



S.A(MD)No.546 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.546 of 2013

and

M.P(MD) No.3 of 2013

1.Manoharan

2.Mahalingam

3.Chithamparam

4.Gurusamy

5.Ashok

6.Rathinam

...Appellants

-Vs-

1.Ragunathan

2.Tamilselvi

3.R.Karthick

... Respondents

(R3 impleaded as a party respondent in this appeal
vide Court order dated 21.08.2020 made in M.P(MD) No.1 of 2014)



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.39 of 2011 dated 28.03.2012 on the file of the Subordinate Judge, Paramakudi and restore the decree and judgment made in O.S.No.54 of 2009 on the file of the District Munsif, Paramakudi, dated 08.04.2011.

For Appellants : Mr.C.S.Ravichandran

For R1 & R3 : Mr.P.T.S.Narendravasan

For R2 : No appearance

JUDGMENT

The plaintiffs are the appellant. They have filed a suit for bare injunction. The suit was decreed by the trial Court and the findings of the trial Court were reversed by the first appellate Court. Aggrieved by the same, the plaintiffs have come by way of this second appeal.

2.According to the plaintiffs, the suit property is a Village Natham site. They have been in possession and enjoyment of the same from the time of their



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forefathers. It is the case of the plaintiffs that the suit property was enjoyed by their forefathers by worshipping Sri Sannasi Andavar. It was also claimed that the suit property has been in possession and enjoyment of more than 500 families worshipping Sri Sannasi Andavar. Recognizing the right of the plaintiffs, an assignment patta was issued in their names by the Tashildar. The defendants, who are northern neighbours of the suit property without having any manner of right, attempted to interfere with the possession of the plaintiffs. Hence, they were constrained to file a suit for bare injunction.

3.The defendants filed their written statement disputed the competency of the plaintiffs to sue in their individual names without filing a suit in representative capacity. The defendants specifically denied the possession and also the alleged right of worship. The defendants also claimed that they had been in possession and enjoyment of the suit property for more than 100 years through their ancestors. It was also claimed by the defendants that the suit property was in occupied natham and they had been enjoying the same along with their house on the northern side of the suit property.



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4. Before the trial Court, on the side the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and 13 documents were marked as Ex.A1 to Ex.A13. On behalf of the defendants, no documentary and oral evidences were let in.

5. The Trial Court based on the assignment patta produced by the plaintiffs, which were marked as Ex.A1, Ex.A4, Ex.A6, Ex.A8, Ex.A10 and Ex.A12 issued in the names of individual plaintiffs and the chitta dated 01.06.2008, came to the conclusion that the plaintiffs proved their possession over the suit property and granted the decree for permanent injunction. Aggrieved by the same, the defendants preferred an appeal in A.S.No.39 of 2011 on the file of the learned Subordinate Judge, Paramakudi. Pending appeal, they also filed an application in I.A.No.66 of 2012 for reception of additional evidence. The order passed by the District Revenue Officer cancelling the assignment patta issued in the individual names of the plaintiffs and the order passed by the High Court in WP(MD)No. 1430 of 2012 suspending the order of injunction passed by the Appellate Authority, were received as additional evidences and marked as Ex.B1 to Ex.B3. The first appellate Court, by taking into consideration that the assignment pattas issued in the names of plaintiffs were cancelled by the appellate authority, came



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to the conclusion that the plaintiffs failed to prove their independent possession or right to maintain the suit and consequently, allowed the first appeal. Aggrieved by the same, the plaintiffs are before this Court by way of this Second Appeal.

6.At the time of admission, this Court formulated the following substantial questions of law by order dated 23.09.2013:-

“Whether the First Appellate Court is right in accepting the additional documents filed in I.A.No.66 of 2012 and pronounce the judgment on the basis of cancellation of assignment of patta by the District Revenue Officer, Ramnad during the pendency of the civil suit is correct or not?”

7.The learned counsel for the appellants submitted that the first appellate Court ought not to have taken into consideration the order passed by the District Revenue Officer cancelling the patta issued in the names of the plaintiffs pending litigation. It is his submission of the learned counsel that the order passed by the District Revenue Officer is hit by Section 52 of the Transfer of property Act.



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8.The suit was filed by the plaintiffs for bare injunction based on the assignment pattas issued in the individual names of the plaintiffs. The said assignment pattas were cancelled by the competent authority pending suit. The first appellant Court, taking into consideration the assignments made in the names of the plaintiffs were cancelled, came to the conclusion that the plaintiffs failed to prove their independent possession or right to maintain the suit. The order passed by the District Revenue Officer cancelling the assignment patta in the names of the plaintiffs under Ex.B1, was not at all challenged by the plaintiffs in the manner known to law and the same has attained finality. Therefore, as on today there is no assignment patta in the individual names of the plaintiffs.

9.A reading of Ex.B1 would suggest that the District Revenue Officer cancelled the assignment patta issued in the names of individual plaintiffs and classified the suit property as Sri Sannasi Andavar Kovil Poramboke. The suit has not been filed by the plaintiffs in the capacity as worshipper of the said temple or as a representative of the temple. Though, in the plaint the plaintiffs pleaded as if plaintiffs and other 500 persons were having right of worship, the suit has not been laid in the representative capacity. When the patta issued in the



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names of the plaintiffs were cancelled by the competent authority, the very foundation of the plaintiffs' case goes and therefore, there is no other independent evidence available on record to support the individual possession of the plaintiffs. The chitta produced by the plaintiffs dated 01.06.2008 are all obtained based on the assignment order issued in the names of the plaintiffs. Now, as per Ex.B1, the assignment in favour of the plaintiffs stands cancelled. In such circumstances, the exhibits marked on the side of the plaintiffs namely, assignment orders and consequential chitta will not advance their case. There is no other evidence available on record to infer the possession of the plaintiffs.

10.The learned counsel for the appellants relied on the order passed by this Court in WP(MD) No.21458 of 2023 in support of his contention. In the said case, subsequent to the institution of civil suit, a patta was granted in favour of the petitioner therein. Taking into consideration that the patta was granted pending suit, this Court directed the Revenue Officer to wait for the out come of the civil suit proceedings. However, in the case on hand, the patta in favour of the plaintiffs was issued even prior to the suit and based on the patta, the suit was laid. Pending suit, the patta issued in favour of the plaintiffs was cancelled by the



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Superior Authority. When the plaintiffs are not able to show their right independently de hors the patta issued in their favour, the case law relied on by the learned counsel for the appellants is not applicable to the facts of the present case.

11.The learned counsel for the appellants submitted that the defendants failed to prove their long possession as pleaded in the written statement. Even though the defendants failed to lead any evidence in support of their possession, that will not enable the plaintiffs to get an order of injunction. It is settled law that the plaintiff has to prove his case independently. In the case on hand, the documents produced by the plaintiffs were cancelled by the competent authority and as on today, the property is classified as temple poramboke. It is for the worshipper of the temple or a representative of the temple to file appropriate suit in case of interference by the defendants. The suit filed by the plaintiffs in their individual capacity cannot be converted in a suit to protect the alleged rights of worshipper.



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12.The submission made by the learned counsel for the appellants that the order passed by the District Revenue Officer is hit by Section 52 of Transfer of Property Act, is not acceptable to this Court simply for the reason that there is no transfer inter vivos in this Case. Ex.B1 is the order passed by the Superior officer cancelling the patta issued by the lower rank official. It is an independent proceeding and the doctrine of *lis pendens* which is enshrined under Section 52 of the Transfer of Property Act, which is applicable to transfer inter vivos cannot be extended to the order passed by the Superior Officer cancelling the order of the lower authority. Therefore, the questions of law framed at the time of admission answered against the appellants. Accordingly the Second Appeal is dismissed. It is made clear that the dismissal of the second appeal will not come in the way of the plaintiffs working out their appropriate remedy for protection of their alleged right of worship in Sri Sannasi Andavar temple. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2024

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

- 1.The Subordinate Judge,
Paramakudi.
- 2.The District Munsif,
Paramakudi.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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