

(2010) 09 MAD CK 0138

In the Madras High Court

Case No : Second Appeal No. 56 of 2006

Gowri, Udayakumar and Meenakshi

APPELLANT

Vs

Lakshmigandam Ammal

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 16A, 3(2)
Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971 — Section 23, 3, 4, 5

Citation : (2010) 5 LW 361 : (2011) 1 MLJ 126

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Parthasarathy for Sarvabhauman Associates, for the Appellant; T. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—Defendants are the appellants herein. The plaintiff filed a suit for declaration of title and also for recovery of possession. The Trial Court dismissed the suit, but, the first appellate court decreed the suit as prayed for of course, with mesne profits.

2. The plaintiff has contended that the suit property originally belonged to Government of Tamil Nadu and the same was classified as natham poramboke. The Revenue Divisional Officer, Tirukoilur granted patta to the plaintiff under proceedings No. 5-1228-79 dated 2.8.1979. It is contended that the plaintiff, having put up a house, has been residing over there, paying house-tax. The plaintiff would also allege that the first defendant, taking advantage of the absence of the plaintiff, encroached upon the suit property and refused to vacate the same.

3. The defendants would contend that the suit property, comprised of a larger extent of 29 cents, originally belonged to one Krishnamurthy and others. Thereafter, it was possessed and enjoyed by Vekatraya Reddiar and Seetharama

Reddiar. The first defendant purchased the same for a sum of Rs. 20/= on 1.5.1960 and has been in exclusive possession and enjoyment of the same. It was only the first defendant who has put up construction. It has also been contended that the first defendant had prescribed title by adverse possession.

4. The Trial Court, having come to a decision that the plaintiff failed to establish her claim that the suit property was a natham poramboke, whereas the defendants have established that they have got the suit property under the oral sale and they have been in possession and enjoyment of the suit property, dismissed the suit filed by the plaintiff. But, the first appellate court reversed the judgment of the Trial Court accepting the plea of the plaintiff that she has got kudiyruppu patta for the suit property from the authorised officer under the said Act and held that the plea of oral sale set up by the defendants was not established and ultimately decreed the suit and granted mesne profits at the rate of Rs. 10/= per month.

5. The second appeal was admitted on the following substantial questions of law:

1. Whether the lower appellate court is correct in law in decreeing the suit for declaration for title on the basis of Ex.A1 patta dated 2.8.1979, especially when it is axiomatic in law that patta is not a document of title.

2. When the admission of the opposite party is the best evidence in law, whether the lower appellate court is justified in law in brushing aside the evidence of PW2 to the effect that the appellants are in possession by putting up a house in the suit property and living there for over the statutory period.

3. Whether the lower appellate court is correct in law in eschewing Exs.B2 to B20 namely Chitta, Adangal, Demand Register Extract and House Tax Receipts which clinchingly negate the case of the respondent.

6. When the second appeal was taken up for arguments, with the consent of both sides, the following additional substantial question of law was formulated:

Whether the grant of kudiyruppu patta Ex.A1 in favour of the plaintiff/respondent by the Revenue Divisional Officer is valid as per the provisions of Tamil Nadu Act 40 of 1971.

7. Learned Senior Counsel appearing for the appellants/defendants would submit that the respondent has come out with a totally different case during the course of trial, completely giving a go-by to the pleadings. The respondent failed to plead and establish that she was an agriculturist or agricultural coolie. It is his further submission that there is nothing on record to show that the suit property is a kudiyruppu. As the possession of the appellants has been admitted by the respondent, the appellants are entitled to protect their possession against the whole world except the true owner. It is his further contention that the bar u/s 23 of the said Act would not apply to the present suit where the matters which fell beyond the purview of the Act had to be decided by the civil court. Further, the authorised officer under the Act lacks jurisdiction inasmuch as the authorised

officer had not dealt with kudiyruppu and the respondent also was not a tenant or a lessee of the said kudiyruppu. The last submission made by the learned Senior Counsel appearing for the appellants is that the officer failed to issue any notice to the deceased first defendant. Therefore, he would submit that the first appellate court has fallen in error in arriving at a decision that the respondent was entitled to the reliefs sought for by her.

8. Learned Counsel appearing for the respondent would submit that kudiyruppu patta, Ex.A1 granted by the authorised officer under the said Act is conclusive in nature inasmuch as the patta granted by the authority under the Act was not challenged u/s 5 of the said Act. It is his further submission that the authorised officer has got authority to decide as to whether a site is a kudiyruppu and whether the claimant is an agriculturist or an agricultural labour under Sections 3 and 4 of the said Act. These matters decided by the authorised officer under the Act cannot be challenged by way of a suit as there is a bar u/s 23 of the said Act. Therefore, he would submit that the first appellate court has rightly decided that the respondent has got title to the suit property under the kudiyruppu patta, Ex.A1 granted in favour of the respondent and as such she is entitled to delivery of possession and also for mesne profits.

9. To say the least, it is found that the plaint has been very badly drafted by the mofussil lawyer. Anyway, the respondent has categorically stated in the plaint that she got right and title over the subject property only under the document Ex.A1 patta. It appears that the mofussil lawyer, who drafted the plaint, has given his own classification as though the subject property was a natham poramboke and the patta Ex.A1 was granted by the Revenue Divisional Officer, even without perusing the content of the document, Ex.A1 which was specifically referred to in the plaint pleadings. If at all Ex.A1 had not been specifically referred to in the plaint, of course, the court will have to presume on the basis of plaint pleadings that the plaintiff has come out with a case that she was granted a patta only for the natham poramboke land by the Revenue Divisional Officer. It is not as if the respondent has produced Ex.A1 only during the course of trial of the case. As already pointed out by this Court, it is only the mofussil lawyer, who ill-drafted the plaint, has given his own classification for Ex.A1. The flaw committed by the mofussil lawyer cannot be taken advantage of by the appellants before this Court.

10. The respondent traced her title through Ex.A1 kudiyruppu patta issued by the authorised officer under the said Act. u/s 3 of the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971, an agriculturist or agricultural labour, who was occupying any kudiyruppu as on the relevant date either as tenant or as lessee, shall be the owner of the kudiyruppu and such kudiyruppu shall vest in him absolutely free from all encumbrances. The authorised officer, u/s 4 of the said Act, has authority to decide whether a site is a kudiyruppu and whether an agriculturist or agricultural labour occupies such kudiyruppu. The decision arrived at by the authorised officer u/s 4 becomes final, if no appeal has

been preferred by the person aggrieved. A kudiyruppu in the occupation of the claimant decided u/s 4 of the said Act cannot be questioned in any suit as there is a clear bar u/s 23 of the said Act.

11. The deceased first defendant has come out with a case that he purchased the suit property under an oral sale arrangement in the year 1960. Oral sale transaction would not be reflected in the revenue records. The authorised officer is bound to issue notice only to the persons who are shown as interested persons in the revenue records. No wonder the alleged purchaser under the oral sale viz., the first defendant was not given any notice by the authorized officer before he proceeded to issue kudiyruppu patta, Ex.A1 to the respondent. Therefore, the appellants cannot now make a lawful claim, at this distance of time, when the entire proceedings in respect of Ex.A1 was initiated by the authorised officer at the behest of the appellants.

12. A Full Bench of this Court, in Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, , while dealing with the ambit of Section 16A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, (Act 10 of 1969), which is found to be similar to Section 23 of the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, has held as follows:

The next aspect to be considered, is the ascertainment of the ambit, amplitude and the extent of the interdict imposed by Section 16-A of the Act, on the exercise of jurisdiction by a Civil Court. We have already extracted Section 16-A. Two things are clear from the language of the section. One is, the interdict is on the jurisdiction of the matters which by or under the Act have to be determined by the Record Officer, the District Collector or other officer or authority empowered by the Act. The section itself does not enumerate as to what those matters are. The second is, the interdict is not on any particular proceeding in the Civil Court, but only on the exercise of the jurisdiction in respect of matters. Controversies that come before a court or a tribunal cannot be either pigeon-holed or put in strait-jackets. They may be of different varieties as well as different standards. For the purpose of deciding the main controversy, the court or the Tribunal may have incidentally to decide a number of subsidiary questions or controversies. Therefore, when the section itself does not enumerate the matters in respect of which the jurisdiction of the Civil Court is ousted, one will have to ascertain the said matters, with reference to the other provisions of the Act conferring power or jurisdiction on the authorities functioning under the Act. Similarly a suit or proceeding in a Civil Court may involve the determination of several matters, some of which may be within the jurisdiction of the authorities functioning under the Act and some others outside the jurisdiction. In such a case, the suit or proceeding as such cannot fail unless it is of such a nature that it can be terminated solely on the determination of the matter falling within the jurisdiction of the authorities functioning under the Act. Since the section itself does not bar the institution of the suit or a proceeding, it is unnecessary to labour the second aspect any further.

13. In the said decision, the Full Bench of this Court, having adverted to Section 3(2) of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, (Act 10 of 1969), has held that the record officer or the appellate or revisional authority, under the provisions of the said Act, has the power to determine the matters relating to the survey number, sub-division number, the extent and local name of the land let for cultivation by a tenant, the name and address of the land owner, the name and address of the intermediary, if any and the name and address of the tenant cultivating the land. The determination of these matters by the record officer cannot be called in question invoking the civil jurisdiction of the court as there is a clear bar u/s 16A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act (10 of 1969). But, there may be cases where the civil court would be called upon to determine certain matters which fall within the jurisdiction of the authorities functioning under the said Act and some other matters which fall outside the jurisdiction of the authority under the Act. Under such circumstances, the civil court has jurisdiction to decide incidentally the matters which fall within the jurisdiction of the authority concerned for the purpose of adjudicating upon the entire controversy which has arisen before the civil court.

14. In the instant suit, the question that arose for consideration was whether the authorised officer was well within his power to grant kudiyruppu patta under Ex.A1 having decided the questions as to whether the subject property was a kudiyruppu and whether the respondent was an agriculturist or agricultural labour. The said questions have not arisen in the suit incidentally. The respondent bases her claim only on the kudiyruppu patta, Ex.A1 granted by the authorised officer under the Act. The appellants challenge the very authority of the authorised officer to grant kudiyruppu patta under Ex.A1 on the ground that the respondent has not shown before the court that the property was a kudiyruppu and she was an agriculturist or agricultural coolie. Such matters fall exclusive within the jurisdiction of the authorised officer under Sections 3 and 4 of the said Act. The civil court is ousted of its jurisdiction u/s 23 of the Act to decide such matters determined by the authorised officer.

15. Of course, the respondent has not let in any evidence to show that the suit property was kudiyruppu and that she being an agriculturist or agricultural labour was a tenant or lessee having been in occupation of the property. When these matters had already been decided by the authorised officer under the said Act, the question of raising those points before the civil court for determination does not arise for consideration. Inasmuch as the authorised officer had determined conclusively that the site was a kudiyruppu and the respondent was entitled to grant of kudiyruppu patta, the appellants cannot challenge the same before the civil forum. The respondent also is not bound to establish all these matters which had already been determined by the authorised officer.

16. Of course, the learned Senior Counsel appearing for the appellants cited a decision of this Court in G. Anushya and 4 Ors. v. Veerasamy Naidu (died) and 4

Ors. 2009 4 LW 641 wherein it has been held as follows:

Though the defendant had stated in his oral evidence that the house in his occupation is a "Kudiyiruppu", he has not let in any documentary evidence to prove that either he or anyone of his family members had contributed manual labour and cultivated agricultural lands owned by the plaintiff at the site. No documentary evidence has been let in even to prove the contention that he was cultivating the lands owned by the temple.

17. That was not a case where the authorised officer had an occasion u/s 4 of the said Act to determine the eligibility of the claimant in order to grant patta. That was the reason why this Court made an observation that the defendant has to approach the authorised officer who is the competent authority under the Act and claim the benefits conferred under the said Act. Therefore, the aforesaid ratio will not apply to the facts and circumstances of this case where the authorised officer had already determined the eligibility of the respondent and granted kudiyiruppu patta under Ex.A1.

18. Of course, the appellants are entitled to protect their possession against the entire world except the true owner. The respondent has established that she, having obtained the kudiyiruppu patta under the said statute, is the rightful owner of the suit property. Therefore, the appellants cannot lawfully pray for protection of their possession as against the true owner viz., the respondent herein.

19. An ordinary patta granted by the revenue authorities evidencing possession of the property cannot be construed as a document of title. Section 3 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 postulates that the occupant of kudiyiruppu becomes owner of the property in occupation if he or she had been a tenant or a lessee with effect from the date of commencement of the said Act. Statutory patta is granted only in recognition of the automatic ownership contemplated u/s 3 of the said Act. Therefore, the statutory kudiyiruppu patta granted by the authorised officer under the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 is, as a matter of fact, a document of title unlike other pattas granted by the revenue authorities recognising the possession of the party concerned. The first substantial question of law is decided accordingly.

20. The respondent has pleaded that about three years prior to the laying of the suit, the first defendant encroached upon the suit property and started enjoying the same. Of course, the appellants have produced documents, Exs.B2 to B20 to show that the first defendant got patta for the suit property in the year 1982 and thereafter, he has been paying kist for the said property. It is to be noted that all those documents relate only to 26 cents of land and the revenue authorities have consciously omitted the subject property viz., 3 cents of land from the purview of those documents. Therefore, the appellants have also not established that they have been in possession and enjoyment of the subject property over the

prescribed period of 12 years. The second and third substantial questions of law are also decided accordingly.

21. As far as the additional substantial question of law formulated by this Court during the course of arguments, firstly, the civil court cannot decide whether the grant of kudiyruppu patta was valid as per the provisions of the Tamil Nadu Act 40 of 1971. No challenge to the kudiyruppu patta granted was made u/s 5 of the Act by approaching the appellate authority. The civil court cannot now question whether the suit property was a kudiyruppu and whether the respondent/claimant was an agriculturist or agricultural labour to claim kudiyruppu patta under the provisions of the said Act, as those matters are the exclusive domain of the authorised officer under Sections 3 and 4 of the said Act. The additional substantial question of law is also decided accordingly.

22. The first appellate court has rightly held that the respondent is the owner of the suit property as per the kudiyruppu patta, Ex.A1 granted in her favour. As the owner of the property, she is entitled to recovery of possession and also for mesne profits. There is no warrant for interference with the judgment rendered by the first appellate court. Therefore, the second appeal fails and it stands dismissed. There is no order as to costs.