
(2012) 01 MAD CK 0320
In the Madras High Court
Case No : Second Appeal No. 264 of 2006

Poongodi and Others

APPELLANT

Vs

Mani

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Citation : (2012) 01 MAD CK 0320

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Selvaraj, SC, for the Appellant; R. Meenal, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja

1. The appellants herein filed a suit as plaintiffs in O.S. No. 299 of 1998 on the file of the Additional District Munsif, Kallakurichi, seeking for declaration and permanent injunction. The facts giving rise to the present appeal are as follows:-

The appellants are plaintiffs and the respondent is defendant. Suit is filed by the appellants/plaintiffs in respect of two items of the suit properties. First item is 0.21.0 acres in R.S. No. 328/2 and second item is 0.20.0 acres in R.S. No. 329/15. It is the case of the appellants that the suit properties are owned by one deceased Krishnamoorthy, father of plaintiffs 2 to 4 and husband of first plaintiff and son of 5th plaintiff. In the plaint, it is stated that from 1973 onwards deceased Krishnamoorthy was in possession and enjoyment of the suit property.

2. The Trial Court, after considering the case of both sides with the oral and documentary evidence, held that the decree for declaration of title cannot be granted, as the very patta-Ex.A1, upon which the claim of the plaint was made, came to be cancelled by cancellation order, which was marked as Ex.B5, dated 04.05.2000. The said finding also came to be affirmed by the First Appellate Court. Aggrieved by the same, the appellants/plaintiffs have filed the present

Second Appeal.

3. At the time of admission, the following substantial questions of law were framed for consideration:

- i) Whether the appellants are entitled for declaration of title and for permanent injunction on the basis of Exs.P.1, P.3 and P.4. If not at least injunction apparent on the face of Chitta and Adangal i.e. Exs.P3 and P.4.
- ii) Whether the defendant have rebutted the proof of the appellants by substantiating the material evidence with reference to the suit properties?
- iii) Whether the Courts below are correct in relying upon the documents of the defendant, which are not referable to the suit properties for rejecting the claim of the appellants?

4. The unsuccessful plaintiffs, who lost their case before the both Courts below, had filed a suit for declaration that the plaintiffs/appellants are the owners of the suit property and consequently, sought for permanent injunction restraining the defendant/respondent herein from interfering with the peaceful possession and enjoyment of the suit property. The case of the plaintiffs/appellants herein was that, as the legal heir of Krishnamoorthy, they have cultivated the lands and enjoyed it and on the basis of patta issued under an updating revenue scheme, they were enjoying the suit property and thereupon, they have perfected the suit property by adverse possession. Hence, the defendant has no right or title to the suit property.

5. On the other hand, the defendant/respondent herein pleaded that the plaintiffs' father Krishnamoorthy was serving as Maniyakkarar in Kongarapalayam for about 30 years. In view of his position as Maniyakkarar, when there was an updating revenue scheme for issuance of patta, by misusing his position in collusion with other revenue officers, have wrongly obtained patta. Immediately, on coming to know about the issuance of wrong patta to the plaintiff, a complaint-Ex.B4 was given to the Collector for cancellation of patta in Samabanthi proceedings. Accepting the complaint, an enquiry was conducted. On completion of the enquiry, the revenue authorities came to the conclusion that the patta was wrongly given and accordingly, the name of the defendant was rectified in the patta. Concealment of this fact and a reading of the another important document-Ex.B1-sale deed, dated 16.06.1928, under which the defendant/respondent's paternal uncle Ayyamperumal Udayar had purchased the suit property from Rengammal and Vaiyapuri Udayar, goes to show that the suit properties were purchased in the name of defendant's paternal uncle, as he was elder in the Hindu joint family. On the basis of Ex.B1, the defendant/respondent established the case against the plaintiffs/appellants that the plaintiffs/appellants are the real owners of the suit property. Under these circumstances, the trial Court came to the conclusion that, Ex.B1, a certified copy of the registered sale deed, dated 16.06.1928, under the defendant/respondent's paternal uncle, had purchased the suit property from one Rengammal and Vaiyapuri Udayar,

disbelieving Ex.B3, a certified copy of the registered sale deed, dated 16.06.1928, through which the plaintiffs' father alleged to have purchased the suit property from the father of the plaintiffs, for the reason that the document did not contain the suit property, has been rightly affirmed by the learned first appellate Court. Therefore, when the patta-Ex.A1, which gives a basis for the plaintiffs/appellants to file a suit, came to be dismissed by the Zonal Deputy Tahsildar, by order dated 04.05.2000, on the complaint-Ex.B4 filed by the defendant/respondent for cancellation of the patta, and further, when the plaintiffs/appellants, at no point of time, had produced any oral or documentary evidence to prove the title and possession of the suit land, the concurrent findings of the Courts below holding that the plaintiffs miserably failed to prove the title, by not discharging the onus, as he has first come to the Court for decree for declaration of the title and permanent injunction, cannot be interfered with and accordingly, by answering substantial question of law, against the appellant, second appeal fails and is dismissed.

6. Further, it is pertinent to note that, when the matter was taken up for final hearing, learned counsel appearing for the plaintiffs/appellants has fairly submitted that though the plaintiffs/appellants had laid their claim on the basis of patta-Ex.A1, kist receipts Exs.A2 to A15, Chitta-Ex.A16 and Adangal-Ex.A7, the very patta-Ex.A1 itself was cancelled by the Revenue Authorities on 04.05.2000, which was marked as Ex.B5. Therefore, when the only piece of evidence, with which the claim was made, also came to be cancelled, this Court, sitting u/s 100 having limited jurisdiction, finds no merit in the appeal preferred by the plaintiffs/appellants herein. In result, the Second Appeal is dismissed. No costs.