



S.A.(MD) No.1050 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.1050 of 2008

S.Mathalai Kumar

... Appellant

-VS-

1.The State of Tamil Nadu,
rep. By District Collector,
Theni District.

2.District Forest Officer,
Theni Division,
Theni.

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree, dated 11.01.2007, passed in A.S.No.16 of 1999 on the file of Additional District Court/Fast Track Court No.IV, Periyakulam, confirming the judgment and decree, dated 16.11.1998, passed in O.S.No.138 of 1997 on the file of District Munsif, Andipatti.



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For Appellant : Mr.S.Kadarkarai

For Respondents : Mr.SRA.Ramachandran,
Addl.Govt.Pleader.

JUDGMENT

The plaintiff in the suit is the appellant. The suit was for declaration of title, permanent injunction and for mandatory injunction, directing the first defendant to grant patta to the plaintiff. The suit was dismissed by the trial Court. The findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the unsuccessful plaintiff has come by way of this Second Appeal.

2. According to the plaintiff, the suit property originally formed part of erstwhile Gandamanur Zamin, comprised in old Zamin Patta No.152. The suit property originally belonged to one M.Subramania Iyer and he sold the suit land to one Krishnasami Gounder under an unregistered sale deed, dated 09.11.1957. The vendee under the document had taken over the possession of the suit property and enjoyed the same. Subsequently, he sold the suit property to the plaintiff under Ex.A-3, dated 25.03.1963. It was further



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contended by the plaintiff that in the sale deed in his favour, the survey number of the suit property was wrongly mentioned as 27/N instead of 27/Z. Subsequently, Zamin Abolition Act came into force and the plaintiff applied for issue of Ryotwari Patta under the said Act. The Commissioner of Land Administration passed an order, rejecting the claim of the plaintiff on 27.03.1992. It was further contended by the plaintiff that when his claim was pending before the settlement authorities, the Forest Department initiated proceedings to notify the area, including the suit property, as a forest area and since the notification was issued when the settlement proceeding was pending, the same was invalid. It was also contended that the Revenue Department issued B-Memos to the plaintiff and he has been paying tax to the total extent of 17 acres of the suit property. Thus, claiming that the plaintiff and his predecessors have been in continuous possession and enjoyment of the suit schedule property, the plaintiff sought for declaration of title and other reliefs.

3. The defendants filed a written statement and contended that 55000 acres in the suit village, namely, Megamalai was declared as reserve forest under the Tamil Nadu Forest Act (hereinafter referred to as "the Act" for brevity) and hence the suit filed by the plaintiff was not maintainable. It was also contended by the defendants that a notification under Section 4 of the Act



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was issued by the Government, notifying Megamalai village as a forest area and necessary proposals have been submitted to the Government to declare the same as reserve forest. Therefore, it was contended by the defendants that the suit filed by the plaintiff was barred under Section 4 of the Act.

4. Before the trial Court, the plaintiff was examined as P.W.1 and an independent witness was examined as P.W.2. On behalf of the plaintiff, 12 documents were marked as Exs.A-1 to A-12. On behalf of the defendants, one witness was examined as D.W.1 and 5 documents were marked as Exs.B-1 to B-5.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his right over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.16 of 1999 on the file of Additional District Court-Fast Track Court No.IV, Periyakulam. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

6. The learned counsel appearing for the appellant submitted that the suit property was originally classified as a Ryoti land and the character of



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the property would not change even after the notification was issued under the Act and, therefore, the Courts below committed an error in non-suiting the plaintiff. The learned counsel further submitted that though in Ex.A-3 title document of the plaintiff Survey Number of the suit property was wrongly mentioned as 27/N instead of 27/Z, the suit property can be identified with the four boundaries and therefore, the Courts ought to have granted a decree for declaration of title and injunctions, as prayed for.

7. The plaintiff claims right over the suit property under Ex.A-3. Under the said document, he purchased the property from one Krishnasamy Gounder on 26.03.1963. The said Krishnasamy Gounder, in turn, purchased the suit property from M.Subramania Iyer under an unregistered sale deed, dated 09.11.1957. Therefore, even as per the admitted case of the plaintiff, Subramania Iyer sold the suit property to his vendee Krishnasamy Gounder under an unregistered sale deed, which would not convey any title to the vendee and, therefore, the title of Krishnasamy Gounder over the suit property is inherently doubtful as per the averment found in the plaint. Further, Krishnasamy Gounder sold 17 acres of land in Survey No.27/N. However, the suit Survey Number is 27/Z. The Courts below, by pointing out the discrepancy in the survey number and also the discrepancy in four



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boundaries mentioned in Exs.A-3 and A-2, came to the conclusion that the plaintiff failed to prove his right over the suit property.

8. Apart from the plaintiff's failure to prove his right over the suit property by dispelling the doubt created in the discrepancy in the survey number and also the four boundaries, the notification under Section 4 of the Act was issued by the Government as per Ex.B-2. It is also seen that under Ex.B-3, a proposal was sent to the Government for issuing final notification under Section 16 of the Act. The suit has been filed on 08.12.1994, subsequent to the notification issued by the Government under Section 4 of the Act. The plaintiff failed to produce any material before this Court that he raised an objection before the statutory authorities under Section 6 of the Act. It is also seen no final notification was issued under Section 16 before filing of the suit. Hence, the suit is clearly barred under Section 5 of the Act.

9. It was contended by the learned counsel for the appellant that on the date of notification under Section 4 of the Act, the plaintiff's claim for patta was pending before the settlement authorities and, therefore, he could not make any objection before the authorities, constituted under the Act. Even assuming that settlement proceedings ended in favour of the plaintiff and patta, if any granted in his favour, after the notification under Section 4 of the Act, it was for the plaintiff to make necessary objection before the



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authorities constituted under the Act, under Section 6 and then only, the claim of the plaintiff could be considered and adjudicated by the authorities before final notification under Section 16.

10. In the case on hand, admittedly, the plaintiff failed to raise any objection before the authorities concerned. In such circumstances, in view of the bar under Section 5 of the Act, the present suit, filed by the plaintiff, is also not maintainable. The plaintiff, who failed to raise his little finger by raising his objection against the notification issued under the Act declaring the lands in Megamalai village, including the suit property, as forest land, is not entitled to maintain the present suit for declaration of title before the Civil Court. Accordingly, I do not find any error in the conclusion reached by the Courts below that the plaintiff was not entitled for declaration. Consequently, the Second Appeal stands dismissed, as devoid of any substantial questions of law. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Additional District Judge/
Fast Track Court Judge No.IV,
Periyakulam.
- 2.District Munsif,
Andipatti.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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