

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.654/2015 & MP.No.1/2015

Rengasamy

.. Appellant /Appellant/
Plaintiff

Versus

1.The Commissioner
Alathur Panchayat Union
Alathur, Kunnam Taluk,
Perambalur District.

2.The President
Allinagaram Village,
Kunnam Taluk
Perambalur District.

.. Respondents /Respondents/
Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge, Perambalur made in AS.No.11/2012 dated 30.09.2013 confirming the judgment and decree of the learned District Munsif, Perambalur, made in OS.No.762/2004 dated 29.10.2011.

For Appellant : Mr.K.A.Vimal Kumar

For Respondents: Ms.Lesi Saravanan for
Mr.S.V.Duraisolamalai

JUDGMENT

The plaintiff who lost before the Courts below, is the appellant herein.

2 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The appellant/plaintiff filed OS.No.76/2004 on the file of the Court of the District Munsif, Perambalur, against the respondents / defendants praying for a judgment and decree for permanent injunction, restraining the defendants, their

subordinates, servants or agents from in any manner interfering with the peaceful possession and enjoyment of the suit property, viz., "Ayyamperumal Eri [water body]", situate in SF.No.412/6, admeasuring to an extent of 4 acres and 28 cents with standing trees on its bank at Pujangarayanallur Village, Kunnam Taluk, Perambalur District and also for other consequential reliefs.

[b] It is the case of the plaintiff / appellant that the suit property is the absolute property originally belonged to the plaintiff's forefathers and on the date of filing of the suit, it is a private bank maintained by his forefathers to raise Nanja crops in their lands which are located nearby to the said Eri. It is further averred by the plaintiff/appellant that the suit property originally belonged to Ayyamperumal Padayachi-great grandfather and in the Settlement Register prepared by the Government at the relevant point of time, it has been shown as "Ayyamperumal Eri" and as such, nobody can claim any right, title and interest in respect of the said property. Since attempts were made to dispute the right, title and possession of the said property, the plaintiff/appellant, on an earlier occasion, filed a suit in OS.No.304/2000 on the file of the very same Court, praying for declaration against the District Collector, Perambalur District, to declare that the plaintiff/appellant is having right, title in respect of the suit property and consequently, restraining the defendant therein from in any manner interfering with the peaceful possession and enjoyment of the same and also for mandatory injunction to grant patta to him and the suit was decreed exparte on 11.07.2003 and it has also become final. The grievance expressed by the plaintiff / appellant is that despite the said exparte decree, once again attempts have been made by the defendants to interfere with the peaceful possession and enjoyment of the suit property and therefore, filed the above said suit in OS.No.762/2004.

[c] The 2nd defendant has filed the written statement which was adopted by the 1st defendant and the averments made in the plaint are refuted. The 2nd defendant took a stand that though in the Village Accounts, it has been shown as "Ayyamperumal Padayachi Eri", it cannot be treated as a private property and the said property continues to be in possession and maintenance of the 2nd defendant and steps are being taken to clear the canal for the storage of water. It is further contended by the 2nd defendant that the earlier decree made in OS.No.304/2000 will not bind them and it has nothing to do with the suit claim and prayed for dismissal of the suit.

[d] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

- Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

- To what other relief the plaintiff is entitled to?

[e] During the course of trial, the plaintiff examined himself as P.W.1 and Exs.A1 to A15 were marked and on behalf of the defendants, an official attached to the 2nd defendant - Local Body, was examined as DW1 and Exs.B1 and B2 were marked.

[f] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has dismissed the suit vide judgment and decree dated 29.10.2011 and the plaintiff, aggrieved by the same, filed an Appeal in AS.No.11/2012 on the file of the Court of the Subordinate Judge, Perambalur.

[g] The Lower Appellate Court, on a consideration of the Memorandum of Grounds and materials placed before it, had formulated the following point for determination:-

- Whether the plaintiff has proved that he is in exclusive possession and enjoyment of the suit private tank?
- Whether the plaintiff is entitled for permanent injunction as prayed for?
- Whether the judgment and decree datged 29.10.2011 passed in OS.No.762/2004 on the file of the District Munsif Court, Perambalur are liable to be set aside?

[h] The Lower Appellate Court found that as per the Tamil Nadu Inam Estates [Abolition and Conversion into Ryotwari] Act, 1963, the Notification with regard to Inam Estate was published and as per section 3[b], the entire Inam Estate including all communal lands, quarries, rivers and streams [tanks and Ooranies including private tanks and Ooranies] and irrigation works, have been transferred to the Government and vest in them free of all encumbrances and as such, the petitioner cannot claim any over the same.

[i] The Lower Appellate Court has also placed reliance upon the judgment reported by this Court dated 17.12.2007 made in SA.No.676/2000 [Subramania Tevar @ Komapattian and others Vs K...Mill Raja and others] which laid down the proposition that all water bodies such as Tanks, Ooranies, including the private ones with effect from 1974 got transferred in favour of the Government by operation of law. The Lower Appellate Court has also placed reliance upon yet another decision reported in 1997 [3] CTC 631 [Damaodaradas Chatram Vs State of Tamil Nadu] and found that the documents produced on the side of the appellant/plaintiff therein, clearly proved that he merely purchased the enjoyment over the private tank and by virtue of the operation of law, it got transferred in favour of the Government and therefore, it cannot be no longer remain as a

private tank. Insofar as the decree obtained by the appellant/plaintiff in OS.No.304/2000 [Ex.A1] is concerned, in the light of the above said statutory provision, the judgment and decree have not effect and it should be treated as nullity and non-est and citing the said reason, has dismissed the appeal vide judgment and decree dated 30.09.2013 and challenging the legality of the same, the present Second Appeal is preferred by the appellant/plaintiff.

3 This Court, while admitting the Second Appeal on 14.06.2016, has raised the following Substantial Questions of law:-

When the judgment and decree in OS.No.304/2000 on the file of District Munsif Court, Perambalur has attained finality and without setting aside the same, whether the judgment and decree of the Lower Appellate Court in holding that the judgment and decree in OS.No.304/2000 is non-est in sustainable in law?

Whether the respondents / defendants are not bound by the judgment and decree in OS.No.304/2000 on the file of the District Munsif Court, Perambalur as being subordinates to the District Collector against whom the decree is in force by virtue of OS.No.304/2000 on the file of the District Munsif Court, Perambalur?

4 The learned counsel for the appellant / plaintiff has drawn the attention of this Court to the pleadings, oral and documentary evidences and would submit that in the light of the decree obtained by the appellant/plaintiff under Ex.A1 [OS.No.304/2000] against the District Collector, Perambalur District, in and by which, a declaratory decree was granted in his favour with regard to the very same suit property, it is not open to the respondents/defendants to take a contra stand as it is a inter-party judgment, which has also become final. It is the further submission of the learned counsel appearing for the appellant / plaintiff that there are overwhelming documentary evidences to show that the said tank is a private tank which was dug up for cultivating agricultural lands which are located nearby, right from the days of his forefathers and as such, it is not open to the defendants to contend that by operation of law, that right got extinguished and prays for interference.

5 Per contra, Ms.Lesi Saravanan, learned counsel representing Mr.S.V.Duraisolaimalai, learned counsel appearing for the respondents 1 and 2 / defendants 1 and 2 would submit that by virtue of the operation of law, whatever rights the plaintiff/appellant had, got extinguished and the documents which include Exs.A11 and A12 do not contain the survey number in which the Eri/water body is located and also drawn the attention of this Court to Ex.B1 and would submit that as per

the "A" Register, the suit property has been shown as Government Poramboke and "Eri" and the Courts below have taken into consideration the oral and documentary evidences as well as the relevant statute and had rightly reached the conclusion, negating the claim made by the plaintiff / appellant and prays for dismissal of the Second Appeal.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7 Substantial Questions of Law 1 and 2:-
No doubt, the appellant / plaintiff, on an earlier occasion, had approached the very same Trial Court by arraying the District Collector of Perambalur District, as the sole defendant for a declaratory relief with regard to his right and title in respect of the very same suit property and also for permanent injunction restraining the defendants or their men, agents from interfering with his peaceful possession and also for mandatory injunction to grant patta in respect of the said property and the sole defendant, viz., the District Collector, Perambalur District, remained exparte and an exparte-decree came to be passed under Ex.A1 on 11.07.2003. The Collector of Perambalur District, who was arrayed as the sole defendant, neither taken any steps to set aside the exparte decree nor made a challenge by filing an appeal. It is to be noted at this juncture that the suit property is classified as water body and the some sincere efforts should have been taken by the said defendant or atleast by his subordinates to protect the interest of the Government and unfortunately, they have failed to do so, which enabled the appellant / plaintiff to approach the Court once again seeking for the relief of permanent injunction. The appellant / plaintiff has marked only the true copy of the exparte decree dated 11.07.2003 made in OS.No.304/2000 as Ex.A1.

8 Order XX of the Code of Civil Procedure, 1908, speaks about the judgment and decree and as per sub-rule 4[2], judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. Sub-Rule 5 of Order XX, mandates the Court to state its decision of each issue by rendering a finding. Admittedly, the appellant / plaintiff did not mark a copy of the judgment ; but merely marked the decree and therefore, this Court is unable to come to the conclusion whether the Trial Court which rendered the judgment in OS.No.304/2000, has framed the issue and given its finding. The decree in the said suit has been marked as Ex.A1 and it merely contains the operative portion of the judgment and in the absence of the exparte judgment, this Court is unable to arrive at a decision as to the binding nature of the said judgment and decree on the defendants who were not parties in the said suit. Even otherwise, by virtue of the operation of law, the entire

Inam Estate including the tanks, Ooranies, private tanks and irrigation works, have been taken over and all rights and interests created in or over inam estates before the notified date by the principal or any other landholder, shall as against the Government, cease and determine. In the light of the provisions of the Tamil Nadu Inam Estates [Abolition and Conversion into Ryotwari] Act, 1963, the Courts below had taken into consideration the factual aspects and legal position and rightly reached the conclusion to reject the case of the appellant / plaintiff. This Court finds no error or infirmity in the findings rendered by the Courts below. Therefore, the substantial questions of law formulated by this Court at the time of admission, are answered in negative against the appellant / plaintiff.

9 In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the learned Subordinate Judge, Perambalur, in AS.No.11/2012 dated 30.09.2013. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

-s/d-

Assistant Registrar(CSV)

True Copy

Sub-Assistant Registrar

AP

To

1.The Sub Judge
Perambalur.

2.The District Munsif
Perambalur.

3.The Collector
Perambalur District, Perambalur.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+1 cc to Mr.S.V.Duraisolaimalai Advocate sr 20510

SA.No.654/2015

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