



S.A.No.121 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.121 of 2021
and C.M.P.No.2489 of 2021

A.Shanmugam

...Appellant

Vs

1. State Represented by
The District Collector, Salem,
Salem.
2. Chairman, Panchayat Union,
Edappadi Panchayat Union Office,
Edappadi.
3. Block Development Officer,
Edappadi Panchayat Union Office,
Edappadi

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed by the learned Subordinate Judge, Sankari in A.S.No.02 of 2014 dated 16.12.2019 allowing the appeal and



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reversing the judgment passed by the learned District Munsif, Sankari
in O.S.No.367 of 2004 dated 28.09.2012.

For Appellant : Mr.C.R.Malarvannan

For Respondent-1: Mr.C.Selvam,
Additional Government Pleader

For Respondent-2: Mr.R.Siddhartaan,
Government Advocate

For Respondent-3 : Mr.R.Naresh Kumar

JUDGMENT

The plaintiff is the appellant before this Court.

2. The facts are herein below briefly set out.

(i) The plaintiff had filed the suit O.S.No.367 of 2004 on the file of the District Munsif, Sankari for mandatory injunction against the defendants to remove the construction put up by them in the suit



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schedule property. It is the case of the plaintiff that he had purchased the suit property under a Sale Deed dated 02.03.1979. The suit property was a vacant site measuring 4 cents comprised in S.No.201/1 of Pakkanadu Village. This property is described as a natham property. The property was purchased from one Koothappa Nadar and from the date of the purchase, the plaintiff has been in possession and enjoyment of the same.

(ii) The plaintiff would submit that a month before the filing of the suit, the second defendant, namely, the Chairman, Panchayat Union, Edaappadi, at the behest of the political parties, was trying to put up a construction on the suit property with the help of the third defendant. They had also put up a godown in the said property. The plaintiff would submit that the act of the defendants is a case of encroachment since the property, which is a natham property, belongs to the plaintiff, he having purchased the same under a registered Sale



3. The third defendant had filed a written statement which was adopted by respondents 1 and 2, in which they had contended that the suit property is a Government Natham poromboke and classified as Government Natham Pattai Poromboke under the Government scheme “Sampoorna Grama Velaivaippu Thittam”. The suit property was used to construct the godown under the scheme and the defendants had also put up the godown. They would submit that the plaintiff had no right, title or interest over the suit property and except for the sale deed, there is no other document that has been produced to show that the plaintiff has been in possession of the property. The Adangal extracts and FMB produced on the side of the defendants would clearly show that the property is a pattai Natham belonging to the Government. The new survey number of the property is S.No.634 and nowhere in the revenue records has the name of the plaintiff been mentioned and the revenue records have not been mutated in his name.



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4. The third defendant had filed an additional written statement stating that the plaintiff had come to Court with unclean hands, suppressing the fact that the suit property is a Natham Pattai Poromboke. As there was no necessary to continue to use the poromboke land as pattai pathway, the Government had decided to construct the godown for storing grains and other materials in bulk quantities which belonged to the Government. The defendants would submit that the suit is nothing but a vexatious one and prayed for dismissal of the suit.

5. The trial Court had framed the following issues:

1. வாதி கோரும் நிரந்தர உறுத்துக் கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
2. இந்த வழக்கில் தேவையான தரப்பினரை சேர்க்காததால் வழக்கு பாதிக்கப்பட்டுள்ளது என்று



எதிர்வாதிகள் கூறுவது சரியா?

3. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?

6. Thereafter, on 01.02.2010, the additional issues were framed.

Since the issues and the additional issues appear to be connected with each other, the issues were re-framed as follows:-

1. வாதி கோரும் நிரந்தர உறுத்துக் கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?.

2. இந்த வழக்கில் தேவையான தரப்பினரை சேர்க்காததால் வழக்கு பாதிக்கப்பட்டுள்ளது என்று எதிர்வாதிகள் கூறுவது சரியா?

3. வாதிக்கு வழக்கில் கோரியபடி செயலுறுத்துக் கட்டளை பரிகாரம் கிடைக்கக்கூடியதா?

4. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?

7. The plaintiff had examined himself as P.W1 and one Kandan



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as P.W2 and marked Exs.A1 to A4. The defendants had examined one Velayudham/Village Administrative Officer of Pakkanadu Village as D.W1 and one Selvam/Secretary of Pakkanadu Village as D.W2 and marked Exs.B1 to B6. The Commissioner's report, plan and Surveyor's plan have been marked as Exs.C1 to C3 respectively. The learned District Munsif, Sankari, held that the reclassification of the land from Government Natham Poromboke to Natham Pattai Poromboke has been done without following the procedure and therefore, the construction put up by the defendants have to necessarily be removed. Therefore, the suit was decreed. Challenging the judgment and decree of the trial Court, the defendants had filed A.S.No.2 of 2014 on the file of the learned Subordinate Judge, Sankari. The learned Judge held that the construction had commenced even much prior to the filing of the suit, i.e on 27.08.2004. The suit had been amended only in the year 2008. Further, the appellate Court observed that the trial Court had overlooked the fact that the property has already been reclassified as



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Natham Pattai Poromboke, belonging to the Government. Since the land belonged to the Government, the Government had proceeded to put up the godown, one of its many welfare schemes. That apart, the plaintiff has never been in possession of the property and except for the sale deed, there is no other document to show his possession. Therefore, the appeal was allowed and the judgment and decree of the trial Court was set aside. Challenging the said judgment and decree, this second appeal is filed.

8. Heard the learned counsel on either side and perused the materials available on record.

9. Admittedly, after the purchase of the property on 02.03.1979 under Ex.A1, the plaintiff has not been in possession of the property and the same remained unoccupied and vacant. The plaintiff has not asserted any right as owner by putting the property to use. The



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property during the reclassification has been described as natham pattai poromboke and therefore, since it has been unoccupied, the Government has utilized the same for a public purpose, namely, to put up a godown for storing food grains. It is only when the construction had been put up that the plaintiff for the first time has come forward with the suit in question. The plaintiff as P.W1 has clearly admitted that he has not produced any document to show his possession of the suit property. It is also not his case that he has been enjoying the suit property as part of his house or his agricultural land. The Courts below has taken note of the fact that the plaintiff has not even produced a certificate from the Village Administrative Officer to show that he has been in possession and enjoyment of the property in question. The plaintiff has also not been able to prove his predecessor-in-title's possession to the suit property. The lower appellate Court has also observed that the description of the property, particularly the western boundary, as shown in the sale deed-Ex.A1 and as found on site differ,



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which factor has not been taken note of by the trial Court. The appellate Court has taken into consideration the fact that the plaintiff has not produced any document from the year 1979 to show that he has at any point in time occupied the suit property. In his plaint, the plaintiff has submitted that his name has been mutated in the revenue records, but he has not produced any document to show that he is in possession of the property. Insofar as the natham properties are concerned, once a person is in occupation and enjoyment of the property, the Court cannot take possession of the same. However, in the case of an unoccupied natham, the Government becomes the custodian of the property and has the right to grant an assignment. In the instant case, the defendants have exercised this right. There is no quarrel about the fact that in the case of grama natham, the property does not vest with the Government and the Government cannot take over the same. Grama Natham are house sites meant for construction of houses or using it for such purpose ancillary to the residential use of



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the occupier. In the case on hand, the plaintiff has kept the property unoccupied and unutilized from the year 1979 and it has become an unoccupied grama natham, thereby vesting a right on the Government to take over and assign the same. That apart, the plaintiff has no property near the suit property to show that he is enjoying the suit property contiguous to his property. Therefore, the substantial questions of law 1 and 2 are answered in the affirmative. However, the suit property has lost its character as a grama natham by reason of it being unoccupied and unutilised for several decades thereby assuming the character of an unoccupied grama natham

10. In the light of the above discussion and the fact that the plaintiff has not chosen to have his right declared, but has simply filed the suit for mandatory injunction, the substantial question of law No.3 is also answered against the plaintiff. There has been no argument advanced in respect of the substantial question No.4 and therefore,



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substantial question No.4 is answered in favour of the plaintiff.

However, taking note of the fact that the plaintiff has failed to prove his possession of the suit property from the date of his purchase in the year 1979 till the filing of the suit and as the property has lost its character of a grama natham, the defendants have taken over the property and utilised it for the storage of food grains, which is for the public purpose. The lower appellate has rightly allowed the appeal and set aside the judgment and decree of the trial Court. I see no reason to interfere with the said judgment and decree of the lower appellate Court. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2024

Index: Yes/No
Speaking order/non-speaking order
srn

12/14



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To

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1. The Subordinate Judge, Sankari
2. The District Munsif, Sankari
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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