
(1988) 01 KL CK 0008
In the High Court Of Kerala
Case No : S. A. No. 435 of 1982

Narayana Iyer

APPELLANT

Vs

Vella and another

RESPONDENT

Date of Decision : 28-01-1988

Acts Referred:

Malabar Land Registration Act, 1895 — Section 13, 19(b)

Citation : (1988) 1 KLJ 231

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : N. Viswanatha Iyer and V. Sivaswamy Jose Joseph, for the Appellant;
A.K. Jose and Abraham Mathew, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Appellant is the plaintiff in O.S. 79 of 1972 of the Munsiff Court, Alathur, who has lost his case in the trial Court as well as in the lower appellate court. Plaintiff filed the suit for recovery of possession on the strength of his title on the allegation that the defendants committed trespass into the plaint schedule property in March 1969. It is the case of the plaintiff that the property was demised on kanam to Narayana Iyer, that the kanari mortgaged it in favour of Subramania Iyer and another, that the plaintiff took assignment of the kanari's right as per Ext. A1 and redeemed the property in O.S. 54 of 1943 and that he is entitled to recover the property from the unauthorised possession of the defendants. It is the admitted case that the plaintiff had filed O.S. 115 of 1969 before the Munsiff Court, Alathur and that it was dismissed by this Court. The main contention of the plaintiff is that even if it is found that the suit property is not covered by Ext. A-1 still there is ample evidence with regard to his possession of the property as evidenced by the grant of patta, revenue receipts, land acquisition notices and the commission report. Counsel for the plaintiff submitted that as against the aforesaid evidence there is hardly any evidence in support of the defendants' contentions. Counsel for the defendants

submitted that the courts below have concurrently held that the plaintiff has not proved his title to the property and hence no interference is warranted in the Second Appeal. Property in item 12 in Ext. A-1 has 2 taks. The measurement of the first take is shown as 43 x 43 six feet koles and that of the second tak as 81 x 35 six feet koles. According to the plaintiff, the plaint schedule property is included in R.S. 72/4A. Item 12 of Ext. A-1 property is in R.S. 70/2. The boundaries of the property in item 12 in Ext. A-1 and that of the plaint schedule property are not the same.

2. The trial Court held that the commissioner has not identified the property with reference to Ext. A-1 or any other document produced by the plaintiff. It is settled law that in the event of conflict between boundaries and extent the former will prevail. As there is not only conflict between boundaries and extent but also in respect of other details, it is not possible to identify the plaint schedule property to be the same as item No. 12 of Ext. A-1.

3. The extent shown in Revenue Receipts Exts. A-9 and A-10 is 6.32 acres in R.S. 72/4A. In Exts. A-11 to A-21 the extent shown is only 2.64 acres. Exts. A-22 to A-24 do not show any survey number at all. Ext. A-2 notice of award under the Land Acquisition Act, mentions survey number 70/2 B2 and 72/4B. It does not relate to the suit property. Ext. A-26 is stated to be a notice issued by the Land Acquisition Officer. It does not contain the seal of the office which issued the said notice. It is indeed difficult to place reliance on Ext. A-26 to hold that portion of the suit "property was acquired by the Government. Ext. A-25 is also of no significance as it does not relate to the suit property. The trial Court on a consideration of the evidence held that the plaintiff has not proved title to the property to entitle him to recover the suit property from the possession of the defendants. The Sub Judge has considered the evidence properly and agreed with the findings of the trial Court.

4. Plaintiff relied on Ext. A-4 Pattayam to substantiate his case with respect to the property in survey number 72/4A. Ext. A-4 shows the Pattayam number as 214. Ext. A-8 is also relied on by the plaintiff in support of his case. Ext. A-8 shows the name of the land owner as Valsamma and occupant as Narayana Iyer. Placing considerable reliance on Exts. A-4 and A-8 plaintiff's counsel contended that they would really establish the title of the plaintiff to the suit property. He contended that the aforesaid documents are sufficient to prove the plaintiff's case to the hilt and merely because Ext. A-1 does not take in the property scheduled in the plaint it cannot be said that the plaintiff cannot succeed in the suit on the strength of the said documents.

5. The settlement proceedings, per se will not confer title to property. It is settled law that the grant of patta by itself will not confer title to the property. Settlement reports, are valuable as they may give sufficient data with regard to the areas coming within the operation of settlement. But they are not conclusive enough to find title on that sale basis. Mutation of names are not judicial proceedings, in which the title to and the proprietary right in immovable

properties are determined. The Preamble to the Malabar Land Registration Act, 1895 makes it explicitly clear that the enactment was passed with a view to secure public revenue by summary means whereby the Collector may ascertain the proprietors and register the property in their names. The registration is done under the said Act only in a summary manner. Section 13 of the Act provides that every person registered as proprietor of an estate shall be deemed to be the landholder in respect of such estate within the meaning and for the purposes of Madras Revenue Recovery Act II of 1864. A reading of the provisions of the Malabar Land Registration Act will not show that the grant of patta confers any title to the property. Section 19(a) of the Act states that the provisions of Section 13 do not preclude the Government or any person from bringing a regular suit for possession of, or for a declaration of right to, any immovable property to which the Government or such person may deem itself or himself entitled-Section 19 (b) stipulates that a registration under the Act would not amount to an admission on the part of the Government of the right of the person in whose name such estate may be registered or an admission of the validity of the title under the estate is held. Section 19 (c) postulates that registration shall not affect the rights of the Government or of any person in respect of any estate or of any interest therein.

6. Thus it can be found that the registration of patta under the Act can only be for the limited purpose of securing public revenue from the property to the Government. As proceedings could be taken under the Act only in a summary manner and as Section 19 of the Act makes it clear that-conferment of registration of the land under the Act in favour of a person is not the final word in the matter it is difficult to hold on the basis of the conferment of patta alone title to the property claimed by the plaintiff can be recognised. In *Parukutti Amma v. Sundara Ayyar* (1949 TGLR 59) the Travancore-Cochin High Court held that the issue of patta by Sirkar in one's name does not confer title to the property, if he had not already obtained title to it. As the suit is based on title the plaintiff can succeed only if he has established it successfully. In other words, in a suit for ejectment the plaintiff can succeed only on the strength of his own title. In such a suit the weaknesses in the defence may not at all be germane when the plaintiff has failed to establish his title to the property. In other words, even if the title set up by the defendant is found against that would not be advantageous to the plaintiff's case if the title set up by him has not been proved. The plaintiff cannot, by highlighting the weakness in the defence case or lack of title for the defendant, succeed if the plaintiff himself failed to prove his title to property, It is apposite to refer to *M.M.B. Catholicos v. M.P. Athanasius* (AIR 1954 S.C. 526) where the Supreme Court held as follows:

The plaintiff in ejectment suit must succeed on the strength of his own title. This can be done by adducing sufficient evidence to discharge the onus that is on him irrespective of whether the defendant has proved his case or not. A mere destruction of the defendant's title, in the absence of establishment of his own title carries the plaintiff no where.

As the plaintiff has not succeeded in proving his title to the suit property the concurrent findings of the Courts below do not merit interference. The Second Appeal is dismissed with no order as to costs.