

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-01-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.1660 of 2016

V.K.Rajan Appellant/Petitioner

-vs-

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Tahsildar,
Pallavaram Taluk,
Kancheepuram.

.... Respondents/Petitioners

Writ Appeal under Clause 15 of the Letters Patent against the order, dated 01.12.2016, made in W.P.No.42112 of 2016, on the file of this Court, Praying to issue a writ of Mandamus, to direct the respondents to assign the 5 cents of land situated in S.No.171 Malayampakkam Village Sriperumpudur Taluk Kancheepuram District which is in petitioner continuous possession and enjoyment.

For appellant : Mrs.Selvi George

For respondents : Mr.A.Srijayanthi,
Spl.Govt.Pleader.

JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J.)

This Writ Appeal is preferred by the writ petitioner, whose petition, seeking a writ of mandamus to direct the respondents to assign five cents of land, situate in S.No.171, Malayampakkam Village, Sriperumpudur Taluk, Kancheepuram District, which is said to be in his possession and enjoyment, has been dismissed by a learned single Judge of this Court.

2. The facts, as narrated, are ; the land in question, measuring five cents, lying in Survey No.171 of Malayampakkam Village, Sriperumpudur Taluk, Kancheepuram District, was classified as 'Kalam' in the revenue records and it is fit for carrying on agricultural operations. It is the assertion of the appellant that this land was allotted in favour of one Sri Gengan, and, after the death of the said Sri Gengan, his heir Sri Sankaran succeeded to the said immovable property and the appellant is stated to have purchased the said property from Sri Sankaran sometime during the year 1989. It is also the assertion of the appellant that the Tahsildar, Pallavaram Taluk, Kancheepuram District, has visited the site in question on 27.11.2016 and given him time till 30.11.2016, for vacating the said land and to hand over the possession thereof. It is stated that the appellant has preferred a representation on 12.02.2016, seeking assignment of this land, on the ground that he is a landless poor person and that he would eke out his livelihood by rearing buffaloes in the said land.

3. One is not very sure as to whether the land in question has been assigned at all - if it ever had been in favour of the said Gengan - and as to whether the said land has been properly succeeded to upon the departure of the said Gengan from this world.

4. Mercifully, those controversial facts need not be ascertained, for the simple reason that the appellant has asserted that he is in possession of five cents of land and it is he, who has been apparently directed by the Tahsildar to vacate and deliver vacant possession of the land in question.

5. In a classic enunciation of the legal principles, touching upon the right to recovery of land in possession of someone else, the Supreme Court, speaking through Sri Justice R.C.Lahoti, (as the learned CJI then was), in Rame Gowda v. M.Varadappa Naidu, AIR 2004 SC 4609, has brought out the following principles :

"5. Salmond states in Jurisprudence (Twelfth Edition), "few relationships are as vital to man as that of possession, and we may expect any system of law, however primitive, to provide rules for its protection. . . . Law must provide for the safeguarding of possession. Human nature being what it is, men are tempted to prefer their own selfish and immediate interests to the wide and long-term interests of society in general. But since an attack on a man's possession is an attack on something which may be essential to him, it becomes almost tantamount to an assault on the man himself; and the possessor may well be stirred to defend himself with force.

The result is violence, chaos and disorder." (at pp. 265, 266).

"In English Law possession is a good title of right against anyone who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law." (Salmond, *ibid*, pp. 294-295)

"Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. In the modern and medieval civil law the distinction is expressed by the contrasted terms *petitorium* (a proprietary suit) and *possessorium* (a possessory suit). " (Salmond, *ibid*, p.295)

6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In *Midnapur Zamindary Co. Ltd. Vs. Kumar Naresh Narayan Roy and Ors.* 1924 PC 144, Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya Vs.*

Anil Panjwani (2003) 7 SCC 350. In-between, to quote a few out of severals, in Lallu Yeshwant Singh (dead) by his legal representative Vs. Rao Jagdish Singh and others (1968) 2 SCR 203, this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in Yar Mohammad Vs. Lakshmi Das (AIR 1959 All. 1,4), "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." In the oft-quoted case of Nair Service Society Ltd. Vs. K.C. Alexander and Ors. (1968) 3 SCR 163, this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The court quoted Loft's maxim 'Possessio contra omnes valet praeter eum cui ius sit possessionis (He that hath possession hath right against all but him that hath the very right)' and said, "A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time". In M.C. Chockalingam and Ors. Vs. V. Manickavasagam and Ors. (1974) 1 SCC 48, this Court held that the law forbids forcible dispossession, even with the best of title. In Krishna Ram Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In Nagar Palika, Jind Vs. Jagat Singh, Advocate (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law,

but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunctioning even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of these cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram and Ors. Vs. Delhi Administration* (1968) 2 SCR 455, *Puran Singh and Ors. Vs. The State of Punjab* (1975) 4 SCC 518 and *Ram Rattan and Ors. Vs. State of Uttar Pradesh* (1977) 1 SCC 188. The authorities need not be multiplied. In *Munshi Ram & Ors.'s case* (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.'s case* (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical

possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession." (emphasis played herein is entirely mine)

6. Keeping the aforementioned principles on the subject in mind, when we examine the provisions of Tamil Nadu Land Encroachment Act, (Act 3 of 1905), it becomes imminently clear that the said legislation is made, in recognition of the aforesaid legal regime. Hence, while Sub-section (1) of Section 6 of the said Act provided for any person, unauthorisedly occupying any land for which he is liable to pay assessment under Section 3 or Section 3-A, to be summarily evicted by the Collector or, subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf and any crop or other product raised on the land shall be liable for forfeiture, the Section has also put in place a fair procedure to be followed in Sub-section (2) thereof, for achieving the objectives specified in Sub-section (1). Sub-section (2) of Section 6 requires serving a notice in the manner provided in Section 7 thereof on the person reputed to be in occupation of the land in question providing him time considered reasonable and after receipt of notice to vacate the land and, only if such notice is not obeyed, the person in occupation can

be removed and if there is any resistance offered for such attempt of removal, a summary inquiry into the facts of the case should be held, and, if satisfied that the resistance or obstruction was without any just cause, may issue a warrant for the arrest of the said person and upon his appearance, commit him to close custody in the office of the Collector or Tahsildar or Deputy Tahsildar for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of schedule for imprisonment of the civil jail of the district for a specified period. Section 7 provided for necessary details to be contained in the notice. An order passed by the Collector or Tahsildar or Deputy Tahsildar is an appealable one under Section 10 and a further revision lies under Section 10-A thereof.

7. In view of this legal regime, we have no hesitation to arrive at a conclusion that the second respondent-Tahsildar could not have sought for eviction of the appellant from the land in question, without following the procedure prescribed under Section 6 read with Section 7 of Act 3 of 1905. Only on this short ground, this appeal is allowed. However, we may hasten to add that the prayer of the appellant for a writ of mandamus to direct the respondents to assign the land is not granted by us. The extravagant prayer of the appellant is not granted by us, for, it is not for this Court to decide as to whether the land in question should be assigned to the appellant or to any other more appropriate individual.

8. Hence, the respondents would do well to follow the principles enshrined behind Sections 6 and 7 of Act 3 of 1905 and, then alone, evict the appellant from the land in question, but not otherwise.

9. Writ Appeal is allowed, subject to the above observations. No costs. Consequently, the connected C.M.P.No.20525 of 2016 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1.The District Collector,
Kancheepuram District,
Kancheepuram.

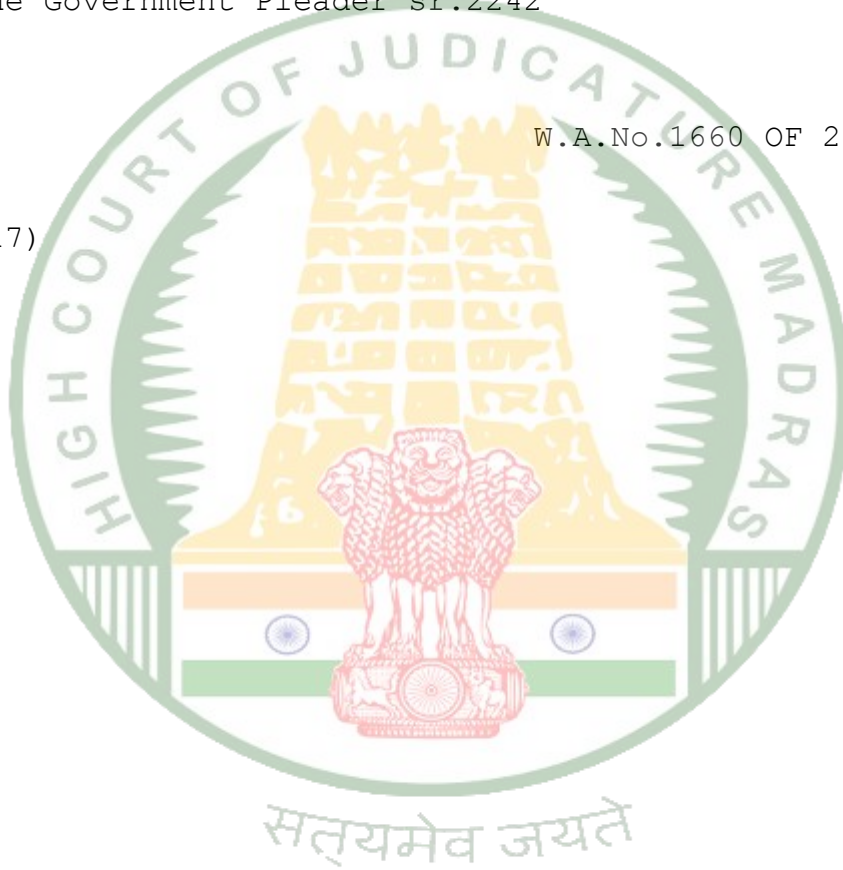
2.The Tahsildar,
Pallavaram Taluk,
Kancheepuram.

+1cc to M/s.Selvi George, Advocate sr.2196

+1cc to The Government Pleader sr.2242

W.A.No.1660 OF 2016

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