

In the High Court of Judicature at Madras

Dated: 14.07.2015

Coram:

The Honourable Mrs. Justice PUSHPA SATHYANARAYANA

Second Appeal No.424 of 2009

and

M.P.Nos.1 of 2009

K.Palanisamy ... Appellant/Plaintiff

Versus

The Commissioner
Dharapuram Municipality
Dharapuram

... Respondent/Defendant

Second Appeal filed against the Judgment and Decree dated 27.01.2009 made in A.S.No.*35 of 2008 on the file of the Subordinate Judge, Dharapuram, reversing the judgment and decree dated 14.03.2005 made in O.S.No.126 of 2004 on the file of the District Munsif, Dharapuram.

For Appellant .. Mr.S.Saravanan

JUDGMENT

The plaintiff, who had lost before the first appellate court in a suit for declaration and for injunction, is the appellant.

2. It is the case of the plaintiff that the suit property is an extent of 10 cents and it belongs to the plaintiff. There are several properties that belong to the family of the plaintiff as well as the third parties around the suit property and through the family properties of the plaintiff, they have been having an access to the suit property. The plaintiff also had claimed title to the suit property by adverse possession. The plaintiff had put up a pucca structure in the suit property and has been running a school from the year 1995. The defendant, who has got no right or title to the suit property, had issued a notice on 09.10.1997 calling upon the plaintiff to vacate the suit properties, for which, the plaintiff had also given a suitable reply. Apprehending action of eviction from the defendant, the plaintiff had filed the suit.

3. The defendant had contested the suit denying all the averments made in the plaint. It is the case of the defendant that the plaintiff had encroached upon a portion of the suit properties in the year 1997 and therefore, the eviction notice was issued to the plaintiff. As the plaintiff himself is an encroacher, he cannot claim right by adverse possession. The defendant municipality contended further that the property in T.S.No.703/A is about 9 acres and 29,024 sq.ft. It was subdivided into three parts and two such parts were allotted to the Municipal Primary School and Kadhi Board. The remaining extent of 4 acres 26,167 sq.ft was classified as 'natham' and was in possession of the Revenue Tahsildar, Dharapuram. It is also contended that a G.O. had been passed to convert that lands into house sites and allot them to Government servants. In this connection, a resolution was also passed by the Municipal Council on 31.12.1977 to assign the property to the defendant. Therefore, the entire extent of 9906 sq.ft in T.S.No. 703/A 42 belong only to the defendant, to be utilised for public purpose and the plaintiff is only an encroacher, who cannot get the relieves as prayed for in the plaint.

4. Before the trial Court, on the side of plaintiff, the plaintiff examined himself as PW.1 besides examining one more witness as PW.2 and marked Exs.A1 to A7; and on the side of defendant, one Mr.Vasukumar, Town Planning Officer, was examined as DW.1 and five documents were marked as Exs.B1 to B5. Apart from that, Exs.C1 and C2 - Advocate Commissioner's Report and Plan, and Ex.X1 to X6 were marked as Court documents.

5. Considering the oral and documentary evidence, the trial court decreed the suit, against which the defendant had preferred an Appeal in A.S.No.*35 of 2008 on the file of Sub Court, Dharapuram. The lower appellate court, on consideration of the facts and evidence, reversed the judgment of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has preferred this Second Appeal.

6. This court had admitted the Second Appeal on the following substantial question of law:-

"Whether the lower Appellate Court is right in overlooking Ex.A7, a judgment of Court (on the same subject) and should it not have seen that the orders binds the municipality and operates as res judicata ?"

In M.P.No.1 of 2015, the petitioner is permitted to raise the following additional questions of law:-

(1) Whether the lower appellate court is right in dismissing the suit when the respondent herein does not have any legal

right to interfere with the property which is classified as Natham ?

(2) Whether the judgment of the lower appellate court is sustainable in law, when the lower appellate court has not gone into the aspect of Natham land which belongs to the person in occupation for quite a long period of time as held by this Hon'ble Court and the appellant having been in possession of the suit property for a long period of time ?

(3) Whether the lower appellate court is right in dismissing the suit when the respondent municipality has no jurisdiction to interfere with the suit property ?

7. The suit is filed for declaration of title for an extent of 10 cents and for consequential injunction. Admittedly, the lands belong to the Government and the plaintiff claimed only right by adverse possession. The plaintiff claimed that his family had been enjoying the suit property for the last fifty years as the adjacent lands around the suit property also belong to the plaintiff's family. The plaintiff, who has come up with the relief of declaration, has conceded that the lands belong to the Government or in other words, the suit property did not belong to him. Therefore, his claim is only based upon the plea of adverse possession.

8. Though the defendant had admitted that the lands around the suit property belong to the plaintiff and also to third parties, they admitted that they approach the suit property only through the plaintiff's property. It is admitted by both the parties that T.S.No.703/A1 is classified as 'natham' and was assigned for distribution of house sites to the Government servants. To substantiate the said claim, the defendant Municipality had filed Ex.B1, which is the survey register for T.S.No.703/A. A perusal of Ex.B1 would make it clear that there is a proposal for construction of house sites. Therefore, the plaintiff cannot claim exclusive right or title to the suit property.

9. The next point raised by the appellant/plaintiff is that he has got title by adverse possession. The possession of the plaintiff on the date of filing of the suit is admitted by the defendant. The evidence of DW.1 is to the effect that the plaintiff had trespassed into the suit property just prior to the filing of the suit and that the alleged trespass is in October 1997. Therefore, admittedly, the plaintiff is in possession of the suit property. But whether the possession of

the plaintiff is open, continuous and uninterrupted, hostile to the knowledge of the defendant for the required statutory period enabling the plaintiff to claim title by adverse possession has to be seen. When the plaintiff has come up with the specific case of adverse possession, the burden is on him to establish the same. To evidence the factum of possession, the plaintiff had filed Ex.A1 series, which are the house tax receipts. Ex.A3 is the permission granted by the authorities to open a Matriculation School. The plaintiff also had produced Adangal Extract for fasli No.1410 to 1413. The suit property is admittedly a 'natham'. When the plaintiff claims right by adverse possession, the factum of possession for 30 years prior to the filing of the suit has to be proved. While so, the evidence adduced by the plaintiff was held to be insufficient to prove such factum of possession to claim right by adverse possession and the same was rightly rejected by the lower appellate court. When there is no positive evidence for the title of the plaintiff and when the lands in dispute are earmarked for the benefit of public purpose, the same should not be defeated by granting a decree to the plaintiff. If the suit lands are grama natham, the court has to see who is the occupier. Though the plaintiff claims to be in possession of the land as held supra, there is no positive evidence, which is sufficient to establish the same. The contentions raised by the plaintiff/appellant based on the classification of the suit property would be relevant, if the suit is filed by the municipality to recover the suit property. In this case, when the plaintiff has sued for declaration of title and injunction, burden is upon the plaintiff to non-suit the defendant while establishing his possession and title. Though the plaintiff claimed title by adverse possession, the same has not been established. The counsel for the appellant placed reliance on paragraphs 12 and 13 of the decision of this Court reported in 2004 (3) CTC 270 (The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District ..vs.. V.Swaminathan and others)

"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 non-Brahmins; 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 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."

In view of the foregoing discussions about the possession of the plaintiff, the above decision is not applicable to the present case. Besides the question of adverse possession being one of mixed question of law and fact, the same cannot be entertained under Section 100 of Civil Procedure Code.

10. Ex.A7 relied on by the plaintiff is the copy of the judgment in A.S.No.179 of 2001 on the file of District Court, Erode. The said suit was filed by the brother of the appellant against the appellant and the suit was decreed and the appeal preferred by the appellant was dismissed under Ex.A7. When there is a partition between the plaintiff and his brother and the suit property is only with respect to the portion allotted to the plaintiff, the said judgment under Ex.A7 will not have any bearing.

11. In such circumstances, the plaintiff having failed to establish his right and title has to fail. The lower appellate court being the final fact finding court had correctly dismissed the suit, which does not require any interference. Accordingly, the question of law and the additional questions of law are dealt with as bereft of merits and the Second Appeal is dismissed confirming the judgment and decree of the first appellate court and setting aside the judgment and decree of the trial Court. Accordingly, the suit filed by the plaintiff is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

To

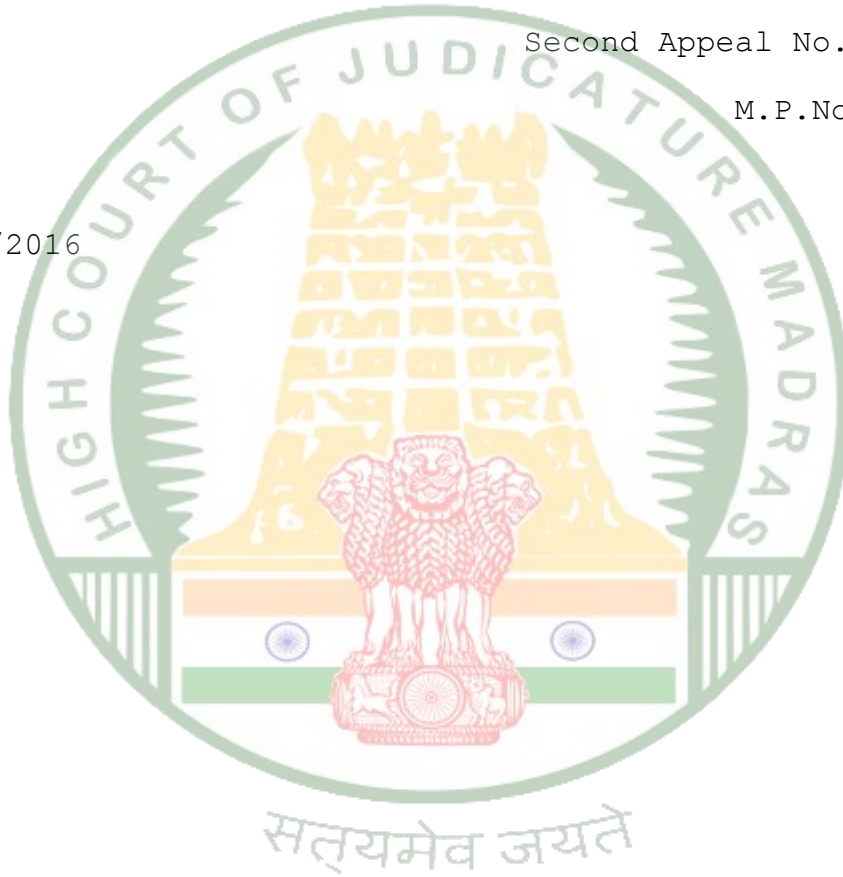
1. The Subordinate Judge, Dharapuram.

2. The District Munsif, Dharapuram.

+1cc to Mr.S.Saravanan, Advocate Sr.35613

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