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Court : Chennai Madurai

Decided On : Nov-15-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : S.A.(MD)No. 420 of 2006

Appellant : Baskaran

Respondent : A. Gunasekaran

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 08.08.2005, made in A.S.No.88 of 2002 on the file of the I Additional Subordinate Court, Trichy, reversing the Judgment and decree dated 05.07.2002, made in O.S.No.187 of 1993 on the file of the District Munsif Court, Thuraiyur.)

1.This Second Appeal has been filed against the judgment and decree dated 08.08.2005, made in A.S.No.88 of 2002 on the file of the I Additional Subordinate Court, Trichy, reversing the Judgment and decree dated 05.07.2002, made in O.S.No.187 of 1993 on the file of the District Munsif Court, Thuraiyur.

2. The first appellant is the second defendant and the appellants 2 to 4 and the first appellant are the legal heirs of the first defendant. The appellants, who succeeded in the Trial Court, but lost in the first appellate Court, filed this second appeal. The respondent is the third plaintiff.

3. Facts of the case:-

(i) The respondent along with his father and mother filed suit in O.S.No.187 of 1993 before the District Munsif Court, Thuraiyur, for declaration to declare the suit property belongs to them, directing the first appellant and his mother to hand over possession of the suit property.

(ii) According to the respondent, the first plaintiff (since deceased) occupied the suit property 50 years back and constructed a house. It consist of four lots. The 3rd lot is a vacant site. The 1st lot was let out to Post Office. In the 2nd lot, the respondent along with his parents/plaintiffs 1 and 2 were residing and in the 4th lot, the first defendant/mother of the appellants was permitted to occupy. The mother of the appellants/first defendant obtained UDR Patta in her name in the absence of the first plaintiff/father of the respondent. Therefore, the first plaintiff/father of the respondent has filed a petition to cancel the Patta granted in favour of the mother of the appellants/first defendant. The said Patta was cancelled on the appeal filed by the first plaintiff. Therefore, he demanded the mother of the appellants to vacate and hand over possession to the respondent and his parents. The first defendant refused to hand over the possession. Hence, the respondent and his parents have filed the suit.

(iii) The first appellant and his mother filed written statement denying all the averments made in the plaint and submitted that the husband of the first defendant was working as Watchman in the Public Works Department and the District Collector allotted a land measuring 0.03.55 Hectares to him. The Revenue Department did not issue any Patta. The first defendant's husband constructed the building and was residing there. The first plaintiff after his retirement was permitted to reside in the building. The first floor was let out to the Post Office. The husband of the first appellant borrowed money from the first plaintiff and therefore, the first plaintiff was permitted to collect rent from the Post Office and Rental Agreement was executed in the name of the first plaintiff with the Postal Department. Joint Patta was granted to the first plaintiff and the first defendant and entire four lots belonged to the husband of the first defendant.

(iv) Based on the pleadings, the learned District Munsif, Thuraiyur, framed necessary issues.

(v) Before the Trial Court, the respondent examined himself as P.W.1 and Rajamanickam and Govindaraj were examined as P.Ws.2 and 3 and marked 24 documents as Exs.A.1 to A.24. On behalf of the appellants, the first defendant examined herself as D.W.1 and one Krishnamoorthy Gurukkal was examined as D.W.2 and marked 7 documents as Exs.B.1 to B.7.

(vi) The learned District Munsif, Thuraiyur, considering the pleadings, oral and documentary evidence adduced by the parties and arguments of the learned counsel appearing for the parties, dismissed the suit.

(vii) Against the said judgment and decree, dated 05.07.2002, the respondent has filed A.S.No.88 of 2002 before the Subordinate Court, Trichy.

(viii)Pending appeal, the first defendant died. The appellants 2 to 4 herein were brought on record as appellants 3 to 5 in the first appeal.

(ix) The learned Subordinate Judge, Trichy, framed necessary points for consideration.

(x) The learned Subordinate Judge, Trichy, considering the pleadings, oral and documentary evidence, judgment of the Trial Court and arguments of the learned counsel for the parties, by judgment and decree, dated 08.08.2005, allowed the appeal setting aside the judgment and decree of the Trial Court and decreed the suit.

4. Against the said judgment and decree, dated 08.08.2005, the present second appeal is filed.

5. At the time of admitting the second appeal, this Court framed the following substantial question of law:

Whether a suit can be filed claiming title over the property which is admittedly a Natham poromboke against another without even impleading the Government as a party in the suit?

6. The learned counsel for the appellant submitted that the first appellate Court failed to see that the respondent admitted that the suit property is a Natham poromboke and his father was paying penal tax for the encroachment for 60 years and therefore, the suit for declaration is not maintainable. The mother of the appellant as D.W.2 has deposed that the suit property was allotted to her husband, who was working in the Public Works Department, by the Deputy Collector, Musiri. The Trial Court has rightly held that both the plaintiff and the defendant were jointly in possession and enjoyment of the property and they are related to each other. The first appellate Court erred in not considering this aspect and ought to have confirmed the findings of the Trial Court and dismissed the appeal. The first appellate Court failed to see that both the appellant and the respondent encroached Natham poromboke land and both were working in the Public Works Department and only the appellants were residing in the suit property and the respondent's father was residing at Thuraiyur, as he was posted there. The learned counsel for the appellants further submitted that the first appellate Court erred in deciding the suit based on the Patta and he relied on the judgment of this Court reported in 2010 (4) TLNJ 223 (Civil) [Smt.Annammal Vs. Mr.Ammavasai and another] and submitted that Patta is not a document of title and it will not confer or extinguish title to the property and the Civil Court has to independently decide the question of title.

7. Per contra, the learned counsel for the respondent submitted that the respondent has proved the possession and enjoyment of the suit property, which is Natham poromboke and proved that the father of the respondent/first plaintiff had put up a building therein and was paying property tax and electricity charges and was collecting rent from the Postal Department, as a portion of the building was let out by the first plaintiff to the Post Office and produced Rental Agreements and receipts to substantiate the said case. UDR Patta in respect of 4th lot was erroneously issued to the first defendant and after filing appeal and revision by the first plaintiff, the Patta was cancelled and Patta was issued in the name of the first plaintiff. Against the cancellation of Patta, the husband of the first defendant has not filed any appeal and the said order has become final. The first appellate Court has properly appreciated all the documents filed and marked as exhibits from the year 1966 and considered all the materials on record and allowed the first appeal

and prayed for dismissal of the second appeal.

8. In support of his submissions, the learned counsel for the respondent relied on the unreported Judgment of this Court, dated 03.09.2002 made in S.A.No.1328 of 1992 [Chinnammal, Chinnaswamy Alias Vs. Malaya Gounder and Mayilswamy], wherein at paragraph 8, it has been held as follows:

8. It is a known fact that Updating Register Pattas were granted without taking much care and most of Updating Register Pattas were found to be not accurate. Further, patta alone does not prove title. In the absence of any title deeds, the defendants are not entitled for title over the suit property. Therefore the judgment and decree of the lower appellate Court cannot be sustained and are set aside. The judgment and decree of the trial Court are restored. The substantial question of law is answered in favour of the appellants.

9. I have carefully perused all the materials available on record and the judgment and decree of the Courts below and considered the arguments advanced by the learned counsel appearing for the parties.

10. The case of the appellants is that the suit property was allotted to the husband of the first defendant by the Deputy Collector, Musiri, as he was working in the Public Works Department. The appellants have not substantiated the same by any documentary or oral evidence. On the other hand, the case of the respondent is that the first plaintiff encroached the Natham poromboke land and put up superstructure and is in possession and enjoyment of the property by paying property tax as well as penal tax for more than 50 years. They have substantiated this claim by marking property tax and electricity bill as exhibits. They also proved the rental agreement entered into between the first plaintiff and the Postal Department to show that the first floor of the building was rented out to Post Office by the first plaintiff. Both the parties have marked UDR Patta. The appellants marked two property tax receipts Exs.B.2 and B.3, dated 03.03.1992 and 29.12.1990 respectively. The first defendant produced E.B. Card and three payments towards electricity charges as Exs.B.4 to B.7. The first appellate Court considered the documents marked by the appellants and rejected the same on the ground that the first appellant paid property tax after Joint UDR Patta was issued

in the name of the first defendant/mother of the appellants and the first plaintiff/father of the respondent and that UDR Patta issued in the name of the first defendant/mother of the appellants was subsequently cancelled by the competent authority. The first appellate Court not only considered the cancellation of patta granted to the first defendant and the first appellant and the patta granted to the first plaintiff and also considered the documents filed by both parties and the pleadings and allowed the appeal. Therefore, the contention of the learned counsel for the appellants that the first appellate Court erred in allowing the appeal based on the patta issued in favour of the first plaintiff, has no force and the judgment relied on by learned counsel for the appellants does not advance the case of the appellants and is not applicable to the facts of the present case. There is no error of law in the reasoning given by the first appellate Court. In the circumstances, the substantial question of law framed is answered against the appellants.

11. In the result, the second appeal is dismissed. The judgment and decree dated 08.08.2005, made in A.S.No.88 of 2002, is confirmed and the judgment and decree, dated 05.07.2002, made in O.S.No.187 of 1993, is set aside. No costs.

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