

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.25712 of 2013

K.Karthickumar

.. Petitioner

Versus

1.The Principal Secretary,
Commissioner of Land Reforms,
Fort St.George, Chennai.

2.The District Collector,
Namakkal District, Namakkal,

3.The Revenue Divisional Officer,
Namakkal District, Namakkal.

4.The Thasildhar,
Namakkal District, Namakkal.

5.P.Ganesan (Deceased)

6.Saraswathi

7.Anbalagan

8.Mrs.Rajamani

9.K.Baskar

R-8 & R-9 are substituted as LRs of deceased
R-5: P.Ganesan as per Order dated 08.03.2017
in WMP.No.2900/2017.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 4 herein to remove the encroachments in the water pond (Water Purambokku land) measuring at 4.71 acres comprised in Survey No.14 in Vittammaickenpatti Village, Namakkal Taluk, Namakkal District.

For Petitioner :Mr.G.K.R.Pandian
For Respondents :Mr.R.Vijayakumar, AGP for R1 to R4
Mr.S.Baskaran for R6
No appearance for R7
Mr.R.Prabakar for R8 and R9

ORDER

[Order of the Court was made by M.SATHYANARAYANAN.,J.]

The petitioner filed this writ petition, styled as Public Interest Litigation, stating among other things that he is the resident of door No.1/46, Sengaligoundanur, Marurupatti Post, Namakkal Taluk, Namakkal and he is the resident of the said Village and there is a lot of villages in and around the place. For the purpose of the irrigation, the villagers depend upon the ground water resources and in turn, the water resources depend upon the seasonal raining. Insofar as Vittammannaickenpatti village is concerned, it is used to percolate the water body / pond situated in S.No.14, which is classified as "Kuttaipurambokku" land belonging to the Government. The petitioner would submit that the water is used to irrigation as well as for drinking purpose of the residents and during raining season, the water get collected in the pond and enable the ground water to get recharge, so as to enable the villagers to carryout agricultural activities. The grievance expressed by the petitioner is that the private respondents, who also own some agricultural lands, started raising variety of trees without authorization on the banks of the water pond and it was also brought to the knowledge of the concerned officials. The respondent 5 to 7 also filed a suit in O.S.No.122 of 2003 on the file of the Additional District Munsif Court, Namakkal, praying for permanent injunction against the respondent 2 to 4 herein and also restraining them from interfering with their possession and enjoyment of the land in S.No.14 of the village. The said suit, after contest, came to be dismissed on 28.02.2005 holding that the private respondents are not in possession of the said land.

2. The petitioner would further aver that suppressing the dismissal of the Suit in OS.No.122 of 2003 dated 28.02.2005, the private respondents once again filed a Suit in O.S.No.181 of 2005 against the respondents 2 to 4, praying for a declaration that they are the owner and also for permanent injunction restraining the defendants / respondents 2 to 4 from interfering with their peaceful possession.

3. The defendants 1 to 3 / respondent 2 to 4 in this writ petition had challenged the Suit by filing a written statement and took a stand that the private respondents suppressed the

dismissal of the Suit in O.S.No.122 of 2003. However, the Court of Principal District Munsif, Namakkal, without properly appreciating the oral and documentary evidence, had erroneously dismissed the Suit, vide judgment and decree dated 06.07.2006 and according to the petitioner, the respondent 2 to 4 / defendant 1 to 3 did not exhibit due diligence in defending the proceedings and since, there is a pond in S.No.14, which is a water body, nobody can claim any right and therefore, came forward to file this writ petition for issuance of a Mandamus, directing the respondents 1 to 4 to remove the encroachment in the water pond classified as "Kuttaipuramboke" admeasuring to an extent of 4.71 acres comprised in S.No.14 in Vittammanaickenpatti Village, Namakkal Taluk, Namakkal District.

4. Mr.G.K.R.Pandian, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that the Village Administrative Officer viz., Thiru.Muthiah was examined as PW1 and through him, Exs.B1 to B3 were marked and his oral evidence clearly depose that the said land in S.No.14 has been classified as "Kuttaipuramboke" and the Trial Court has also recorded the findings that as per Ex.B2, it has been classified as "Kuttaipuramboke" and dismissed the Suit holding that the private respondents / plaintiffs therein are not in possession of the said Suit and deliberately suppressing the said fact, have once again filed O.S.No.181 of 2005 on the file of the Court of Principle District Munsif, Namakkal, praying for declaration and also for permanent injunction and despite the fact of suppressing was brought to the knowledge of the Trial Court, without properly appreciating the oral and documentary evidence, the Trial Court had decreed the Suit and the respondents 2 to 4 herein, who are arrayed as respondents 1 to 3, did not exhibit due diligence in defending the proceedings. The 4th respondent herein had filed an appeal along with a petition in IA No.5 of 2014, for condoning the delay of 2710 days in preferring an appeal and it was also dismissed and no further challenge has been made by filing a revision by the respondents 2 to 4.

5. In sum and substance, it is the submission of the learned counsel appearing for the petitioner that the overwhelming documents and evidence would disclose that the land in S.No.14 of the said village is shown as "kuttaipuramboke" in revenue records and such a documentary decree in OS.No.181 of 2005 is to be termed as non est in law and therefore, the prayer sought for by the petitioner is to be granted.

6. Per contra, Mr.S.Baskaran, the learned counsel appearing for the 6th respondent, Mr.R.Prabakar, the learned counsel appearing for the respondents 8 and 9 has invited the attention of this Court to the typed set of documents and to the

counter affidavit and would submit that though the earlier dismissal of the Suit in O.S.No.122 of 2003 have not been disclosed in the Suit in OS.No.181 of 2005, the fact remains that the Trial Court, while dismissing the Suit in O.S.No.122 of 2003, has recorded the finding that the land in question is classified only as "Puramboke" and therefore, the suppression of the fact relating to said Suit have not given any advantage of the private respondents and would further add that subsequent suit in OS.No.181 of 2005, the respondents 2 to 4, who were arrayed as defendants 1 to 3, also took a specific stand as to the suppression of the said Suit and an issue was also framed. The Trial Court has recorded the suppression of the said fact of dismissal of the suit in OS.No.122 of 2003 and it does not have a bearing upon the merits of the case and rightly decreed the Suit on 06.07.2016. One of the defendants viz., the Tahsildar, Namakkal District has filed IA.No.5 of 2004 to condone the delay of 2071 days in filing an appeal against the judgment and decree in OS.No.181 of 2005 and it was also dismissed and no further challenge has been made to the said order. It is the primordial submission of the learned counsels appearing for the private respondents that since the judgment in OS.No.181 of 2003 is an inter party judgment and it has reached finality, the petitioner cannot maintain this writ petition and prays for dismissal of the suit.

7. When this writ petition was listed on 10.08.2017, this Court after taking note of the Rules framed by the official respondents has also called for the records relating to O.S.No.122 of 2003 and 181 of 2005 as well as the report of the Collector of Namakkal District and in compliance of the same, the Collector of Namakkal District, has submitted an enquiry report dated 06.09.2017 along with the typed set of documents.

It is relevant to extract the following paragraphs:

"5. It is submitted that, the above three retired officials have given deposition that Counter Affidavit was filed by the Tahsildar before the Principal District Munsif Court, Namakkal on the file of OS.No.181/2005 stating that the land comprising in S.No.14 of Vittamanaickenpatty Village and an extent of 4.72 acre, is water course poramboke (Kuttai) which belongs to the State Government and also in a previous case the Additional District Munsif, Namakkal on the file of OS.No.122/2003 had already decreed that the same land was water course poramboke and belonging to Government. They also deposed that even though the submissions purforth in the counter affidavit by the Tahsildar, Namakkal, pertaining to OS.no.181 /2005 that the land belonging to the Government, the learned District Munsif has decreed in favour of the petitioners and they also

stated that they would have produced a ccopy of the village register before the Court, if any summon might have been received from the District Munsif.

8. It is also submitted that, the Tahsildar, Namakkal had filed application in IA No.5/2014 before Sub-Court, Namakkal for condonation of delay for about 2700 days in filing the appeal and it was also dismissed. Action is being taken to file second appeal before this Court."

8. A perusal of the enquiry report filed by the 2nd respondent would prima facie indicate as if the entire blame is upon the Trial Court, which decreed the Suit in OS.No.181 of 2005. This Court even for the sake of arguments assuming that the said judgment and decree passed by the Trial Court in OS.No.181 of 2005 is erroneous and it is unsustainable, is of the view that it is for the defendants 2 to 4 to take appropriate action within the period of limitation and admittedly, appeal was preferred by them with enormous delay of about 2710 days and to condone the same, they filed IA.No.5/2014 and it relevant to extract the affidavit filed in support of this writ petition:

"I, V.Elango, S/o.P.Vaiyapuri, aged about 48 years, working as Namakkal Taluk Thasildar, Namakkal District do hereby solemnly affirm and sincerely state as follows,

1.I am present Thasilsar of Namakkal Taluk and I am well acquainted with thhe facts of the case based on records.

2.I Submit that the above case was decreed on 06.07.2006 and the file pertaining to the above case was misplaced by the earlier Thasildar. It was found by us only after the Government Pleader has intimated as to file counter in the execution proceeding after that only I came to know that the certified copies were not received by the earlier Thasildar and I applied the same only on 19.07.2013 to the present Government Pleader and was able to get the same on 21.08.2013 and after getting an approval for filing this appeal I am able to present this appeal only to day and there accrued the delay of 2710 days in filing the appeal. In the above delay is neither willful nor wanton but it is beyond our control and a bonafide mistake. The memorandum of grounds of appeal filed along with this petition may also be read as part and parcel of this affidavit. We have better chance to success in this Appeal.

3. Unless the above delay is condoned and the appeal is taken into file, we will be put to great loss and hardship.

Under those circumstances it is just and necessary that this Court may kindly be pleased to condone the delay of 2710 days in filing this appeal and thus render justice.

Solemnly affirmed and signed before me at Namakkal on 16.12.2013.

9. The said petition was also dismissed, surprisingly for the reason that no plausible or acceptable or tenable explanation is put forth by the 1st defendant, who is arrayed as 4th respondent in this writ petition. It is also pertinent to point out at this juncture that though the petition for condonation of delay in appeal suit is dismissed, no further challenge has been made by filing a review and therefore it has become final.

10. It is the vehement and forceful submission of the learned counsel appearing for petitioner that since the judgment and decree in OS.No.181 of 2005 dated 06.07.2006 came into being by suppressing the dismissal of the earlier Suit, this writ petition is to be ordered. However, this Court is of the considered view that the judgment and decree came to be rendered on merits and admittedly, challenge was made after enormous delay and it was also dismissed and the said order of condonation of delay have not been put to challenge and therefore, it has become final. The judgment rendered in OS.No.181 of 2005, would operate as inter party judgment and binds all the respondents in this writ petition.

11. The additional typed set of documents filed on behalf of the respondents 6 and 7 contains copy of the SLR register and shows that the land in S.No.14 as "Kuttaipuramboke" (Pond Puramboke) and however, in the light of the decision in the form of decree in OS.No.181 of 2005, this Court is unable to come to the aid of the petitioner and the remedy, open to the petitioner, if any, is to avail the common law remedy subject to law of limitation.

12. Hence, for the reasons assigned above, the writ petition stands dismissed and the petitioner is so advised, he is at liberty to avail the common law remedy. No Costs.

Sd/-
Asst.Registrar(CO)

/true copy/

Sub Asst. Registrar

sk

1.The Principal Secretary,
Commissioner of Land Reforms,
Fort St.George, Chennai.

2.The District Collector,
Namakkal District, Namakkal,

3.The Revenue Divisional Officer,
Namakkal District, Namakkal.

4.The Thasildhar,
Namakkal District, Namakkal.

+ 1 cc to Mr.S.Baskaran, Advocate,SR.65288

+ 1 cc to Mr.G.K.R.Pandian, Advocate,SR.64556

+ 1 cc to Mr.R.Prabakar, Advocate,SR.64465

+ 1 cc to The Govt.Pleader, SR.65409

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GMI (CO)
NR 09/10/2017

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