



S.A.No.1071 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Second Appeal No.1071 of 2012
and
Miscellaneous Petition No.1 of 2012

Amaladass

... Appellant/Defendant

-Vs-

Smt. Amaravathi

... Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 09.02.2011 in A.S.No.5 of 2010 on the file of the learned Principal Subordinate Judge, Krishnagiri, confirming the Judgment and Decree dated 30.10.2009 in O.S.No.113 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthangarai.

For Appellant : Mr. V. Nicholas
For Respondent : Mr. T. Balaji
For Mr. A. Thiyagarajan



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JUDGMENT

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The appellant is the defendant has come up with this Second Appeal, challenging the Judgment and Decree dated 09.02.2011 in A.S.No.5 of 2010 on the file of the learned Principal Subordinate Judge, Krishnagiri, confirming the Judgment and Decree dated 30.10.2009 in O.S.No.113 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthangarai, wherein, the relief of recovery of possession was allowed.

2. The case of the plaintiff is that he was having land comprised in Natham Survey No.309/15, in Krishnagiri District, Uthangarai Taluk, Mahanoorpatti Revenue Village [Old Survey No.98/2 to the extent of 33 sq. metres] including three shops bearing Door No.196 [Old Survey No.35] assigned to him during the year 1991. Subsequently, he has constructed a building and rented the same to the defendant herein and after some time, the defendant has refused to vacate and handover the vacant possession to him. There was also exchange of notices and subsequently, the plaintiff has filed a suit for recovery of possession and also for payment of rents.

3. The suit was resisted by the defendant on the ground that the



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nature of land is a natham land, which is to be used only for the purpose of constructing houses, whereas, the defendant has constructed shops which is commercial in nature thereby, the plaintiff has violated the object of the scheme. He further contended that as per the unregistered sale taken place in the year 23.09.2002, the plaintiff has sold the property in his favour. Based on the sale deed-Ex.B1, the defendant has also obtained patta and he is in possession and enjoyment of the property. The plaintiff is therefore not having any right over the same and prayed for dismissal of the suit.

4. The Trial Court has framed the following issues for consideration:

1. Whether the Ex.B1 is a legally admissible document?
2. Whether the Court fees U/s.43(2) paid by the plaintiff is correct or not?
3. Whether the appeal deserves to be allowed or not?

5. After hearing both sides, the Trial Court has held that the title claimed by the defendant is not sustainable since it is based on the unregistered Sale deed and it was also recorded that there is an admission on



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the part of the defendant regarding issuance of patta in favour of the plaintiff during Natham Survey Scheme and also held the issues framed in favour of the plaintiff and decreed the suit.

6. Aggrieved over the Judgment and Decree passed by the Trial Court, the defendant has filed A.S.No.5 of 2010, on the file of the Principal Subordinate Judge, Krishnagiri.

7. The Appellate Court, after considering the various points raised including title to the property dismissed the appeal, holding that the defendant has failed to prove his title and based on the admission of defendant and for the reason that the plaintiff was issued with patta by the Revenue Department during Natham Survey and Settlement Scheme.

8. Aggrieved over the concurrent findings, this Appeal has been filed by the defendant.

9. The learned counsel for the appellant/defendant submits that the



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patta was issued in favour of the plaintiff during Natham Survey Scheme for constructing houses, but he has constructed shops which is commercial in nature. Subsequently, he has sold the shops in favour of the defendant through an unregistered Sale deed. He has also submitted that subsequent to the Sale deed in his favour, the patta also issued by the Deputy Tahsildar and thereafter, he started to pay taxes and other charges to the Government. Thereby, he is in possession and enjoyment of the property. Since the nature of land is a Natham land, he is entitled to continue in possession and the plaintiff is not entitled for title or possession of the property. He further submitted that since title of the plaintiff is questioned, without seeking declaration, the suit for recovery of possession is not maintainable. He has also relied on various Judgments to support his case.

10. Per Contra, the learned counsel for the respondent/plaintiff submits that it is true that shops have been constructed in the land given to him as per Natham Scheme but, same is not a ground for the defendant to dispute plaintiff's right over the lands. Defendant claims ownership by way of unregistered Sale deed-Ex.B1, executed by the plaintiff, which itself is sufficient to hold that, prior to alleged sale, the plaintiff is the owner of



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property.

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11. The learned counsel for respondent-plaintiff further submitted that both the Courts below have consistently held that the unregistered Sale deed-Ex.B1 is not a document executed by the plaintiff in favour of the defendant and it is a fabricated document. Hence, the defendant is not entitled to claim any subsequent rights based on Ex.B1-Sale deed. The defendant has taken inconsistent stand before the Trial Court, at one stage, he claimed that shops have been constructed by him whereas, he admits that, the property was utilized for commercial purpose by the plaintiff. Thus, inconsistent stand taken is against the evidence available and thereby, both the Courts have rightly held that the defendant was not having right to dispute the title to the property.

12. The following questions of law have been framed by this Court at the time of admission:

- a) Whether both the Courts below were right in assuming that the defendant was occupying the property only in his capacity as a tenant?



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b) Where the defendant by relying upon Ex.B1 is questioned the title of the plaintiff over the suit property, whether the suit for recovery of possession is maintainable without seeking for the relief of declaration of title?

13. I have considered the submissions made on both sides and also perused the materials placed on record.

14. Both the Courts have considered the issue relates to validity of Ex.B1-Sale deed, and it has been held that Ex.B1-Sale deed is not only an unregistered document but also a fabricated document, thus the defendant is not entitled to claim any right on the basis of Ex.B1-Sale deed.

15. Ex.B2- Patta issued in favour of the defendant is also unreliable since it was issued by the Deputy Tahsildar of the Taluk, who is not a competent person to issue Patta with regard to the allotment of lands. Admittedly, Ex.B1-unregistered Sale deed and its execution has been denied by the plaintiff. The transfer of land claimed by the defendant held to be false claim and Courts have after appreciating the evidence adduced had



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held that, Ex.B1 is not having any evidentiary value, due to non-registration.

This Court finds no infirmity in this finding. While dealing with the Second Appeal under Section 100 of the Code of Civil Procedure, it is not proper for this Court to interfere with the concurrent findings rendered by the Courts below as regards the validity and enforceability of Ex.B1-Sale deed and Ex.B2-Patta.

16. The learned counsel for the defendant further submitted that the Natham lands shall not be utilized for a commercial purpose, thereby, the plaintiff violated the assignment conditions. It may be a valid ground for cancellation of Patta issued in favour of the plaintiff, but the same could not be a valid ground to dispute or deny the ownership or right of the plaintiff. Similarly, both the Courts below have held that, the defendant is tenant for using the shops and knowing fully well that he is put in to possession as a tenant of the shops, he cannot be permitted to continue his possession on the same excuses, for avoiding and returning possession to the plaintiff.



17. It is also contended by the defendant that since the title to the property has been questioned, the simple suit for recovery of possession is not maintainable. He also relied on the Judgment of the Apex Court in ***“Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs and Others [2008 (4) SCC 594]”***. I am not able to agree with the said contention since there is an admission on the part of the defendant that lands were originally allotted to the plaintiff and from him, he purchased the property, after recognizing the ownership of the plaintiff and this would only mean that to defeat the right of the plaintiff such defence has been taken by the defendant.

18. The necessity to file the suit for declaration of title, where a cloud over plaintiff's title is raised by the defendant, is well clarified by the Hon'ble Apex Court in ***“Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs and Others [2008 (4) SCC 594]”*** in paragraph 21, it is summarized as follows:

21. The plaintiffs and their witnesses gave evidence to the effect that Damodar Rao represented that his sister Rukminibai was the owner of the plot and negotiated for sale of the several portions thereof in favour of plaintiffs and PW3, and that Damodar Rao had attested the sale deeds in their favour and identified his sister as the vendor executant before the Sub-Registrar, at the time of registration of the sale



deeds. It is no doubt true that if that was the position, it is possible for them to contend that having regard to [section 41](#) of Transfer of Property Act, when the ostensible owner Rukminibai sold the property with the implied consent of Damodar Rao, the defendant as a transferee from Damodar Rao could not contend that the sales were not valid. They also alleged that defendant was a close relative of Damodar Rao and the sale in favour of defendant was only nominal, intended to defeat their title. But Damodar Rao in his evidence denied having made the oral gift or having attested the sale deeds in favour of plaintiffs. He also denied having identified his sister at the time of registration of the sale deeds. Whether Rukminibai's evidence and other plaintiffs' witnesses should be believed or whether evidence of Damodar Rao should be believed on the question of title, can be examined only when there are necessary pleadings and an issue regarding title. Further, where title of plaintiffs is disputed and claim for possession is purely based on title, and the plaintiffs have to rely on various principles of law relating to ostensible ownership and [section 41](#) of TP Act, validity of a oral gift by way of 'pasupu kumkum' under Hindu Law, estoppel and acquiescence, to put forth a case of title, such complicated questions could properly be examined only in a title suit, that is a suit for declaration and consequential reliefs, and not in a suit for an injunction simpliciter."

19. In the case on hand, there is admission on the part of the defendant regarding allotment of land in favour of the plaintiff and he also



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claims that he purchased the property from the plaintiff, thereby, he has not denied the ownership of plaintiff and he claim title, only through the plaintiff. These facts are not sufficient to create any cloud over the title to the properties of the plaintiff.

20. Thus, the contention of the appellant that he had disputed the title is not maintainable and the same is hereby rejected. Both the Courts below have rightly considered the validity of Ex.B1-unregistered Sale deed as well as the maintainability of suit for possession filed by the plaintiff herein and rightly decreed the suit.

21. Accordingly, the substantial question of law 1 and 2 answered to the effect that, suit for recovery of possession claimed by the plaintiff herein is maintainable, in view of the false claim of title made by the defendant, and he was in possession of suit properties only as a tenant not as a owner of the property.

22. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 09.02.2011 in A.S.No.5 of 2010 on the file of the learned



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Principal Subordinate Judge, Krishnagiri, confirming the Judgment and Decree dated 30.10.2009 in O.S.No.113 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthangarai, is hereby confirmed. Consequently, the connected miscellaneous petition stands closed. No costs.

28.08.2024

Index : Yes/No
Speaking Order: Yes/No
Neutral Citation Case : Yes/No
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To:

1. The Principal Subordinate Judge,
Krishnagiri.
2. The District Munsif-cum-Judicial Magistrate,
Uthangarai.
3. The Section Officer,
VR Section,
High Court of Madras.



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K.RAJASEKAR,J.

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