

CASE NO.:
Appeal (civil) 452 of 2002

PETITIONER:
Balasubramanian & Ors.

RESPONDENT:
Ramaiah Thondaman

DATE OF JUDGMENT: 14/12/2007

BENCH:
Dr. Arijit Pasayat & P. Sathasivam

JUDGMENT:
JUDGMENT

P. Sathasivam, J.

1) The Legal Representatives of the deceased defendant being aggrieved by the judgment and order dated 22.03.2001 passed by the High Court of Judicature at Madras in Second Appeal No. 45 of 1985 allowing the same filed by the respondent-herein have preferred the above appeal.

2) Brief facts of the case are as follows:
The respondent herein/plaintiff filed a suit for declaration of his title and for injunction restraining the defendant from interfering with his possession and enjoyment of the suit property or in the alternative for possession of the suit property. According to the plaintiff, the suit property belonged absolutely to Ramasamy Konar and his daughter Nachammai. The patta was in their names and they were in enjoyment of the same. The plaintiff purchased the suit property from the said Ramasami Konar and his daughter for Rs.12,300/- on 11.09.1978. From the date of purchase, the plaintiff was in possession. The defendant's husband purchased some of the property from the said Ramasami Konar. Since the defendant with their followers caused disturbance to the plaintiff in the matter of enjoyment of the suit property, the plaintiff filed the suit.

3) The case of the defendant as stated in the written statement was that the settlement patta had been wrongly issued for the suit lands to Ramasami Konar and Nachammai without proper enquiry. The grant of patta in favour of them cannot confer any title to the suit property as the same is not a document of title. The plaintiff is debarred in claiming title to the suit property by virtue of the patta in favour his vendors. The sale in favour of the plaintiff was brought about by fraud, misrepresentation and by undue influence. In any event, Ramasami Konar and his daughter had no right and title to the suit property. When the defendant's husband Chelliah Pillai came to know about the wrong issuance of patta for the suit property in favour of Ramasami Konar and his daughter, he filed an application before the settlement authorities for transfer of patta for the property in his favour. The said Ramasami Konar appeared before the Assistant Settlement Officer and conceded that he and his daughter Nachammai had no title or possession of the suit property and the patta for the suit property was wrongly granted to him. He consented for the transfer of registry for the suit property. The defendant and her predecessors in title have and had been in possession of the suit properties for more than the statutory period adversely openly and uninterruptedly. The defendant and their children have acquired title to the suit properties by

adverse possession. The village karnam is the brother of the plaintiff. Hence with the assistance of his brother, the plaintiff had brought the sale deed and filed the suit. He denied the claim of the plaintiff with regard to possession.

4) The trial Court decreed the suit on 15.10.1982. Aggrieved by the same, the defendant filed appeal in A.S. No. 146 of 1982 before the lower Appellate Court. By judgment dated 05.08.1983 on consideration of the oral and documentary evidence, the Appellate Court allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit. Questioning the same, the plaintiff filed a Second Appeal No. 45 of 1985 before the High Court. The High Court accepted the case of the plaintiff, set aside the judgment of the lower Appellate Court and allowed the second appeal. In the meanwhile, the defendant passed away and his LRs filed the above civil appeal before this Court. The only respondent though duly served notice from this Court has not chosen to contest the appeal.

5) We heard Mr. B. Sreedhar, learned counsel appearing for the appellants and perused the relevant materials and annexures filed along with this appeal.

6) The points for consideration in this appeal are:-

a) Whether the High Court was justified in upsetting the factual findings arrived at by the lower Appellate Court?

b) Whether the plaintiff has established his case for grant of decree as claimed?

7) In support of his case, the plaintiff has pressed into service Ex. A-1 sale deed dated 11.09.1978 to the effect that he purchased the suit property from Ramasami Konar and Nachammai. On the other hand, it is the case of the defendant that her husband alone was in possession of the suit property for a long time and plaintiff's vendors have no title to the suit property at any point of time. The plaintiff apart from examining himself as PW 1 also examined One Velusami as PW 2 who is an attestor of Ex. A-1 Sale deed. Apart from these two persons, one Veerappa Pillai has been examined as PW 3. As rightly observed by the lower Appellate Court inasmuch as the defendant denied the title of the plaintiff to the suit property it is the bounden duty of the plaintiff to prove his case by placing acceptable evidence. Admittedly, the plaintiff has not examined his vendors to show how they got title to the property sold under Ex. A-1. On the other hand, the defendant by placing notice Ex. B-19 issued by vendors of the plaintiffs i.e. Ramasami Konar and Nachammai contended that the suit property was in possession of the defendant and not with the vendors of the plaintiff. The lower Appellate Court on perusal of Ex. B-9 came to the conclusion that the suit property was enjoyed by the defendant and her husband through out by paying kist to the same. It was also highlighted before the courts below that patta was wrongly given to Ramasami Konar/Nachammai/vendors of the plaintiff. This material aspect was stated before the Assistant Settlement Officer and in fact they informed the said officer that they had no objection for change of patta in the name of the defendant's husband. In fact in Ex. B-9 the defendant has admitted that he was not aware of the grant of patta by the Settlement Officer. The evidence further show that the said Ramasami Konar and his daughter never executed any sale deed in favour of the plaintiff and the same was obtained on account of old age of Ramasami Konar. It was also highlighted that the said Nachammai was also not well versed with the transactions of this nature. It is not clear when the vendors of the plaintiff mentioned several material aspects in Ex. B-19, the plaintiff had not taken any action and not even denied the

same by sending reply. In those circumstances, based on the relevant and acceptable materials, the lower Appellate Court arrived at a conclusion that the sale deed Ex. A-1 was obtained by fraud, undue influence and mis-representation.

8) In the earlier paragraphs, we have already stated that the plaintiff\022s vendors were not in possession of title deed to the suit property except adangal extracts and patta in the name of Ramasami Konar. No doubt he also filed proceedings of the Assistant Settlement Officer dated 24.02.1969 as Ex. A-7 which shows that rough patta had been issued in favour of Ramasami Konar and Nachammai. In this aspect, it is relevant to refer to the factual discussion by the lower Appellate Court. In the proceedings for a grant of Ryotwari patta, the Settlement Officer had issued a notification calling for objections from the villagers. As rightly pointed out by learned counsel for the appellants, the name of the defendant\022s husband found in Form 5. It is brought to our notice that in the said proceedings, Settlement Officer conducted suo motu enquiry in respect of 370 cases by verifying the revenue records and prepared Form 5 statement which refers the name of the defendant\022s husband. This factual information strengthen the case of the defendant that her husband got title to the suit property. Based on the various material/information a petition was filed (Ex. B-3) on 29.04.1969 before the Assistant Settlement Officer for rectification of the mistake in grant of patta in favour of the plaintiff\022s vendors. Only in this context, Ramasami Konar appeared in person and informed the officer that he has no objection to change the patta in respect of the suit property in favour of the defendant\022s husband. Even otherwise, the grant of patta cannot be equated to that of a document of title. At the most the patta proceedings and the ultimate order by the competent authority granting patta may be used as a piece of evidence to show that the subject-matter property is with the grantee. Considering all these material aspects particularly the action of the plaintiff\022s vendors in informing the Assistant Settlement Officer about the wrong decision in granting patta in their favour and considering the oral and documentary evidence with regard to the same, the lower Appellate Court rightly concluded that the Assistant Settlement Officer has passed an erroneous order which could not confer any right or title to the plaintiff\022s vendors i.e. said Ramasami Konar and Nachammai.

9) The stand of the defendant that since at the relevant time plaintiff\022s brother was a village karnam, the plaintiff got the sale deed by utilizing his brother\022s service as well as taking advantage of old age of plaintiff\022s cannot be ruled out. All these factual aspects were duly considered by the lower Appellate Court which is a final Court of appeal. While such is the position, the High Court placing heavy reliance on Ryotwari patta alone interfered with the well-considered judgment of the lower Appellate Court. We are satisfied that all the details as adverted to by the lower Appellate Court have not been considered by the High Court and committed an error in setting aside the judgment merely on the basis of Ryotwari patta when the same was proved to be obtained by mistake by the authority concerned. In fact, the High Court did not consider Ex. B-19 notice sent by the vendors to plaintiff wherein they admitted in categorical terms that patta was wrongly granted to them. In such circumstances, the High Court could not have allowed the second appeal based only on patta proceedings which were found to be wrongly obtained.

10) In the light of the above conclusion, we set aside the judgment and decree of the High Court dated 22.03.2001

made in Second Appeal No. 45 of 1985 and confirm the judgment and decree of the lower Appellate Court dated 05.08.1983 passed in Appeal Suit No. 146 of 1982. The civil appeal is allowed. No costs.

JUDIS