IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDERS RESERVED : 10.08.2016
ORDERS DELIVERED : 31.08.2016

DATED: 31.08.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.1214 of 2010
and
M.P.Nos.1/2011, 1/2013, 1 and 2/2015

S.Ganeshraja ... Appellant

Vs.

1.The Deputy Salt Commissioner,
Officer of the Deputy Salt Commissioner,
No.26, Haddows Road,
Sastri Bhavan,
Madras 600 006.

2.The Superintendent of Salt,
Madras Circle,
Officer of the Deputy Salt Commissioner,
No.26, Haddows Road,
Sastri Bhavan,
Madras 600 006.

3.The Deputy Superintendent of Salt,
Kovalam Salt Factory,
Kelambakkam Road,
Kovalam 603 112,
Chingleput Taluk.
4.P.S.Ponrathinam-given up ... Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Additional Subordinate Judge, Chingleput made in A.S.No.6 of 2003 dated 29.07.2004 thereby confirming the judgment and decree of the learned District Munsif, Chingleput made in O.S.No.12 of 1996 dated 19.11.2002.

For Appellant : Mr.S.V.Jayaraman,
Senior Counsel
for Mr.R.Sankarappan

For Respondents : Mr.A.Murughan for R1 to R3
R4-Given up

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J U D G M E N T

The appellant is the plaintiff. He filed the suit for declaration of his title to the suit property and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the same.

2.The case of the plaintiff is as follows:

The suit property originally belonged to one Radha Devadoss, from whom he purchased the same under a registered sale deed dated 23.03.1990. The plaintiff's vendor got title to the said property in pursuant to a decree for partition granted in O.S.No.460 of 1963 on the file of the City Civil Court, Madras dated by way of passing a final decree on 19.12.1964. The suit property is registered in patta No.491 in the name of the plaintiff. The fourth defendant attempted to trespass into the suit property on 02.01.1996, by claiming that he got lease of the suit property from the defendants 1 to 3. Therefore, the plaintiff has come forward with the present suit.

3.The suit was contested by the defendants 1 to 3 by filing a written statement. The fourth defendant remained exparte.

4.The case of the defendants 1 to 3 is as follows:

The plaintiff or his vendor has no title or possession over the suit property. It belongs to the first defendant. The properties at R.S.Nos.37/1, 37/2, 38/1 and 39 of Semancheri village, Chennai MGR District are absolutely owned and enjoyed by the Salt Department of Central Government. These survey numbers come under Salt Survey No.47/1, Kovalam Salt Factory. The Government of India through Salt Department has been in possession and enjoyment of these lands ever since 1805. The suit property situated at R.S.No.39 is part and parcel of the Salt Survey No.47/1. In a suit filed by these defendants in O.S.No.231 of 1975 decreed by the Appellate Court in A.S.No.92 of 1978 and confirmed by the High Court in S.A.No.2268 of 1981 dated 10.01.1992, it has been found that Salt Survey No.47/1 belongs to these defendants and they are in possession and enjoyment of the property. The fourth defendant has taken possession of the suit property from these defendants in pursuant to a tender dated 19.02.1993 and they are in actual possession and enjoyment of the same as the lessee to manufacture salt.

5.The plaintiff in support of his case marked Exs.A1 to A6 and examined himself as PW1. The defendants 1 to 3 marked Exs.B1 to B6 and examined one R.Elango, who was the Deputy Superintendent Salt, as DW1.

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6.The trial court after considering the rival pleadings of the parties and the evidence let in by them, dismissed the suit by giving a finding that the suit property at Survey No.39 forms part and parcel of Salt Survey No.47/1 belonging to the defendants 1 to 3. The trial court has also found that in another suit filed in O.S.No.231 of 1975 which culminated up to a filing of S.A.No.2268 of 1981 on the file of this court, the above said fact has been confirmed.

7.The plaintiff challenged the judgment and decree of the trial court in A.S.No.6 of 2003. The lower Appellate Court dismissed the appeal, thereby confirming the findings rendered by the trial court. Challenging the concurrent findings rendered by the courts below, the plaintiff filed the present second appeal.

8.This court admitted the second appeal by framing the following substantial questions of law:

> "1.Whether the Courts below satisfied themselves that Salt Survey No.47/1 situated at Kelambakkam does correspond to Survey No.39 at Tiruvidanthai on the basis of any acceptable revenue record produced by the parties?
>
> 2.Whether the Courts below satisfied themselves that when Salt Survey No.47/1 at Kelambakkam was shown, was there any such Village called Tiruvidanthai (Kovalam Salt Factory) since the said village had come into existence subsequently?"

9.Mr.S.V.Jayaraman, learned Senior Counsel appeared for the appellant and made his submissions. Learned counsel for the appellant also filed written submission. The sum and substance of the contention of the appellant is as follows:

The suit property was purchased by the plaintiff from the said Radha Devadoss under Ex.A1 sale deed, who in turn got the title to the property in pursuant to a final decree passed in a partition suit filed among the family members of the vendors. The present suit property at Survey No.39 was allotted to the share of the said Radha Devadoss and she was in possession and enjoyment of the same. In pursuant to the sale by the said person, the plaintiff is in possession and enjoyment of the suit property. Kist receipts were marked to show the possession. The patta in respect of suit property stands in the name of the plaintiff. The suit property situated at Survey No.39 is not forming part of Salt Survey No.47/1. In the previous suit in O.S.No.231 of 1975 culminated into S.A.No.2668 of 1981, the present property was not the subject matter and Survey Nos.37 and 38 alone were dealt with therein. Though the said suit was laid only against Survey Nos.37 and 38, it was found by way of passing reference that Survey No.47/1 includes Survey No.39.

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Therefore, findings rendered in the above proceedings will not operate as res judicata to the present proceedings. A passing reference made in those judgments will not bind the plaintiff, who was not a party to those proceedings.

10.The learned counsel appearing for the respondents made his oral submissions. He also filed his written submission. The sum and substance of the submission made on behalf of the respondents are as follows:

The judgment and decree passed by this court in S.A.No.2268 of 1981 was not challenged further and thus, the same has become final and conclusive. In the earlier proceedings, it has been found that Survey No.39 is part of Salt Survey No.47/1 along with Survey Nos.37 and 38 situated at Tiruvidanthai Semmancheri. The reference of the village name made under Ex.B3 as Kelambakkam village was a clerical mistake when the actual village name is only Tiruvidanthai as could be seen from other records. In any event, as the Survey No.39 was found forming part of Salt Survey No.47/1 in the earlier proceedings, the plaintiff is not entitled to seek the relief.

11.Heard the learned counsels appearing on either side and perused the materials placed before this court.

12.The unsuccessful plaintiff who lost before both the courts below in a suit for declaration and injunction, is the appellant before this court. He claims that the suit property situated at Survey No.39 of Semmancheri, Tiruvidanthai Village, Chengalpattu Taluk belongs to him in pursuant to a sale executed by one Radha Devadoss on 23.03.1990. On the other hand, it is the contention of the defendants 1 to 3 that the suit property belongs to the Salt Depatment of the Union of India forming part of Salt Survey No.47/1. Thus, it is contented by the defendants 1 to 3 that Salt Survey No.47/1 comprises of three survey Nos. viz., 37, 38 and 39 and that the land situated in all these three Survey Numbers belong to the Salt Department. The plaintiff in support of his claim relied on the sale deed and other kist receipts. On the other hand, the defendants in support of their contention, relied on the decision rendered in earlier suit in O.S.No.231 of 1975 culminated into filing of S.A.No.2268 of 1981 before this court. It is seen that the said suit was filed by Union of India against one A.Abdul Rasheed and others seeking for declaration of title to the suit properties and for permanent injunction. It is seen that the schedule of property referred to in the said suit shows R.S.Nos.37/1, 37/2, 38/1 and 38/2 comprised in Salt Survey No.47/1.

13.No doubt, it is true that the present suit property situated at Survey No.39 was not referred to in the said suit schedule. But at the same time, the Appellate Court in

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A.S.No.92 of 1978 which reversed the finding of the trial court and granted the decree in favour of the Union of India, has categorically found that Survey No.47/1 comprises of three resurvey Nos.37,38 and 39. Such finding of the Appellate Court in that suit, marked as Ex.B2, is available at paragraph No.8 of the said judgment. The second appeal filed against such decision in S.A.No.2268 of 1981 that too in respect of S.No.37/1 alone, came to be dismissed by specifically observing that there was overwhelming documentary evidence to prove that from 1955 onwards, the plaintiff therein has been leasing out the property for the purpose of quarrying and collecting the lease amount. Therefore, it is evident that the factual finding rendered by the lower appellate court in the said suit holding that the present suit property comprised in Survey No.39 also forms part of Salt Survey No.47/1 belonging to the Salt Department, has become final and conclusive, in so far as the status of the subject matter property is concerned. It is true that the appellant herein was not a party to the said proceedings nor his vendor was a party to the said proceedings. Even then, the plaintiff cannot be conferred with the title to the suit property based on Ex.A1 sale deed dated 23.03.1990 for the following reasons.

14.At this juncture, it is relevant to note the facts and circumstances which warranted the present defendants to file the earlier suit in O.S.No.231 of 1975. Certainly, those facts and circumstances are very much relevant for proper adjudication of the present proceedings. The said suit was filed for declaration, injunction and for possession against four defendants out of whom the defendants 1 to 3 therein were private parties, whereas the fourth defendant was the Government of Tamilnadu. The contention of the plaintiff therein/defendants herein was that suit properties comprised in Survey Nos.37/1, 37/2, 38/1 and 38/2 are the properties belonging to the Salt Department coming under the Salt Survey No.47/1 and that the defendants 1 to 3 were attempting to make rival claim without having any right. The private defendants 1 to 3 therein did not contest the said suit and remained exparte. The fourth defendant viz., the Government of Tamilnadu alone contested the suit. Their case was that entire Semmancheri Village was an inam asset and taken over by State Government on 01.01.1951. Their further case was that in pursuant to such vesting of the lands with the State Government, dry patta was granted to some third parties in respect of Survey Nos.37/2, 38/1, 38/2, while 37/1 was classified as unasset waste. The trial court by accepting the contention of the fourth defendant, dismissed the suit filed by the Salt Department. The specific finding by the trial court therein was that the Union of India failed to prove the possession over the suit properties for more than 30 years. However the Appellate Court reversed the finding as stated supra and granted the decree. Here again though those

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private party defendants were arrayed as respondents, they once again remained exparte before the Appellate Court. The State Government alone filed the second appeal before this court in S.A.No.2268 of 1981 that too, confining the appeal only with regard to Survey No.37/1, thereby giving up their claim over other survey numbers, to which they claimed to have given patta to some third parties. In other words, it is evident that the State Government accepted the findings rendered by the lower Appellate Court in respect of the Survey NO.39 also to the effect that the same too forms part of Salt Survey No.47/1. From these facts and circumstances, it is very much evident that the actual fight was between the Central Government and the State Government in respect of Salt Survey No.47/1 and the Central Government has won their battle over such property, which includes the present suit property viz., Survey No.39, Semmancheri Village.

15.No doubt, the learned Senior Counsel appearing for the appellant contended that the findings rendered in the earlier suit cannot be put against the appellant, as he was not a party to the said proceedings. In other words, the learned Senior Counsel contended that the findings rendered in the earlier suit would not operate as res judicata to the present claim of the plaintiff. It is true that the principles of res judicata may not be strictly applied in this case. But at the same time, it is to be noted that the defendants herein are not precluded from relying on the findings rendered in the earlier suit by marking the said judgment and decree as exhibits in the present suit, though not for the purpose of contending on the principles of res judicata, but for the purpose of establishing their claim against the plaintiff on merits.

16.For proper appreciation, paragraph No.8 of the judgment rendered in A.S.No.92 of 1978 is as follows:

> "8.The plaintiff mainly relied on Exs.A-4 to A-6 to prove that the suit properties are the absolute properties of the plaintiff. Ex.A-4 is the printed plan of Covelong Salt Factory prepared in the year 1903. Ex.A-5 is the fair area list prepared in the year 1881. Ex.A-6 is the Madras Salt Manual, 1928 Edition, Volume No.1. It is seen from Ex.A4, that the State Government has prepared a plan for the benefit of the Central Government. Ex.A-4 has been prepared for the purpose of showing the Salt Factory of the Central Government in Kovalam in Chengalpattu Taluk and District. Ex.A-5 the Fair Area list shows the Salt Survey Nos., of Covelong Salt Factory in Covelong in Chengalpattu District. It is further seen from Ex.A-5 that an extent of 25 acres and 67 cents in Salt Survey No.47 is one among the various salt survey Nos. Ex.A-6 would reveal that Kelampakkam village, Pudur,

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Kunnakkadu and Covelong are mentioned as the villages where the Salt Factory are owing lands. At page 72, of the above said book, Ex.A-6, Inam Semmancheri is mentioned. Thus, it is seen from Ex.A-4 to A-6 that the Salt S.Nos.47/1 belongs to the plaintiff. Ex.B-3 is the letter dated 23-4-1943 sent by the Tahsildar, Chengalpatu to the Collector of Chengalpattu District. In Ex.B-3, the Tahsildar, Chengalpattu has stated that he inspected the suit village, on 21-4-1943 along with Inspector of Salt Factory Revenue Inspector, Village officials and Villagers. The Tahsildar, has clearly stated that the suit factory plan prepared by Survey Department, in 1881 shows that the filed No.47/1 is included in the salt factory limits. The Tahsildar, Chengalpattu has also stated that Salt Factory Plan of 1881 shows field Nos.1 to 47 and are included in the salt factory limit and Fair Area list prepared in 1881 shows the area of field No.47, as 25.67 acres. It is further seen from Ex.A-3 that the Tahsildar has also stated that the whole Salt Factory, has been resurveyed in 1901. The Tashildar has refered to Ex.A-4 and Ex.A-5. Ex.A-4 would show that salt Survey No.47/1 is shown on the north eastern corner of the plan Ex.A-4 south of Kunnakkadu Village and Covelong village. Ex.A-3 is the sketch showing the salt Survey No.47/1 of Covelong Salt factory. It is seen from Ex.A-3 that salt Survey No.47/ comprises of three resurvey Nos. viz. 37,38 and 39. A comparison of Ex.A-3 with Ex.A-4 would clearly go to show that what is now shown in Ex.A-3, is the replica or reporduction of Ex.A-4. The only difference is that in Ex.A-4 the re-survey Nos.37,38 and 39 are not given, but only the salt survey Nos.47/1 is given. In other aspects, Ex.A-3 tallies with Ex.A-4. Thus, Ex.A-4 to A-6 and Ex.B-3 will go to show that the lands comprised in Salt Survey Nos.47/1, belongs to the plaintiff. The learned counsel for the 4th defendant would argue that Shrotriumthar of the suit village has claimed the suit property as being included in the sale deed executed by the Official Assignee, while conveying the entire village. Ex.B-7 is the registered sale deed dated 14.08.1929 executed by the Official Assignee, Madras in favour of one Janabaggiammal. It is seen from Ex.B-7 that one P.Sethuram Pillai was declared as an insolvent and his properties were purchased by Janabaggiammal, wife of R.Doraisami Pillai in the auction held by the Official Assignee, Madras. Salt Survey No.47/1 is not mentioned in Ex.B-7. There is nothing on record to show that the insolvent Sethurama Pillai had any right over the lands comprised in Salt Survey No.47/1. Ex.B-7 has been executed in the year,

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1929. But, Ex.A-4 to A-6 would reveal that long prior to the purchase of the lands of Sethurama Pillai, by Janabaggiammal, the plaintiff was in possession and enjoyment of the suit properties as an absolute owner. Therefore, the allegation that Shrotriamdar has purchased the entire suit village including suit properties cannot be true. Therefore, I hold that the lands comprised in suit survey No.47/1 belong to the plaintiff."

17. It is well settled that the plaintiff who comes to the court has to either succeed or fail, based on his pleadings and evidence, more particularly when he seeks for declaration of his title to the suit property. In this case, except marking the sale deed under Ex.A1 dated 23.03.1990 and consequential patta issued under Ex.A2 and other kist receipts, the plaintiff has not pleaded anywhere as to how his vendor got the title to the suit property except to state that in a suit for partition, the present suit property was allotted to the share of his vendor. It is seen that the vendor of the plaintiff claimed title to the suit property based on a final decree for partition granted in O.S.No.463 of 1963 in a suit filed among the family members of the plaintiffs vendor. It appears that the present suit property was shown as one of the suit item in that partition suit. Merely because some private parties have shown the present suit property as one of the item of the properties in the partition suit and obtained a decree therein, it would not take away the right of the Salt Department over the suit property, when they are not parties to the partition suit. The plaintiff herein has not pleaded and established as to how the present suit property became the property of his vendor's family and how they traced title to the same. Unless these material details are pleaded and proved with evidence, the plaintiff herein is not entitled to succeed, especially when the defendants, in support of their title, are armed with the decision of the court in respect of the present suit property as well. In any event, the partition suit and subsequent sale deed were of the year 1963 and 1990 respectively. On the other hand, the title to the suit property on the Salt Department is traced from much earlier documents viz., plan of covelong salt factory prepared in the year 1903, fair area list prepared in the year 1881 and the Madras Salt Manual, 1928 Edition Volume No.1. These public documents were relied as Exs.A4 to A6 in the earlier suit filed by the Salt Department in support of their contention and the Appellate Court in that suit relying on those documents found that the present suit property is also forming part of Salt Survey No.47/1 and thus declared the title of the suit properties therein in favour of the Salt Department. Therefore, it is seen that the evidence let in by the defendants undoubtedly establishes that the present suit property forming part of Salt Survey No.47/1 has already been dealt with as early as in the year 1903, conferring title of such property on the

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defendants. Therefore, the overwhelming evidence let in by the defendants through public documents certainly outweigh the self serving documents of the plaintiff, to arrive at a conclusion that the plaintiff has not established title to the suit property.

18.Considering the above stated facts and circumstances and in view of the title already conferred on the Salt Department in the earlier proceedings based on the public documents, I am of the view that the plaintiff/appellant herein is not entitled to the relief of declaration and injunction. Accordingly, I find no grounds to interfere with the concurrent findings rendered by the courts below. Thus, the substantial questions of law raised in this second appeal are answered against the appellant and in favour of the respondents. The second appeal thus fails and the same is dismissed. No costs. The connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar (CS IV)

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Sub Asst. Registrar

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1.The Additional Subordinate Judge,
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2.The District Munsif,
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