Dr.S.Suriya, learned Additional Government Pleader for Respondents 1 and 2 in S.A. No.12 of 2018 and Mr.C.D.Sugumar, learned counsel appearing for the third respondent in S.A. No.12 of 2018 and respondent in S.A. No.13 of 2018.

10. The learned counsel for the appellant would state that the First Appellate Court erred in holding that the respondent had title when the vendor of the respondent had no title. He would invite my attention to the findings of the Courts below and also placed reliance on the decisions of this Court in the cases of *Umapathy Vs. Gopalakrishnan*, reported in 2009 (4) CTC 483 and *Rukkaiah Natchiar Vs. P.M.S. Mohamed Aamina Beevi and Others* reported in 2020 SCC Online Mad 22892.

11. The learned counsel for the appellant would state that the First Appellate Court erred in applying the provisions of Tamil Nadu Survey and Boundaries Act, 1923, without noticing that the said Act would not apply



WEB COPY

when questions of title were involved. He would also state that the Courts below ought not to have drawn adverse inference against the appellant for non production of the Patta when his title to the extent 28 cents in RS. No.286/3 was admitted by the respondents and therefore, he would state that there is no necessity or requirement for proving admitted facts.

12. Per contra, the learned counsel for the contesting respondent viz., the third respondent would invite my attention to Exhibits A1, A6 and also Exhibits. B8 and B9. He would contend that the First Appellate Court has rightly applied the provisions of the Tamil Nadu Survey and Boundaries Act, 1923 and also found that the suit was barred by limitation. He would also invite my attention to the findings of the First Appellate Court with regard to the action taken by the appellant for the first time only in 2003, despite having admitted to knowledge of sub-division way back on 12.05.1927, as seen from Exhibit B5. The First Appellate Court has also non suited the appellant on the ground that he has not sought for any declaration of his right and further he has not produced the Patta in respect of RS.No.286/3.



WEB COPY

13. I have carefully gone through the pleadings, judgments of the Courts below as well as the two decisions on which reliance has placed on by the learned counsel for the appellant.

14. The plaint schedule property consists of two items viz., 32 cents and 4 cents. Insofar as 32 cents, there is no dispute. The contentious issue in the suits are only pertaining to 4 cents of land. It is seen from the written statement filed by defendant in O.S. No.141 of 2006 viz, the third respondent herein that he has categorically stated that 37 cents was available in RS.No.196/20. However, the plaintiff has wantonly shown the extent available to be only 32 cents. He has also stated that in respect of 5 cents, there is no dispute in respect of which, he has already filed a suit in O.S. No.289 of 2003 and the trial Court, specifically framed an issue in this regard. However, the trial Court non suited the appellant on the ground that the defendant had claimed that in S.No.196/19, patta was issued for 32 cents. However, when it comes to issuance of patta to the appellant, the trial Court has stated that, the appellant has not taken any steps to produce

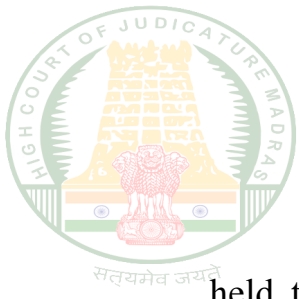


WEB COPY

the Patta in respect of 28 cents which has been issued to him in order to establish the deficit of 4 cents. The trial Court also found that the appellant ought to have examined the Revenue Authorities and correlated the survey numbers to establish his right.

15. The First Appellate Court however, non suited the appellant on the ground that the appellant ought to have approached the authority under the Tamil Nadu Survey and Boundaries Act, 1923 and further held that there was corrections made to Exhibit A9, which was also not established to be true and genuine.

16. As laid down by this Court in *Umapathy's* case, referred herein supra, Section 14 of the Tamil Nadu Survey and Boundaries Act would not extinguish the right of the party and the adversary party cannot contend that the party who did not invoke the provisions of the Tamil Nadu Survey and Boundaries Act, 1923, would be estopped from questioning his rights and that the plaintiff who approaches the Court should establish his case independent of any weakness in the defendant's case.

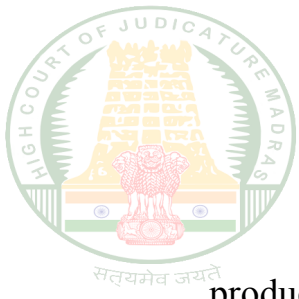


WEB COPY

17. In *Rukkaiah Natchiar's* case, referred herein supra, this Court has held that whenever there is a conflict between boundary and title of the party, then the Civil Court alone can decide the dispute and that the bar of limitation of three years under Section 14 of the Act, would only refer to disputes regarding correctness of boundary fixed by the survey officials for a survey field and cannot be stretched to dispute of title.

18. In view of the ratio laid down by this Court in the above two referred decisions, the Appellate Court clearly erred in holding that the suits not having been filed without exhausting the remedies available under the Tamil Nadu Survey and Boundaries Act, were not maintainable are unsustainable and liable to be set aside.

19. Also, as rightly contended by the learned counsel for the appellant, the third respondent's title was also questionable, since his vendor himself did not have title to convey in the first place, as seen from the documents exhibited before the trial Court. Thus, the respondents cannot claim better right or title than his predecessors in interest.



WEB COPY

20. Even insofar as the Courts non suiting the appellant for non production of patta, as rightly contended by learned counsel for the appellant, it is clear from the pleading and also evidence adduced by the third respondent that the title of the appellant to 28 cents in RS.No.286/03 was never called in dispute. The dispute was only revolving around 4 cents and therefore, both the Courts clearly fell in error in drawing an adverse inference against the appellant for not producing the Patta for an extent of 28 cents comprised in RS.No.286/3.

21. It is also established in the evidence that the predecessors in title of the third respondent had title only for 31 cents and therefore, he had no right to convey 37 cents in favour of Subramaniam Poosi. These aspects have not been discussed by the First Appellate Court and merely finding that the suit was barred in view of the provisions of the Tamil Nadu Survey and Boundaries Act, 1923, the First Appellate Court, reversed the findings of the trial Court and decreed the suit filed by the third respondent.

22. The First Appellate Court has erroneously allowed the appeal for



WEB COPY

declaration and permanent injunction clearly based on the weaknesses of the appellant's case and not on the strength of the third respondent's case. It is now settled law that the plaintiff who approaches the Court especially, in a suit for declaration of title or for possession, it is for such plaintiff to independently establish his claim to the suit property, by production of satisfactory oral as well as documentary evidence. The plaintiff cannot attempt to piggyback ride on the defence of the defendant, either being weak or not substantiated. Here, the First Appellate Court has non suited the appellant for all the above mentioned reasons which have been discussed in detail and without any independent assessment of the third respondent's case has proceeded to decree his suit.

23. Insofar as the other appeal, the Courts below have non suited the appellant on the ground that he has not sought for a declaration and the suit for mandatory injunction simpliciter would not be maintainable in law. When the claim of the third respondent was only in respect of 5 cents and not the entire 36 cents, in respect of which the appellant claims right and when the third respondent had miserably failed to establish his case viz., to



WEB COPY

entitlement of 5 cents, it is not necessary for the appellant to have sought for declaration of his title. The appellant has established his title through Exhibits B1 to B27. In fact, Ex.B1 to Exhibit B8 are registered Conveyance Deeds and Exhibit B11 to B25 are receipts and Exhibit B26 is the patta issued to the appellant. When there is no cloud on title to the substantial portion of the suit property and other than 5 cents, in respect of which, the claim has been made by the third respondent, I do not deem it necessary for the appellant to have sought for the relief of declaration of his title in respect of the entire 36 cents. Moreover, I have already found that the title of the third respondent in respect of 6 cents has not been established and the 6 cents has been included in the property sold to the third respondent's vendor and therefore, no valid title can be conveyed in respect of the said 6 cents in favour of the third respondent.

24. The grievance of the appellant insofar as the suit for mandatory injunction is that only a correction was required to be made in the patta which had an incorrect measurement issued to the third respondent and therefore, there was no necessity to seek a prayer for declaration of title. I



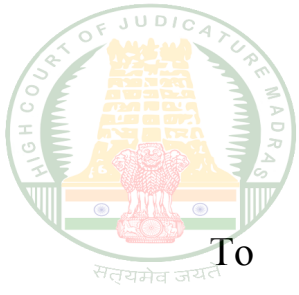
see force in the said submission of the learned counsel for the appellant.

Though the learned counsel for the respondents would invite my attention to the correction made in Ex.A9, I do not see that the the said correction has any material bearing on the dispute in the present appeal. Even otherwise, the First Appellate Court erred in applying the incorrect statutory provisions to the case on hand, besides also requiring proof of admitted facts. For all these reasons, the appellant is bound to succeed and the substantial questions of law are answered in favour of the appellant.

25. In fine, these Second Appeals are allowed and the Judgment and Decree of the Courts below are set aside. There shall be no order as to costs.

23.02.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp



S.A.Nos.12 & 13 of 2016

To

WEB COPY

1. The Principal Subordinate Judge, Virudhachalam.
2. The II Additional District Munsif, Virudhachalam.



WEB COPY



S.A.Nos.12 & 13 of 2018

P.B.BALAJI, J,

rkp

S.A.Nos.12 & 13 of 2018

23.02.2024