



S.A.Nos.812 & 813 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.Nos.812 & 813 of 2005

and C.M.P.Nos.11457 & 11458 of 2005

1.Kalyani

2.Govindan

... Appellants in both second appeals

-Vs-

1.R.Perumal (died)

2.Salammal

3.Jayasankar

4.P.Soundararajan

5.P.Muthu Chettiyar

6.P.Manoharan

7.Vimala

8.T.Amsa

9.P.Asokan

... Respondents in S.A.No.812 of 2005

1.R.Perumal (died)

2.The Government of Tamil Nadu

Rep. by District Collector, Salem.

3.The District Revenue Officer, Salem.

4.P.Soundararajan



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5.P.Muthu Chettiyar

6.P.Manoharan

7.Vimala

8.T.Amsa

9.P.Asokan

... Respondents in S.A.No.813 of 2005

(Respondents 4 to 9 in both second appeals were
impleaded legal heirs of the deceased first respondent
vide order dated 22.11.2018 in C.M.P.No.421 to 423 of 2015)

Prayer:- Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 14.03.2005 in A.S.Nos.8 & 7 of 2004, respectively, passed by the Subordinate Judge, Mettur, reversing the judgment and decree dated 31.10.2003 in O.S.Nos.834 & 625 of 1996, respectively, passed by the District Munsif, Omalur.

For appellants : Mr.P.Jagadeesan

For R2 & R3
in S.A.No.812/2005 : Mr.P.Mani

For R2 & R3 : Mr.C.Sathish
in S.A.No.813/2005 Government Advocate (C.S)

For R4 in both S.A.s : No appearance

For R5 to R9 in both S.A.s : Mr.P.Mani

COMMON JUDGMENT



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The second appeal in S.A.No.813 of 2008 is arising out of A.S.No.7 of 2004 in O.S.No.625 of 1996 filed by Mr.Perumal against the Government and the plaintiffs. Another suit in O.S.No.395 of 1995, which was re-numbered as O.S.No.834 of 1996, was filed by Mrs.Kalyani against the plaintiff in O.S.No.625 of 1995, Mr.Perumal and his wife and his son. In O.S.No.834 of 1996, the second plaintiff is the father of the first plaintiff Mrs.Kalyani. The first and second defendants in the said suit are the father-in-law and mother-in-law of the first plaintiff. The third defendant is the brother-in-law, being the brother of the first plaintiff's husband.

2. For the sake of convenience, we may refer O.S.No.834 of 1996 as 'Kalyani's suit and O.S.No.625 of 1996 as 'Perumal's suit. The parties will be referred to according to their litigative status in O.S.No.834 of 1996.

3. Since the cases involved in both the second appeals is interconnected and the suit property and the parties are one and the same, this Court deems it appropriate to dispose both the second appeals by way of this



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Common judgment.

4. In Kalyani's case, she arrayed her in-laws as defendants and sought for the reliefs of declaration and recovery of possession in respect of the suit property. In Perumal's case, Mr.Perumal sought for the relief by declaring the patta assigned in the name of the first plaintiff/Mrs.Kalyani as null and void and also seeking for the relief of permanent injunction.

The brief facts, which give rise in these second appeals are as follows:

5. The suit property originally belonged to the second plaintiff Mr.Govindan by virtue of Sale deed dated 07.04.1961. He put up superstructure and then he gave it to his daughter, who is the first plaintiff as sridhana vide unregistered gift settlement deed dated 09.04.1978. Though the second plaintiff executed only unregistered gift settlement deed, he promised to register the same when his daughter required. Further, he accepted that the first plaintiff is the owner of the suit property. Since 1978, the first plaintiff has been paying kist and other payments to the Government in respect of the suit property. Since she was working in Chennai, she left the defendants in permissive occupation.



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When the first defendant was applying for patta in his own name, the same was objected by the first plaintiff and ultimately the Government granted patta vide order dated 12.03.1985 in the name of the first plaintiff. Therefore, it is her submission that the suit property is her absolute property. Since the defendants are objecting the plaintiffs' title and also evading to vacate the premises, the plaintiffs came forward with the suit for declaration and to direct the defendants to deliver the possession.

6. The said suit was resisted by Mr.Perumal, being the plaintiff in another suit in O.S.No.625 of 1996 by contending that he has been in possession and enjoyment of the suit property for more than 35 years. Hence, contended that he has perfected title by way of adverse possession. He disputed the sale deed dated 07.04.1961 and the gift settlement deed dated 09.04.1978. Further, he has stated that the suit property is a natham poramboke. 35 years ago, he encroached the suit property and put up a small house on the same and also he was residing in the suit property alongwith his family members including the first plaintiff's husband. Subsequently, he built a tile house by utilizing his own sources and also the house tax receipts stands in his name.



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Hence, he submitted that the patta was issued in the name of Mrs.Kalyani is null and void. Hence, he prayed to dismiss the Kalyani's suit.

7. In Perumal suit, the defence in the Kalyani's suit is plaint pleading, and Mrs.Kalyani has set up defence as pleaded in her plaint in O.S.No.834 of 1996.

Evidence and documents:

8. Before the Trial Court, on behalf of the plaintiffs, the second plaintiff viz., Mr.Govindan, examined himself as P.W.1, and 19 documents were marked as Exs.A1 to A19. On behalf of the defendants, the first defendant viz., Mr.Perumal examined himself as D.W.1 and two more witnesses viz., Mr.Govindan and Mr.Ashokan were examined as D.W.2 and D.W.3, respectively and 12 documents were marked as Exs.B1 to B12.

Finding of both the Courts below:

9. The Trial Court, after having considered the oral and documentary evidence, decreeing the Kalyani's suit (O.S.No.834 of 1996) and dismissed the



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Perumal's suit (O.S.No.625 of 1996). Aggrieved by the same, the said Mr.Perumal has preferred two appeals in A.S.Nos.7 of 2004 and 8 of 2004. The First Appellate Court, on re-appreciating the evidence, has come to a conclusion that the judgment and decree rendered by the Trial Court is liable to be interfered with and ultimately allowed the appeals thereby dismissed the Kalyani's suit (O.S.No.834 of 1996) and decreed the Perumal's suit (O.S.No.625 of 1996).

10. Challenging the same, the plaintiffs in O.S.No.834 of 1996 (Mrs.Kalyani & Mr.Govindan) are now before this Court by way of these second appeals as the appellants.

Substantial questions of law:

11. At the time of admission on 22.07.2005, this Court has formulated the following substantial questions of law:

“1. Whether Ex.A1 is more that 30 years old and the original of thte same was produced from proper custody, is it open to the learned subordinate Judge to disbelieve the same



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and particularly under Section 90 of the Indian Evidence Act there is a presumption as to the correctness of the contents and due execution of the same?

2. Was Ex.B9, a certificate given by the respondent in his personal capacity as the president of the local panchayat certifying certain receipts for the payment of property tax with respect to the suit property to the period prior to his election as the president of the panchayat, admissible under Section 77 of the Indian Evidence Act as public document as held by the Appellate Court?"

Submission made by both sides:

12. The learned counsel for the appellants (plaintiffs in Kalyani's suit) in both second appeals would submit that the suit property is a grama natham poramboke and the second plaintiff has purchased the property by virtue of the sale deed dated 07.04.1961 and also the suit property has been given as a gift to the first plaintiff. Though it is an unregistered gift deed, the second plaintiff himself categorically admitted that the suit property is the absolute property of the first plaintiff. The reversal finding rendered by the First Appellate Court, in not believing Ex.A1/sale deed, is perverse and liable to be interfered with. It is also contended by the learned counsel that apart from Ex.A1/sale deed, the first



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plaintiff has been paying the kist and house tax to the Government, since 1978 and the Government has also granted patta in her name. Therefore, in view of such subsequent documents, the first plaintiff's right cannot be ignored by Exs.B2 and B3/house tax receipts for the year 1963-64 and 1964-65, without there being any title nor an assignment from the Government. Hence, he prayed to allow both the second appeals.

13. It is also contended by the learned counsel for the appellants that in the suit filed by Mr.Perumal, he has not put forth as to under what ground the impugned order passed by the District Revenue Officer is not valid and binding. Hence, the learned counsel prayed to allow both the second appeals and thereby prayed to decree the Kalyani's suit and dismiss the Perumal's suit.

14. Per contra, the learned counsel for the respondents/legal heirs of Mr.Perumal has vociferously contended that the suit property is not a grama natham and it was also a natham poramboke, which was admitted by both the plaintiffs and the defendants. Therefore, when the suit property is classified as natham poramboke, the Government is the owner of the same, unless there is an



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assignment in favour of the plaintiffs. Hence, the very Ex.A1/sale deed has no sanctity and through which, the plaintiffs Mrs.Kasthuri and Mr.Govindhan cannot claim any title or interest over the same. The learned counsel also submits that even prior to the house tax receipt of the first plaintiff, Mr.Perumal had paid house tax through Exs.B2 and B3, which was given by the second defendant/Government. Therefore, the learned counsel would contend that the order passed by the First Appellate Court is based on documents and well merited and does not require any interference.

15. To substantiate his contention, the learned counsel for the respondents would rely upon the judgement of this Court in the case of *Hotel Saravana Bhavan vs.The Additional Chief Secretary and others* [reported in *MANU/TN/5485/2023*] and the Government Order in G.O.(Ms).No.409, Revenue SSI (2) Department, dated 02.07.2008.

16. The Court has given its anxious consideration to the submissions made on both sides.

Analysis of the submission made by both sides:



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17. The learned counsel for the appellants (plaintiffs in Kalyani's suit) would contend that under Section 14 of the Patta Passbook Act, 1983, a Civil Court has no jurisdiction to deal with the suit against the entry made in patta. However, the learned counsel for the respondents (defendants in Kalyani's suit) by relying upon the Government Order in G.O.(Ms).No.409, Revenue SSI (2) Department, dated 02.07.2008, would submit that, the first respondent/Mr.Perumal has filed a revision before the District Revenue Officer and by virtue of the above Government Order, the second revision is not permissible under the Commissioner of Land Administration. Therefore, now the only remedy available for them is to file a civil suit. Therefore, considering the above Government Order, this Court is of the firm view that the Civil Court has got jurisdiction in the matter.

18. It is the submission of the learned counsel for the appellants (plaintiffs in Kalyani's suit) that the suit property was a grama natham, whereas the learned counsel for the respondents (defendants in Kalyani's suit) would contend that the suit property was a natham poramboke. Therefore, this Court deems it appropriate to refer the difference between the grama natham and



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natham poramboke. In this regard, it is appropriate to refer the ***Hotel Saravana Bhavan***'s case [cited supra], in which the learned Single-Judge has analysed various precedents. The relevant paras are extracted herein:

*“15. The learned Senior Counsel, in support of the contentions, relied on the Judgement of the Division Bench of this Court, held in the case of **The Executive Officer, Kadathur Town Panchayat, Vs.V.Swaminatham and others**, reported in 2004(3)CTC 270, and the relevant paragraphs are extracted as under:*

“9. A perusal of a combined reading of Section 3(b) and Section 18 of Madras Estates (Abolition and Conversion into Ryotwari) Act viz., Madras Act XXVI of 1948 and Section 2 of the Madras Land Encroachment Act, 1905 discloses that the title to a house site in a Grama Natham is protected from transfer to Government.

*10. We draw inference for the above view from the decision rendered by this Court in **S.Rangaraja Iyengar v. Achi Kannu Ammal**, 1959 (2) MLJ 513 : 1959 (72) L.W. 767. A similar view is expressed by the Apex Court in its decision rendered in **C.V.Subbaya v. P.Anjayya**, AIR 1972 SC 1421, while referring to Section 3(b) of the Madras Act XXVI of 1948, it is held therein that the communal lands, porambokes, other ryotwari lands, waste lands, forests, mines and minerals, quarries, rivers and streams tanks and irrigation works etc., vest with the Government other than the land classified as ‘Grama*



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*Natham'. This Court in its decision rendered in **N.S.Kuppuswamy Odayar v. Narthangudi Panchayat, 1971 MLJ Reports 190** has held that the classification of 'Natham Poramboke' and the description of 'Poramboke' in the settlement register will not, by itself, establish title of the Government to the land in question.*

*11. Similarly, this Court in **Thillaivanam, A.K. and another v. District Collector, Chengai Anna District and 3 Others, 1998 (3) L.W. 603** and in **Krishnamurthy Gounder v. Government of Tamil Nadu, 2002 (3) CTC 221** held that the house sites classified as 'Grama Natham' cannot be construed as vesting with the Government.*

12. Further, 'Grama Natham' is defined in the Law Lexicon as "ground set apart on which the house of village may be built". Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the nonBrahmins; or land reserved as house sites; etc.

13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the



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instance of the resolution passed by the Panchayat is not sustainable. Further such a summary eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions.”

47. 'Grama Natham' has been defined in the Law Lexicon as follows:- “Ground set apart, on which the house of a villager may be built”.

48. 'Grama Natham' is the village habitation, where the land holders may build houses and reside. They are also known as 'House Sites' (Manai). They were classified as 'Grama Natham' to differentiate from Inam lands, Ryotwari lands, Pannai lands and Waste lands, while later vested with the Government, the 'Grama Natham' did not vest with the State.

49. As far as the Corporation limits and Municipal limits are concerned, the Government imposed ban for assignment of 'Grama Natham' lands and in many cases, the Government has reclassified the 'Grama Natham' lands as 'Government Poramboke' and in such circumstances, the occupants are not entitled to claim patta or right over the property.

50. If the Natham is unoccupied, it will be classified as a 'Poramboke Natham'. Where such 'Poramboke Nathams' are concerned, the Government acts as a custodian, and may allocate the piece of land to an individual, only for the construction of houses.

51. The Government Order has provisions for “encroachments” on poramboke land. A penalty is levied on encroachments on poramboke land, which also acts as a record of occupancy (because it makes them



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visible on an official register). It's called a B-memo and is issued by the village panchayat or the government agencies under whose control the poramboke land lies. Although Tahsildars are supposed to act to remove encroachments within three months of the B-memo being issued (pending appeals), it has been observed that the memo is often used as a proof of occupancy.

52. According to Government Order issued, no poramboke land “shall be used for any purpose other than that for which it was originally intended except with the prior approval of the Collector” (G.O. [Ms] No.317, Rural Development [C4], dated December 6, 2000). In case it is not required for the purpose originally intended, it may be used for any other “specified public purpose”, in which case the panchayat must publish the notice in the village and invite objections to its proposed use of the poramboke land. The proposal, along with any objections, must then be submitted to the district collector, who will take the final call.

53. Poramboke land is often compared with 'Grama Natham'. “Poram” means outside, and “boke” means revenue record. Hence the word, 'poramboke', can be defined as land, which lies outside revenue records. By such a definition, any piece of land can be classified either as a privately owned Patta land, 'Government Poramboke' land or 'Grama Natham land'. Although 'Grama Natham' can be used for building a house, there is always a risk of litigation when the Government needs the land for its projects.

54. 'Grama Natham' lands are house sites, and must be actively used by the land owner. If the 'Natham' is unoccupied, it will be classified as a 'Poramboke Natham'. Where such 'Poramboke Nathams' are concerned, the Government acts as a custodian, and may allocate the



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piece of land to an individual. Hence, 'Grama Natham' may not be an ideal investment if the buyer does not have intention to build a house and reside in it."

19. On harmonious reading of the above judgment, it is apparent that only grama natham land would be reclassified as natham poramboke, if the same was unoccupied for some period. In this case, the second plaintiff purchased the suit property by virtue of Ex.A1/sale deed on 07.04.1961. According to the plaintiffs, the suit property was a grama natham. As per the ruling relied by the learned counsel for the respondents, a grama natham land can be classified as natham poramboke, if there is no house put up by the occupant and kept it as a vacant for some time. Therefore, this Court is of the view that as long as there is no proof that as on 1961, the suit property was a natham poramboke, this Court can safely come to a conclusion that only because of the reason that the land was a grama natham, the property would have been sold to the second plaintiff.

20. It is pertinent to mention here that the first defendant could not have visualized any litigation during 1996. Therefore, by efflux of time, by the



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reason of letting the land as vacant, there was a possibility of re-classification as natham poramboke. The above discussion is made only upon the submission made by the learned counsel for the respondents. Because, there is no material available before this Court that as on 1961, the suit property was a natham poramboke.

21. It is pertinent to mention here that in pursuance of Ex.A1/sale deed, a patta was also granted in favour of the first plaintiff. Therefore, even prior to filing of the suit, the title has been acknowledged by the Government, even if the land was classified as natham poramboke. In view of Ex.A9/patta, this Court could safely arrive at a conclusion that the property is the absolute property of Mrs.Kalyani.

22. In this case, the plaintiffs have established their title through Exs.A1/sale deed and A9/patta. However, the defendants did not submit any documents to contradict the plaintiffs' title so as to establish their own title. As rightly contended by the learned counsel for the appellants, in the Perumal's suit, no ground or any reason emerged as to under what manner the order of the



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Revenue authorities is null and void. However, the First Appellate Court has misdirected itself on the ground that there is no anterior title prior to 1961 to vest the title with Mrs.Kalyani and Mr.Govindan.

23. Admittedly, the plaintiffs set out the case of grama natham and the defendants set out the case of natham poramboke. To put it in other words, the defendants contended that neither the plaintiffs nor the first defendant can have any right over the property, since the patta is to be assigned by the Government. Admittedly, the first defendant did not have any record to show that he is the owner of the property. But, these aspects have been left out by the First Appellate Court and has misdirected by itself by disbelieving Ex.A1/sale deed on the ground that there is no assignment from the Government.

24. Before the Civil Court, the nature of proof is only preponderance of probability. As this Court has already held that there are no documents available before this Court that as on 1961 this land was a natham poramboke, the sale deed stands in the name of the second plaintiff in the year 1961, would definitely vest title upon the plaintiff as the UDR Scheme came at later point of



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time. Therefore, by applying the preponderance of probability, this Court can safely held that the first plaintiff is the absolute owner of the property by virtue of Ex.A1/sale deed and Ex.A9/patta. Hence, she is also entitled to the delivery of possession from the defendants. Since Mr.Perumal did not substantiate his right over the property, he cannot have any relief for declaration to cancel the patta issued in the name of Mrs.Kalyani.

25. In view of the above detailed discussions, the substantial questions of law are answered in favour of the appellants.

26. In the result, both the second appeals are allowed by setting aside the judgment and decree rendered by the First Appellate Court and thereby, restoring the judgment and decree passed the Trial Court. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

21.12.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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C.KUMARAPPAN, J.

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To

1. The Subordinate Judge, Mettur.
2. The District Munsif-cum-Judicial Magistrate, Omalur.
3. The Section Officer, V.R.Section, High Court, Madras.

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