



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD)No.683 of 2016andC.M.P(MD)No.10456 of 2016

Murugesan (Died)

1. Velu

Govindaraj (Died)

Marimuthu (Died)

2.Sorna Gandhi

3.Kavitha

4.Jothi

5.Anitha

6.Balamani

7.Prasanth

8.Chithra Barathi

9.Praveena

... Appellants/Appellants 1 to 4, 6 to 13/
Defendants 2, LR's of 3 and 4 Defendants

-Vs-.

1.Murugesan

2.Muthukoori

Malaiyandi (Died)

Munisamy (Died)

3.Paneer

4.Murugan

5.Shanmugathai

6.Minor Karthick

7.Minor Diwakaran

**(Minor R6 and R7 are rep.by their
mother/7th Respondent)**

8.Marimuthu

9.Kooriammal

10) Sonai @ Karunanithi

11) Tamil

12.Senthil

13.Ponnusamy

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14.Amaravathy

15.Soundar



16.Pandi
17.Suresh
18.Eswari
19.Jyothi
20.Prema

...Respondents 1 to 20/
Respondents 1,2,5,6,7 to 9,
10, 11 to 23/Defendants
4 to 11, 13, 15 to 27

P.Rajagopal (Died)

21.Kuppusamy

...Respondent 21/Appellant 5/Nil

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 19.02.2016 made in A.S.No.38 of 2013 on the file of the Subordinate Court, Ramanathapuram, reversing the Judgment and Decree dated 15.07.2013 made in O.S.No.82 of 2000 on the file of the District Munsif Court, Ramanathapuram District.

For Appellants : Mr.M.V.Venkataseshan
For Caveator : Mr.T.R.Jeyapalam for R1

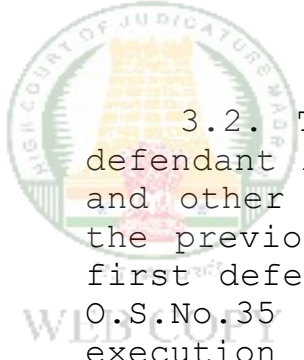
JUDGMENT

The second defendant and the legal representatives of the defendants 3 and 4 in the suit in O.S.No.82 of 2000 on the file of the District Munsif Court, Ramanathapuram, are the appellants in this Second Appeal.

2. The first respondent in this appeal filed a suit in O.S.No.82 of 2000 for declaration that the defendants are not entitled to any right in respect of the suit properties, which belong to the plaintiff's family and for recovery of possession and for other consequential reliefs.

3. The case of the plaintiff as stated in the plaint, are as follows:

3.1. The suit properties originally belong to the plaintiffs ancestor, by name, Namasivayam Pillai. He founded a Trust in the year 1930. The said Trust was in respect of his properties and it is a family Trust. The plaintiff's father was administering the Trust and after his death, his sons including the plaintiff, became the owners of the properties. Since the elder brother of the plaintiff did not administer the Trust property properly, a suit came to be filed in O.S.No.35 of 1985, wherein a declaration was sought for in respect of the suit properties to declare that the properties belong to the plaintiff's family. The said suit was decreed and hence, the title of the plaintiff's family over the suit properties has become final.



3.2. The first defendant in this suit is the son of first defendant in the previous suit and similarly, the second defendant and other defendants, are also claiming under the defendants in the previous suit. The third defendant is the son-in-law of the first defendant in the previous suit. Since the previous suit in O.S.No.35 of 1985 was also for recovery of possession and the execution petition in E.P.No.37 of 1995 was filed and the defendants in the previous suit were evicted by the Court. The suit properties have also been delivered to the plaintiff. However, after taking possession, the defendants have encroached the same houses illegally. The plaintiff being in management of the suit properties, is entitled to protect the same and remove the encroachment as a co-sharer. Hence, the plaintiff is constrained to file the suit.

3.3. In the plaint, the plaintiff has also stated that the defendants in the present suit have agreed to hand over the possession before the Revenue Divisional Officer after agreeing that the right of the parties have been decided in the previous suit.

3.4. The suit was contested by the defendants mainly on the ground that the suit property in Survey No.227/2 is a Government Poramboke shown as Iyyar Madam and burial ground respectively, as per the revenue records. The defendants specifically pleaded that they are not aware of the previous suit in O.S.No.35 of 1985 and that the judgment and defendant in the previous suit in O.S.No.35 of 1985 is not binding on them. The plaintiff has obtained a decree in the previous suit by misrepresentation and by committing fraud.

3.5. The defendants admitted that some of the defendants in the previous suit are also parties, however, disputed that the defendants 3 to 6 in the present suit have not received any summons or notice in the previous proceedings. It was contended by the defendant that the suit property is a Government poramboke as revealed from the revenue records and that the defendants have occupied the same about 65 years back. The defendants also pleaded that they had constructed thatched houses after spending huge money for rising the ground level and for other convenience.

3.6. By stating that the suit property belongs to the Government the defendant further contended that the plaintiff cannot seek declaration without taking action for evicting the defendants pursuant to the decree in the previous suit. It was further stated that the plaintiff had created records for the purpose of claiming right which he never had. They also raised other contentions which are not germane to the claim of the title. A Service Commission was also appointed by the trial Court and he submitted a report confirming the enjoyment of the suit properties by some of the defendants.



3.7. The suit was decreed by the trial Court by holding that the declaration of title granted in O.S.No.35 of 1985 has become final and that the defendants have illegally encroached into the property after the plaintiff got delivery of possession by evicting the defendants in the previous suit. Though it was contended by the defendants that they are in possession and enjoyment of the suit property for more than 65 years and they are entitled to claim title by prescription, the trial Court found that the defendants are estopped from disputing the title by virtue of O.S.No.35 of 1985 and they cannot re-agitate their right and contend that the property belongs to the Government. Though it was contended by the defendants that the delivery recorded pursuant to the earlier suit in O.S.No.35 of 1985 in E.P.No.37 of 1996 is only a paper delivery, on the basis of the evidence, the trial Court came to the conclusion that the plaintiff had taken actual physical possession from the defendants in the previous suit and that the suit is maintainable.

3.8. Aggrieved by the judgment and decree of the trial Court, the appellants herein preferred A.S.No.38 of 2013 and the appellate Court also considered all the documents and came to the conclusion that the defendants/appellants are bound by the decision in the earlier suit.

3.9. The contention of the defendants that the suit property is a Government poramboke is also rejected by the appellate Court by referring to the documents adduced in this case. As against the dismissal of the appeal, the second defendant and the legal representatives and the respondents 3 and 4 preferred this second appeal.

4. The learned Counsel for the appellant raised the following questions of law:

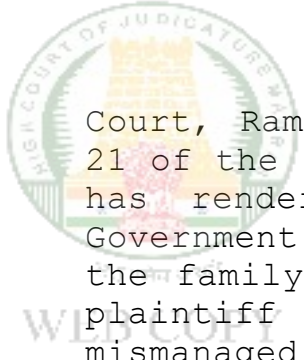
"a) Whether the courts below are right in holding that the decree in O.S.No.35 of 1985 on the file of District Munsif Court, Ramnad, is binding on the appellant when the appellants are not partly to the suit?

b) Whether the courts below are right in ignoring the exhibits X1-X4 and thereby committed perversity in appreciation of evidence?"

5. The learned Counsel produced a typed set containing all the documents filed on the side of the plaintiff as well as the defendants and submitted that the findings of the Courts below are perverse as the lower appellate Court did not consider many of the documents which would dislodge the case pleaded by the plaintiff.

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6. It is relevant to point out the findings in the previous suit in O.S.No.35 of 1985 on the file of the District Munsif



Court, Ramnad. The said judgment is marked as Ex.A10. Paragraph 21 of the judgment is relevant and in the previous suit, the Court has rendered the findings that the suit property is not a Government poramboke, but belonged to the private Trust, namely, the family of the plaintiff. The present plaintiff is the fourth plaintiff in the previous suit. Since the suit properties were mismanaged by one of the members of the plaintiff's family, he was also impleaded as defendants. The plaintiff's previous suit was also decreed for recovery of possession from the defendants therein, who claimed that the suit properties belonged to the Government and that they had prescribed title by adverse possession.

7. The contention of the contesting defendants was specifically negatived. In such circumstances, having regard to the findings in the previous suit and the judgment and decree that was passed in O.S.No.35 of 1985, this Court has no other option except to reject the contention of the appellant that the suit property belonged to the Government and does not belong to the plaintiff's family.

8. The first question of law is that the appellants are not parties to the previous suit and therefore, the decree in the previous suit in O.S.No.35 of 1985 is not binding on the appellants. It is to be seen that in the previous suit filed in the year 1985, a decree was obtained on 27.12.1988 and thereafter, execution petition was filed and the delivery was effected through Court. The entire suit property was taken possession by the plaintiff. In such circumstances, there was no obstruction by any one during execution proceedings pursuant to the earlier decree in O.S.No.35 of 1985. The present suit was also contested only by some of the defendants in the previous suit by raising the plea that possession was not taken from them pursuant to the previous decree in O.S.No.35 of 195 and that the present suit is not maintainable.

9. Having regard to the stand that has been taken by the defendants, this Court finds that the present appellants are only claiming under the defendants in the previous suit, even though they are not parties by name and that the decree in earlier suit is binding on them.

10. The second question of law is raised by relying upon Exs.X1 to X4. According to the learned Counsel for the appellant, these documents were not considered by the Courts below. It is to be seen that these documents are obtained after the suit. As against a binding decree in the previous suit, these documents which came into existence long after the decree in the previous suit and presentation of the plaint in the present suit, cannot be taken into consideration. The Courts below have also considered all material facts and the position that the Revenue



Department has admitted the title of the plaintiff and granted patta in favour of the plaintiff's family.

11. In such circumstances, there is no merit in the second substantial questions of law. The documents Exs.A1 to A30 have been relied upon by the trial Court. No perversity is demonstrated before this Court by the learned Counsel for the appellants. In such circumstances it is not possible to accept the case of the appellants merely on probabilities. A suit in O.S.No.312 of 1996 was filed by three persons in the village in a representative capacity for declaration and permanent injunction against Government, the plaintiff in the present suit and others. The said suit was dismissed after holding title in favour of the plaintiff in the present suit. Hence, the contention of appellant are unsustainable in law.

12. Hence, I find that no question of law much less a substantial question of law arises in this second appeal for consideration and the questions of law raised in this appeal are also answered against the appellant.

13. In the result, this second appeal is dismissed and the judgment of the appellate Court in A.S.No.38 of 2013 confirming the judgment and decree of the trial Court in O.S.No.82 of 2000 is confirmed. No costs. Consequently, connected Miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Court, Ramanathapuram.

2.The District Munsif Court, Ramanathapuram District.

Copy to:

The Section Officer/Record Keeper,
V.R.Section, Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.M.V.VENKATASESHAN, Advocate, SR No.74296

+1 CC to Mr.T.R.JEYAPALAM, Advocate, SR No.74982

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