



S.A.No.670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.670 of 2023
and
C.M.P.No.21373 of 2023

M.Dhanapal Naicker (Died)

1. D.Jegadevan
2. D.Ponnurangam
3. D.Subramani
4. D.Mohan

... Appellants

Vs.

1. K.Jeeva
2. State,
Represented by
The Tahsildar,
Taluk Office,
Chengalpattu,
Kancheepuram District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 24.04.2023 in A.S.No.8 of 2018 passed by the learned Additional Sub Judge, Chengalpattu @ Kancheepuram District, confirming the judgment and decree of O.S.No.225 of 2012 dated 24.11.2017 passed by the learned District Munsif, Chengalpattu.



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For appellants : Mr.V.Chinnasamy
For respondents :
For R1 : Mr.G.Balasubramanian
For R2 : M/s.Dr.S.Suriya
Additional Government Pleader

JUDGMENT

The first defendant has filed the above appeal challenging the judgment and decree passed in O.S.No.225 of 2012 by the learned District Munsif, Chengalpattu, which was confirmed by the learned Additional Sub Judge in A.S.No.8 of 2018.

2. The facts which have given rise to the filing of the above second appeal are set out hereinbelow and the parties are referred to in the same litigative status as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed the aforesaid suit for declaration of his title to the suit schedule property and for injunction restraining the defendants from interfering with his peaceful possession and



enjoyment of the suit schedule property and from alienating the same and also for mandatory injunction directing the second defendant i.e., The Tahsildar, Chengalpattu, to delete the name of the first defendant from the Patta No. 858.

2.2. It is the case of the plaintiff that he had purchased the suit property from one Adhishesan under a registered sale deed dated 23.06.2004 and thereby, he became the absolute owner of an extent of 0.17 cents in S.No.391/1F situated at Kalvoy Village. From the date of purchase, the plaintiff was in possession and enjoyment of the said property and he has also obtained mutation of the revenue records and even patta has been granted under Patta No. 858.

2.3. Further, one Duraisamy Naidu and Sardhammal were owning several other properties in the suit village viz., Kalvoy and thereafter were exercising all acts of ownership in respect of those properties. They had been allotted Patta No.98. Thus, the property comprised under this Patta No.98, on the death of the said Duraisamy



Naidu, was divided orally between the son Ramakrishnan and wife Saradhammal and they were in possession of their respective portion.

The lands in old Survey No. 391/1 was sub-divided into 1A-1N and an extent of 0.7 ares in S.No.391/1F and an extent of 0.12 ares in S.No.391/1N and other items fell to the share of his son Ramakrishnan who was in possession and enjoyment of the same. He had been allotted Patta No.371 in respect of these properties.

2.4. The said Ramakrishnan and his three sons had divided the properties and the 'B' schedule property fell to the share of the plaintiff's vendor. The suit property was one of the properties described in the 'B' schedule property. The plaintiff's vendor was, therefore, in possession and enjoyment of the same. The suit property consists of 11 items. The plaintiff had purchased the property after confirming the title of his vendor.

2.5. The first defendant who had no right to the suit property, in the 3rd week of March 2012, allegedly claimed that he was a joint



pattadar and attempted to interfere with the plaintiff's possession and enjoyment of the suit property. The plaintiff would submit that the second defendant had included the name of the first defendant in Patta No.858 which was issued to the plaintiff in the year 2005. The plaintiff, therefore, made a necessary application to the second defendant on 09.05.2012 and 25.06.2012, seeking deletion of the first defendant's name from Patta No.858. The second defendant gave evasive reply in this regard. The inclusion of the first defendant's name in the plaintiff's patta by the second defendant has been done without following due process of law and therefore, it is void and not binding on the plaintiff. Therefore, the plaintiff has come forward with the suit in question.

2.6. The first defendant had filed a written statement contending that the plaintiff is not in physical possession and enjoyment of the property. The first defendant would contend that he had purchased the suit property and an extent of 62 cents in S.No.391/1 and lands in S.No.391/2 at Kalvoy Village from one Thulukkana Naicker under a registered sale deed dated 05.11.1969. The first defendant had



purchased 1 acre 25 cents and from the date of purchase, he has been in possession and enjoyment of the same. The first defendant would admit the fact that the total extent of land in S.No.391/1 measured 3 acres 5 cents. The Encumbrance Certificate would reveal that the first defendant is the absolute owner of the suit property and other properties comprised in S.No.391/2.

2.7. While so, under UDR Scheme, the patta has been wrongly issued by the revenue authority, the second defendant herein, to an extent of 62 cents in favour of one Ramakrishna Naidu. The said Ramakrishna Naidu and his sons *viz.*, Adhisesan Naidu, Ranganathan Naidu and Manoharan Naidu have partitioned the suit property and other properties under a registered partition deed in the year 1996.

2.8. The first defendant would submit that his son Mohan has lodged a criminal complaint on 02.10.2008 against Ramakrishna Naidu and his sons stating that they had trespassed into the suit property and cut the casuarina trees grown in the suit property. The first defendant



was not aware of the purchase of the property by the plaintiff. The first defendant and the said Ramakrishna Naidu and his sons were called for an enquiry and the second defendant had not further proceeded with the complaint.

2.9. It is the case of the first defendant that the suit property was allotted to Adhishesan, son of Ramakrishna Naidu and he had conveyed the suit property to the plaintiff under a registered sale deed bearing Doc.No.2104 of 2004. Thereafter, the first defendant is in uninterrupted peaceful possession and enjoyment till date and his son has sent representation on 26.07.2006 to the second defendant for transfer of patta in their name with reference to the suit property and other extent of land. The second defendant issued notice to the first defendant and one Devaraj calling upon both of them to attend the inspection of the land. Since the proceedings in second appeal in S.A.No.440 of 2008 is pending before this Court, the second defendant had informed the first defendant that the patta would be transferred after judgment and decree is delivered in the second appeal. The second



defendant had also issued notice to the first defendant and Village Administrative Officer of Kalvoy Village to attend the enquiry on petition for transfer of patta. It is also the case of the first defendant that the joint patta was issued by the second defendant without issuing proper notice and conducting proper enquiry.

2.10. The first defendant would also submit that a memorandum was submitted to the second defendant on 24.03.2012 to cancel the joint patta and in this regard, the papers had been forwarded to the Village Administrative Officer, Kalvoy Village and the first defendant had also attended the enquiry. The first defendant would submit that the subsequent sale deed executed by the said Adhikesavan in favour of the plaintiff under the registered sale deed is not binding on the first defendant since the said Adhikesavan had no *locus standi* to execute a deed in favour of the plaintiff. The plaintiff had also not described how his vendor obtained the right to the property. He, therefore, sought for the dismissal of the suit.

2.11. The second defendant had filed a written statement and



admitted that he had issued a joint patta in the name of the plaintiff and the first defendant pursuant to the representation by the first defendant on 27.01.1994. In response to the application filed by the first defendant to issue patta in his favour in respect of S.No.378/1C1,398/11, 378/1, 391/1, 382/2, 392/2, 372/1, 377/1 and 382/2B of Kalvoy Village, the second defendant had called upon the parties to attend the enquiry and in the said enquiry, they had come to know about the pendency of the application before this Court. Therefore, the second defendant had sought for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the issues and the plaintiff had examined himself as P.W.1 and marked Exs.A1 to A10. On the side of the defendants, the first defendant has examined himself as D.W.1 and marked Exs.B1 to B11.



4. On hearing both the sides and on perusing the records, the Trial Court had decreed the suit.

LOWER APPELLATE COURT:

5. Challenging the same, the first defendant had filed an appeal in A.S.No.8 of 2018 before the learned Additional Subordinate Judge, Chengalpattu at Kancheepuram District.

6. The Lower Appellate Court had framed the following points for consideration:

“1. Whether the suit property purchased by the plaintiff is the same as purchased by the 1st defendant?

2. Whether the plaintiff is entitled to the relief of declaration of title and consequential injunction as prayed?

3. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed?

4. Whether the petition under Order 41 Rule 27 C.P.C. filed by the appellant to receive the additional document can be allowed or not?

5. Whether this appeal suit can be allowed or not?”



7. The Lower Appellate Court had perused the evidence and come to the conclusion that on a perusal of Ex.A5 – partition deed dated 22.02.1996 which was a deed under which the said Ramakrishna Naidu and his sons had partitioned the suit property along with other properties, the suit property was also allotted to the share of the plaintiff's vendor Adhishesan. It is from the said Adhishesan, the plaintiff has purchased the suit property under Ex.A10 dated 23.06.2004. The plaintiff had filed Exs.A1 to A4 and Ex.A6 to A9 which were the revenue records.

8. The first defendant had denied the plaintiff's case and had stated that the suit property belonged to Munusamy Naicker and the said Munusamy Naicker, under Ex.B1 – sale deed dated 13.08.1923, had purchased the suit property from Munusamy Naidu and others. From the son of Munusamy Naicker viz., Thulukana Naicker, the first defendant had purchased the suit property under Ex.B2 – sale deed dated 05.11.1969. The first defendant would admit that the said Munusamy Naicker had another son viz., Thiruvengada Naicker apart



from Thulukana Naicker. The sons had a dispute in respect of the property and filed a suit before this Court and to meet out the litigation expenses, Thulukana Naicker had sold away the property to the first defendant.

9. It is also the case of the first defendant that Thiruvengada Naicker and his wife, Kannammal has filed a suit in O.S.No.103 of 1972 as against his brother Thulukana Naicker and against the first defendant for declaration of title and permanent injunction in respect of the property comprised in S.No.391/1 measuring an extent of 0.62 cents. This suit was dismissed after contest and the appeal filed in A.S.No.4 of 1988 also ended in a dismissal which is evident from Exs.B3 and B6.

10. The Lower Appellate Court came to the conclusion that the property of the defendant and the plaintiff were entirely different. The Lower Appellate Court had also observed that the first defendant had not discharged the *onus* cast on him to prove his possession and the



plaintiff had proved his title and possession through Ex.A1 to A10 and proceeded to dismiss the appeal.

11. The Lower Appellate Court had also observed that the inclusion of the name of the first defendant in Patta No.858 has been done without proper notice to the plaintiff and therefore, the same cannot be looked into.

12. Challenging the same, the first defendant is before this Court.

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

DISCUSSION:

14. The only argument that has been adduced by the learned counsel for the appellant/first defendant was that the Courts below ought not to have allowed the plaintiff's case since the jurisdiction to



decide on the grant of patta solely rests on the Thasildar and the final authority of powers vests with the District Revenue Officer, Commissioner of Land Registration. The learned counsel would submit that the suit was barred under the proviso to Section 14 of the Tamil Nadu Patta Pass Book Act, 1982.

15. The suit has been filed to declare the plaintiff's title to the property and to restrain the defendant from interfering with his peaceful possession and enjoyment of the suit property and from alienating the same. The mandatory injunction is sought to delete the name of the first defendant from the patta as a consequence of such declaration.

16. The Courts below held that the property of the defendant and the property of the plaintiff are different and distinct and that the plaintiff, by filing Exs.A1 to A10, has proved his title and possession of the suit schedule property. The proviso to Section 14 of the Tamil Nadu Patta Pass Book Act, 1982, allows the person, who is aggrieved by the entry made in the patta pass book described in respect of the



property in which he is in possession and enjoyment, to institute a suit for declaring his rights. Therefore, the suit filed is very much in order and the argument of the appellant/first defendant has to be necessarily turned down.

17. Both the Courts below have extensively considered the evidence on record and decreed the suit. The first defendant has not been able to prove as to how concurrent judgment is erroneous and has also not made out any substantial question of law.

Accordingly, this second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. No costs.

09.01.2024

Index : Yes/No
Speaking order/non-speaking order
ssa
To
1. The Additional Sub Judge, Chengalpattu.
2. The District Munsif, Chengalpattu.



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3.The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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