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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 82 of 1999

Kumarasami Padayachi

...Appellant/Appellant/
Respondent

Vs.

Muthusami Gounder

...Respondent/Respondent/
Plaintiff

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree of the Court of the learned Subordinate Judge, Cuddalore in A.S.No.95 of 1992 dated 12.12.1996 in confirming the judgment and decree of the Court of the District Munsif, Vridhachalam in O.S.No.1165 of 1984 dated 26.02.1990.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.R.Sunilkumar

JUDGMENT

The suit for declaration and injunction in alternate, possession of the suit property filed by the respondent herein in respect of Kuttai Poromboke was decreed by the trial Court. The first appellate Court confirmed the judgment and decree of the trial Court. Against the concurrent findings of the Courts below, the defendant has filed this second appeal raising the following substantial question of law :-

1. Whether the order of the Courts below in decreeing the suit is not illegal and whether it should not have seen that the suit property is Kuttai Poramboke and the appellant had proved his possession under Exs.B.1 to B.11 and consequently the suit for declaration of possessory title isn't maintainable?



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2. Whether the Courts below ought not to have seen that the proceeding in the criminal Court has no relevance in deciding the possessory title and whether the reliance based on the criminal proceedings isn't misconceived?

2. The learned counsel for the appellant submitted that the suit itself is not maintainable since admittedly the suit property is a Government Kuttai Poramboke and the relief of declaration and injunction was sought only based on his continuous possession and enjoyment of the suit property. However, the plaintiff has not impleaded the Government as necessary party to this proceedings. Both the Courts below have not taken serious note of the non-joinder of necessary party, decided the dispute as a private dispute between the two private individual.

3. In support of his submission, the learned counsel for the appellant referred the judgment of this Court reported in "MANU/TN/2594/2009 Barbers rep by their representatives, Gopalakrishnan and Pavadaisamy Vs. Kalyanasundaram" wherein in almost identical situation, the plaintiff in that suit sought for declaration in respect of the suit property which is Poramboke land but without impleading the Government as party in the suit, this Court passed the following order:-

".....this Court is of the considered view that the first appellate Court had come to the right conclusion in reversing the judgment and decree of the trial Court, dated 30.07.1993, made in O.S.No.108 of 1989. When the plaintiffs had filed the suit for a declaratory relief to recognise their customary rights in the suit property, it is for them to prove, by sufficient evidence, that they have been enjoying such rights for a considerable length of time. Further, the plaintiffs had failed to show that they had filed the suit in a representative capacity, under Order 1 Rule 8 of the Civil Procedure Code, for themselves and on behalf of the other member of their community. When it is clear from the Government records that the suit property is a Government Poramboke the plaintiffs ought to have impleaded the Government, as a party to the suit. Non impleading of a necessary party is fatal to the maintainability of the suit. Further, it is found that Jaganatha Pandithar the father of the plaintiff had requested for a patta being granted to him in respect of the suit



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property. However, the request had been rejected on the ground that the suit property is a Government Poramboke. While so, it is not open to the plaintiffs to claim customary rights of fishing and of using the pond, which is said to be known as "Ambattan Kuttai", in the suit property, without impleading the Government as a party. When the plaintiffs have stated that the suit property is for the common use of the members of the barber's community, as well as the other villagers, there cannot be a declaratory relief granted in favour of the plaintiffs, as prayed for by them in the suit....."

4. In the case on hand, the plaintiff claims declaration based on his enjoyment and continuous possession through his predecessor in title who being the auction purchaser in the Court auction sale pursuant to the recovery of money decree passed against one Chandrakasha Padayatchi. Even according to the plaintiff the suit property was not an absolute property of the Chandrakasha Padayatchi. It was only a right of enjoyment which was brought to sale under Court auction in the year, 1983. No doubt, the civil Court in the execution proceedings has delivered the possession of the suit property to the plaintiff on 11.10.1983. But, by itself, it is not sufficient for the plaintiff to get a declarative injunction independently without impleading the Government. Therefore, this Court holds that the suit is bad for non-joinder of the necessary party and the Courts below ought to have framed an issue on this point and should have arrived at proper conclusion. Having failed to frame appropriate issue and exercise the proper procedure, the appeal is liable to be allowed.

6. Accordingly, the second appeal is allowed. The judgment of the Courts below is set aside. No order as to costs.

-s/d-
Assistant Registrar(CSIII)

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Sub-Assistant Registrar

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To

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1. The Subordinate Judge, Cuddalore

2. The District Munsif, Vridhachalam

+1 cc to M/s.V.Raghavachari Advocate sr 11492

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