IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on	20.12.2023
Judgement Pronounced on	08.03.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.437 of 2015

and M.P.No.1 of 2015

1.The State of Tamil Nadu,
rep. By the Tahsildar,
Poonamallee Taluk,
Poonamallee, Chennai-600 056

2.The Collector Thiruvallur District,
Thiruvallur.

(2nd appellant impleaded vide order of Court dated 18.07.2016 made in C.M.P.No.7221 of 2016 in S.A.No.437 of 2015) ... Appellants

Versus

1.K.Rajendrababu
2.K.Sekar
3.K.Viayakumar

... Respondents

Prayer : The Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 07.04.2010 made in A.S.No.55 of 2008 on the file of the Sub-Court, Poonamallee, confirming the judgment and decree dated 26.02.2004 made in O.S.No.28 of 1994 on the file of the District Munsif Court, Poonammallee.

For Appellants	:	Mr.A.Edwin Prabakar Special Government Pleader (CS)
For Rr1 to R3	:	M/s.V.Pavithra for M/s. V.Srimathi

JUDGMENT

The second appeal is directed against the judgement and decree dated 07.04.2010 in A.S.No.55 of 2008 on the file of the Sub Court poonamallee, confirming the judgement and decree dated 26.02.2004 in O.S.No. 28 of 1994 on the file of the District Munsif Court, poonamallee.

2. The appellants are the defendants and the respondents are plaintiffs in the above suit. The respondents as plaintiffs filed the above suit

in O.S.No. 28 of 1994 for declaration of plaintiff's title to the suit property and for mandatory injunction directing the defendants to cancel the nature of the suit property under the classification of 'Tarisu' and record the same as the regular patta land in the Revenue records and for cost. The learned District Munsif, Poonamallee, by the judgement and decree dated 26.02.2004 decreed the suit. Not satisfied with the findings arrived at by the learned District Munsif Poonamallee, the defendants preferred an appeal in A.S. No. 55 of 2008 on the file of the Sub Court Poonamallee praying to set aside the judgement and decree dated 26.02.2004 passed by the learned District Munsif, Poonamallee.

3.By judgement and decree dated 07.04.2010 the learned Sub Judge, Poonamallee dismissed the appeal suit by confirming the decree passed by the trial court in respect of the suit property. Aggrieved over the same, the defendants are before this Court with present the second appeal.

For the sake of convenience, herein after the parties would be referred as described by the trial Court.

4.The averments made in the plaint in brief are as follows:

The suit property originally owned by one Kari krishnama Chetty who sold the property to the plaintiff's grandfather the late Narasimhalu Naidu in the year 1912 for a sum of Rs.50/- by an oral sale. The plaintiff's grandfather Narasimhalu Naidu took possession of the suit property in pursuance to the oral sale and he became the absolute owner of the suit property and he was in peaceful possession and enjoyment of the same till his death in the year 1914. After the demise of the said Narasimhalu Naidu, the said property was inherited by his only son Kistappa Naidu, the father of the plaintiff. The said kistappa Naidu was in possession and enjoyment of the suit property till his death on 31.05.1983. The said Kishtappa Naidu had bequeathed all his properties including the suit property in favour of his sons, namely the plaintiffs herein, under a duly executed and registered Will dated 01.06.1981. After the demise of their father, the plaintiffs continued to be in possession and enjoyment of the suit property along with other properties as absolute owners thereof. In pursuance of their ownership, the

Revenue Authorities have issued patta in the name of their father on 12.01.1970. The plaintiffs father was paying the kist and other charges to the Revenue Authorities till his death. The plaintiffs are now paying the kist and other charges for the suit property. They have also obtained tractor loan from the Land Development Bank at Poonamallee for which the property is shown as security. Thereafter, the plaintiffs came to know that the suit property was classified and was recorded as 'Tharisu' in the revenue records. The said entry is totally incorrect as the suit property cannot be treated as waste land because it is a private property of an individual from time immemorial. Hence, there is no need or necessity to treat the suit property as an assessed waste land. In the revenue records, the defendants ought to have mentioned the property as a patta land of kishtappa Naidu, father of the plaintiffs. The plaintiffs were requesting the Revenue Authorities to change the nature of land after deleting the word 'Tharisu' in the Revenue records. As the original owner late Kari Krishnama Chetti had already parted away the suit property under an oral sale in 1912, the title passed on and vested with the purchaser late Narasimhalu Naidu. Therefore, the late Kari

Krishnama Chetti has no interest to any portion of the suit property after the sale. As such, the suit property cannot be vested in the Government under any circumstance. Therefore, the classification of the land as 'Tharisu' is to be cancelled and to be treated as a regular patta land in the revenue records. The plaintiffs and their predecessor in title have been in continuous possession, open and uninterrupted and enjoyment of the suit property with an assertion of hostile title to the knowledge of the defendants for more than a statutory period. Hence, the plaintiffs had also perfected title to the suit property by adverse possession. The plaintiffs made several representations to the defendants on several occasions. They have even cast legal notice on 05.01.1993 calling upon them to comply with the demands, for which the defendants sent a reply notice stating that changes could not be effected in the revenue records as required. Hence, the plaintiffs were constrained to file the above suit.

5. The case of the defendants in the written statement is as follows:

The suit is not maintainable. The allegation that the suit property was purchased by the plaintiff's grand father in the year 1912 for a sum of

Rs.50/- by oral sale and after his demise the plaintiff's father inherited the property who in turn, bequeathed his properties along with the suit property in favour of the plaintiff under a Will dated 01-06-1981 and the Revenue Department had also issued patta in the name of his father and now the plaintiffs are paying the kist are all denied. The defendants would further contend that the contention of the plaintiff that they have obtained loan from the Land Development Bank for which the suit property was shown as security is false. The defence taken by the defendants is that the suit property measuring 0.39.0 hectare in S.No.16 of 1 is classified as 'Tharisu' in the Revenue records. The plaintiffs' possession, if any, is highly illegal and they are encroachers. The defendants are taking necessary action under Land Encroachment Act and also collecting the penal charges from the encroachers concerned. The alleged Will executed and the mortgage created in favour of Land Development Bank by the plaintiff's father are self serving documents. The alleged patta issued in favour of plaintiffs' father is valid and it was only a temporary patta. Hence, the Plaintiffs have no right to claim the suit property based on a temporary patta. The defendants have suitably replied to the notice sent by the plaintiff that they have no right over the land. There is no cause of action for the suit The plaintiffs have to prove their title and possession before seeking any injunction.

6. Based on the above averments, the trial Court framed the necessary issues and tried the suit.

7. On the side of the plaintiffs, the 3rd plaintiff was examined as P.W.1 and Exs.A1 to A.10 were marked. On the side of the defendants, the Deputy Tahsildar, Poonamallee, was examined as D.W.1 and Exs.B.1 to B.5 were marked.

8. Having considered the materials placed before, the trial Court vide judgment and decree dated 26.02.2004 decreed the suit in favour of the plaintiff. On appeal filed by the defendants, the findings arrived at the trial Court were confirmed.

9. Aggrieved over the said findings of the first appellate Court, the defendants are before this Court with this present second appeal.

10. When the second appeal was taken up for admission, this Court formulated the following substantial question of law:

"1. Whether the plaintiffs can seek the relief of declaration of title to the suit property by claiming adverse possession which plea can at the best be raised as a defence and not as a plea to establish the title?"

11. Heard the learned counsel on either side and perused the materials available on record.

Substantial question of law:

12. The learned counsel appearing for the appellants/defendants would contend that as per Section 14 of the Patta Passbook Act, The Civil

Court has no jurisdiction to entertain the above suit. The plaintiffs have not produced any document to show that the property is a patta land. The plaintiffs with ulterior motive to grab the valuable Government property to the extent of 56 Cents simply filed the suit which cannot be permitted. The Courts below, without appreciating the facts and circumstances of the case, simply decreed the suit without any material. In a suit for declaration for title and possession, the plaintiff could succeed only on the strength of their own title and not on the weakness of the case of the defendant. The burden is on the plaintiff to establish the title to the suit property to show that they are entitled for a declaratory relief. In this case, the plaintiffs neither produced the title document nor proved their right by adducing any other evidence. The revenue entries relied on by the plaintiffs are not proof of title. It cannot confer any right or title of the party relied on them for proving their title. To support his contention, the learned counsel upon decision reported in ***2019 6 SCC 82.***

13. He would further contend that since B memo was issued to the plaintiffs for encroaching the suit property which cannot be construed that

the plaintiffs are in continuous possession without disturbances by the defendants. Moreover, the plaintiffs failed to produce any peace of evidence to prove their continuous possession and enjoyment for more than 30 years. Thereafter, the plaintiffs cannot claim adverse possession of the suit property. To support his contention, he has relied upon the decision made in ***S.A.Nos.2037 and 2038 of 2002*** by this Court. Further the learned counsel would contend that mere possession, however long, does not necessarily mean that it is adverse to the true owner. Absolutely, there is no specific averment made by the plaintiffs to satisfy the legal requirement to prove the case of adverse possession. To support his contention, the learned counsel relied upon the decision reported in ***DCJ 2020 MHC 1773***

14. The further contention of the learned counsel for the appellants/defendants is that excepting the temporary patta, the plaintiffs who claims the title to the suit property has not produced any other document to substantiate their claim. It is a settled principle of law that patta will not confer any title. Patta issued by the Government will confer

the title only when the lands were assigned in favour of the person. But, in this case, there is no such assignment. Therefore, merely because a temporary patta was issued, the title cannot be declared in favour of the plaintiffs. To support his contention, the learned counsel relied upon the decision made in ***S.A.(MD)No.33 of 2014*** dated 27.07.2017 of this Court.

15. The learned counsel would further contend that the plaintiffs cannot claim adverse possession in respect of properties dedicated to public use. To support his contention, the learned counsel relied upon the decision rendered in ***2019 8 SCC 729.***

16. The learned counsel further argued that it is well settled that an entry in Revenue records does not confer title on a person who appeared in Record of Rights. Such entry in the Revenue records, have only 'fiscal purpose' i.e., for payment of land-revenue and no ownership is conferred, on the basis of such entries. To support his contention, he has relied upon the decision made in Hon'ble Supreme Court in ***Civil Appeal No.1971 of 2007***

17. On the other hand, the learned counsel appearing for the respondents/plaintiffs would contend that the suit property is in possession and enjoyment of the plaintiffs by virtue of a registered Will dated 01.06.1981 executed by his father Kishtappa Naidu, who inherited the suit property from his father namely Narasimhalu Naidu. The said Narasimhalu Naidu orally purchased the suit property from one late Kari Krishnama Chetty in the year 1912. The plaintiffs are paying kist and other charges for the suit property. While so, the plaintiffs came to know that the suit property is being recorded as 'Tarisu' in the revenue records. Inspite of several requisition made by the plaintiffs, the defendants were not inclined to change the nature of the suit property as a regular patta land. Hence, the plaintiffs filed the above suit for declaratory and mandatory relief. The Courts below appreciating the oral and documentary evidence on record, rightly decreed the suit in favour of the plaintiffs which calls for no interference.

18. Heard on both sides and records perused.

19. The specific case of the plaintiffs is that, the suit property originally belong to one Kari Krishanama Chetty, who had orally sold the same for Rs.50/- to one Narasimhalu Naidu grandfather of the plaintiffs in the year 1912. The said Narasimhalu Naidu became the owner and he was in possession and enjoyment of the suit property till his demise in the year 1914. Thereafter, his son Kishtappa Naidu (father of the plaintiff) inherited the suit property, who bequeathed his properties including the suit property in favour of his sons, the plaintiffs herein by executing a Will dated 01.06.1981. After his demise, the plaintiffs are in possession and enjoyment of the suit property. The Revenue Authorities have issued patta in the name of their father on 12.01.1970 and he was paying kist and other charges to the Revenue Authorities till his demise for the suit properties. The patta dated 12.01.1970 issued in favour of Kistappa Naidu was marked as Ex.A.1 before the trial Court. Now, the plaintiffs are paying kist and other charges to the Revenue Authorities for the suit properties. The further contention of the

plaintiffs is that the suit property is now wrongly recorded as 'Tarisu' in the revenue records and the revenue authorities ought to have mentioned the suit property as a regular patta land.

20. The subject matter of the suit is pertaining to the land measuring acre 0.96 cents in S.No.16/1 at Ariyamanthanallur Village, Poonamallee Firka, Poonamallee Taluk, Thiruvallur District. The learned Government Pleader would submit that, the SLR of the above village, the land in S.No.16/1 have been an extent of 0.96 cents has been registered in the name of Thiru.Kari Krishnama Chetty. Subsequently, during the abolition of Estate abolition and other Acts, the record of Classification of the land has been changed as 'Tharisu'. Before the change of classification of the land, the owner of land was mentioned as Thiru.Krishnama Chetty who is now no more and has no legal heirs. His further contention is that the patta issued in favour of Kistappa Naidu is a temporary patta and and assignment order was issued in his favour. The plaintiffs have remitted necessary B memo charges to the revenue authorities for enjoying the suit property and therefore, the

plaintiffs cannot claim adverse possession in the suit property for which the Government alone is the owner.

21. On perusal of Ex.A.2- Adangal extract for the fasli 1377 it is seen that the said Kistappa Naidu was in possession and enjoyment of the suit property to the extent of 0.96 cents in S.No.16/1. The plaintiffs have also produced the patta issued in favour of Kistappa Naidu and the same is marked as Ex.A.1 and the kist receipt marked as Ex.A.9 issued on 28.05.1986 in favour of Kistappa Naidu.

22. On the other hand, the defendants have produced Exs.B2 & B.3, B memos for S.No.16/1 in the name of 3rd plaintiff. The revenue Inspector, Poonamalle vide Ex.B.4 issued a letter to the Thasildar, Poonamallee stating that the encroachment made by the 3rd defendant in the suit property with the help of Village Administrative Officer and his menial. In Ex.B.5-Adangal extract, the land in S.No.16/1 for the fasli 1413, it is mentioned as 'Tarisu'. The plaintiffs have not produced any document to show that the patta was issued in the name of their father or in the name of the plaintiffs. Even in

Ex.A.1 the patta number is not mentioned. Therefore, Ex.A.9 is not related to the suit property. Even in Ex.A.8 Will the patta number is not mentioned. The 3rd plaintiff, examined as P.W.1 admitted that before Ex.A.1, the suit property was classified as 'Tarisu'. Moreover, the plaintiffs have not produced any document show that they are in possession and enjoyment of the suit property. Even in Ex.A10 resettlement register, it is mentioned that the property in S.No.16/1 owned by the Government. Therefore, the plaintiffs failed to establish that the suit property is a regular patta land. The plaintiffs have not produced any document to show that the suit property is a patta land. The burden is on the plaintiffs to establish the title to the suit property. The Revenue entries relied on by the plaintiffs are not proof of title. Even assuming that Ex.A.1 patta was issued in favour of late Krishnama Chetty, without any assignment order, the same has to be construed only as a temporary patta. Based on a temporary patta, the title cannot be declared in favour of the plaintiffs. Excepting the temporary patta, the plaintiffs, who claims title to the suit property has not produced any other document to establish their title in the suit property. As rightly pointed out by the learned Special Government Pleader, the entries in the revenue records are only for payment of land revenue and no ownership can be conferred on basis of such entry. The contention advanced on behalf of the plaintiffs that the plaintiffs have established their title in the suit property is not sustainable. It is settled law that a vendor cannot transfer a title to the vendee better than he himself possesses. In the present case, the plaintiffs failed to produce a single document of title in the name of Krishanama Chetty in respect of the suit property, except Ex.A1 patta. Having instituted the suit for declaration, the burden of proof rested on the shoulders of the plaintiffs to reasonably established the probability of better title, which the plaintiffs in the present case, have manifestly failed to do. In a suit for declaration of title and possession, the plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the defendants. The Hon'ble Supreme Court in ***Jagdish Prasad Patel (Deas) thr.LRs and others vs. Shivnath and Others*** reported in ***(2019) 6 SCC 82*** has summarized the law on burden of proof in suits for declaration of title as follows:

"44. In the suit for declaration for title and possession, the Plaintiffs- Respondents could succeed only on the strength of their own title and not on the weakness of the case of the Defendants-Appellants. The burden is on the Plaintiffs-Respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title."

23. Therefore, the plaintiff was only expected to prove his title to a high degree of probability and not beyond reasonable doubt. Having led in evidence only revenue documents which are essentially fiscal in nature, the plaintiffs were unable to assert their case to a high degree of probability.

24. Now, it has to be seen whether the plaintiffs can claim title by adverse possession in the suit property. According to the defendants, the plaintiffs have encroached into the suit property and for which the

defendants have issued B memo. Therefore, it cannot be construed that the plaintiffs are in continuous possession without disturbances by the appellants. Further, the plaintiffs also did not produce any piece of evidence to prove their continuous possession and enjoyment more than 30 years. Since B memo was issued to the plaintiffs for encroaching the suit property, the plaintiffs cannot claim adverse possession. While so, the Courts below ought not to have decreed the suit in favour of the plaintiffs. Hence, the findings of the Courts below are liable to be set aside.

25. In the result, the Second Appeal is allowed and the judgement and decree passed by the Courts below are set aside. No costs. Consequently, connected miscellaneous petition is closed.

.03.2024

vsn
Index:Yes/No
Speaking Order : Yes/No

To

1. The Sub Judge, Poonamallee

2.The District Munsif Judge, Poonammallee.

K.GOVINDARAJAN THILAKAVADI,J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

S.A.No.437 of 2015
&M.P.No.1 of 2015

03.2024