



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 28.11.2016
Delivered on: 20.02.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) Nos.331 and 332 of 2013
M.P. (MD) Nos.1 of 2013 and 1 of 2015

S.A. (MD) No.331 of 2013

Narayanan (Died)

1.Arputham @ Lakshmi Ammal
2.Ramakrishnan @ Sekar
3.Petchiammal @ Shanthi
4.Uthiravasakar @ Latha
5.Perumal
6.K.S.Sahul Hameed
7.S.Abitha Beevi
(2 to 5 Appellants through
their Power of Attorney the
first appellant herein)

: Appellant/Respondent/Plaintiffs
1 to 8 1 to 8

-Vs-.

1.Melapalayam Mailakader Street
Residential Welfare and Muslim,
Women Arabi Matharasa Committee,
Through its President,
No.107, Mailakader Street, Melapalayam,
Tirunelveli District.

: Respondent/Respondent No.9
/3rd Defendant

2.The Government of Tamil Nadu,
Represented through the District Collector,
Tirunelveli - 9.

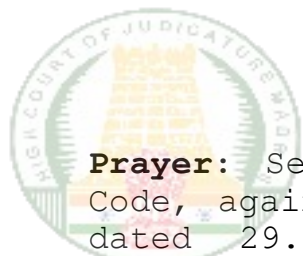
3.The Revenue Divisional Officer,
Tirunelveli - 9.

: Respondents / Appellants/
1,2 Defendants

4.Muthumalai
5.Petchiammal
6.Suresh
7.Arulsubha
8.K.S.Sahul Hameed

: Respondents / Respondents 10 to 13
/ Plaintiffs

[6th appellant is transposed as 8th respondent vide order dated
18.06.2015 made in M.P. (MD) Nos.2 and 3 of 2015 in S.A. (MD) No.331 of
2013 by PRSJ]



Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.112 of 2011 dated 29.01.2013 on the file of the Additional Sub Court, Tirunelveli, reversing the judgment and decree passed in O.S.No.573 of 2005 on the file of the Principal District Munsif Court, Tirunelveli, dated 29.07.2011.

For Appellants : Mr.A.Arumugam
1 to 5 and 7 for Mr.T.Selvan

For Respondent 1 : Mr.M.VAlinayagam
Senior Counsel for
Mr.D.Nallathambi

For Respondents 2&3 : Mr.S.Sathish Kumar
Additional Government Pleader

For Respondent 8 : Mr.K.S.Shahul Hameed
Party-in-person

For Respondents 4-7 : Dispensed with

S.A. (MD)No.332 of 2013

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: Respondents / Respondents 11 to 14
/ Plaintiffs

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For Respondent 1	: Mr.M.VAlinayagam
	Senior Counsel for
	Mr.D.Nallathambi
For Respondents 2&3	: Mr.S.Sathish Kumar
	Additional Government Pleader
For Respondent 8	: Mr.K.S.Shahul Hameed
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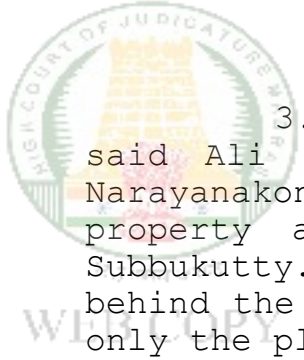
COMMON JUDGMENT

The plaintiffs in the suit in O.S.No.573 of 2005 on the file of the District Munsif Court, Tirunelveli, are the appellants in the above Second Appeals.

2.The appellants filed a suit in O.S.No.573 of 2005 for permanent injunction restraining the third defendant from interfering with their peaceful possession and enjoyment of the suit property. The suit is also for injunction restraining the defendants 1 and 2 from changing the suit property as poramboke. The suit property has been described as a land measuring East-West on the northern side 127 feet and southern side 105.50 feet. Similarly, the property is shown as measuring an extent of North-South on the Eastern side 148 feet and on the western side 78.50 feet in Ward No.4, Block No.20, Town Survey No.1846 within the Tirunelveli Municipal Corporation.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The case of the appellants in the plaint are as follows:

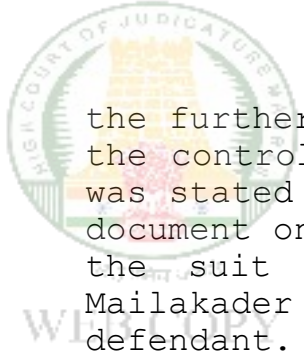


3.1.The suit property originally belonged to one Ali. The said Ali executed a sale deed on 12.08.1968 in favour of one Narayanakonar. The said Narayanakonar was in enjoyment of the suit property and he died in the year 1975 leaving his only son Subbukutty. The said Subbukutty Konar died on 15.03.1990 leaving behind the plaintiffs 1 to 6 as his legal heirs. After that, it is only the plaintiffs 1 to 6, who are entitled to the suit property as owners. The plaintiffs also entitled to title by adverse possession. When the first plaintiff asked for assessment of vacant land tax, the Assistant Commissioner of Melapalayam Region, passed an order on 30.10.2002. Similarly, the Tahsildar has also submitted a report on 06.06.2003 stating that the suit property has been registered in the name of N.Subbukutty. The suit property was never in the enjoyment of the third defendant. When some third parties interfered with the possession on the basis of sale deed dated 15.07.1997, the plaintiffs filed a suit in O.S.No.1168 of 2004 on the file of the Additional District Munsif Court, Tirunelveli, and obtained a decree on 30.12.2004.

3.2.The plaintiffs 7 and 8 have purchased an extent of 18 cents on the southern side of the suit property on 24.01.2005. Since the third defendant is making hectic efforts to interfere with the possession of the plaintiffs, the plaintiffs were constrained to file the suit.

4.The first defendant is the State represented by the District Collector and the second defendant is the Revenue Divisional Officer, Tirunelveli. The second defendant filed a written statement on behalf of defendants 1 and 2. It is the case of the defendants 1 and 2 that the suit property is a poramboke land and that as per the settlement documents, the suit property is only an assignable poramboke. The defendants 1 and 2 disputed the title of the plaintiffs though they admitted the name of Subbukutty in the Municipal records. Since no patta was granted to the plaintiffs, it is the specific case of the defendants 1 and 2 that the plaintiffs can neither claim title nor can claim possession. Since, the suit property had been classified as poramboke way back in the year 1933, the contention that Narayana Konar has purchased the property from one Ali cannot be accepted, as the said Ali had no title at any point of time. According to the defendants 1 and 2, the sale deed relied upon by the plaintiffs will not confer any right in favour of the plaintiffs.

5.The third defendant in the suit filed a detailed written statement denying the title as well as the enjoyment of the suit property by the plaintiffs. Apart from raising several issues questioning the maintainability of the suit on the ground of non-joinder of necessary parties and on the ground that the suit for bare injunction is not maintainable without a declaration of title, the third defendant specifically pleaded that the suit property is a Government poramboke land and it was classified in the "A" register as a land which can be assigned by collecting ground rent. It was



the further case of third defendant that the suit property was under the control of Melapalayam Naina Mohammed Moopan Palli Mohalla. It was stated by the third defendant that the plaintiffs have created a document only to secure the land for their personal benefit. Though the suit property is in the enjoyment of the Women Folk in Mailakader Street, the same is under the control of the third defendant. When the third defendant came to know about the claim of plaintiffs on the basis of concocted and fabricated documents, the third defendant made objections to the Revenue Officials after bringing it to their notice about the third defendant's claim and the enjoyment of the suit property for public convenience. The third defendant also raised defense in tune with the contentions in the written statement filed by the defendants 1 and 2. Even in the written statement, the third defendant referred to the different caveat original petitions to show the inconsistencies in the description of the suit property. With regard to the earlier suit and the *ex parte* decree obtained by the plaintiffs, it is the specific case of the third defendant that it is a collusive suit and came into existence only to show the same as evidence of plaintiffs' title. There were other contentions but they are not necessary for the purpose of deciding this Second Appeal.

6. The trial Court after framing necessary issues found that the plaintiffs are in enjoyment of the suit property and that the plaintiffs have proved their title to the suit property. Since the trial Court also accepted the case of the plaintiffs that the defendants 1 and 2 are trying to convert the suit property as a Government poramboke land, the entire suit as prayed for was decreed. Aggrieved by the judgment and decree of the trial Court, the third defendant preferred an appeal in A.S.No.27 of 2007 on the file of the Principal Sub Court, Tirunelveli. The defendants 1 and 2 also filed an independent appeal in A.S.No.51 of 2007 before the same Court. The lower appellate Court has dismissed both the appeals by a common judgment and decree dated 30.06.2007. Earlier, the third defendant preferred an appeal before this Court in S.A. (MD)No.898 of 2007 challenging the judgment and decree of the trial Court in A.S.No.27 of 2007. This Court allowed the Second Appeal and remitted the matter to the trial Court with specific directions. The operative portion of the order of this Court in the Second Appeal read as follows:

"i) That the Judgment and Decree dated 30.06.2007 passed by the Principal Sub Judge, Tirunelveli in A.S.No.27 of 2007 confirming Judgment and decree dated 21.12.2006 passed by the Principal District Munsif, Tirunelveli in O.S.No.575 of 2005 be and hereby are set aside and this second appeal is allowed;

(ii) That the Original Suit No.573 of 2005 be and hereby is remitted to the file of the Principal District Munsif Court, Tirunelveli;

(iii) That the Principal District Munsif Court,



Tirunelveli do restore the Suit to its original number in the register and proceed to dispose of the case in the light of the observations and directions contained in the Judgment herein;

(iv) That the respondents 9 and 10 herein / the defendants 1 and 2 be and hereby are strictly directed to submit all the relevant registers relating to the Suit Town Survey No.1846;

(v) That both the parties, be and hereby are permitted to adduce additional evidence if any;

(vi) That the Principal District Munsif Court, Tirunelveli, be and hereby is strictly directed to dispose of the Original Suit No.573 of 2005 before the end of July 2011 and report the same to this Registry without fail;

(vii) That the Court fee paid in Second Appeal No.898 of 2007, be and hereby is ordered to be refunded to the appellant therein forthwith and

(viii) That there be no costs in this Second Appeal."

7.It was thereafter the suit was taken up on file. Even after the remand, the suit was decreed after holding all the issues in favour of the plaintiffs. Aggrieved by the judgment and decree of the trial Court, once again the third defendant and defendants 1 and 2 preferred A.S.No.94 of 2011 and A.S.No.112 of 2011 respectively before the Additional Sub Court, Tirunelveli. The lower appellate Court, this time reversed the findings of the trial Court and allowed the appeal after setting aside the judgment and decree in O.S.No.573 of 2005. Aggrieved by the judgment and decree of the lower appellate Court in A.S.No.94 of 2011 and A.S.No.112 of 2011, the present two Second Appeals have been preferred by the appellants who are the plaintiffs in the suit.

8.At the time of admitting the Second Appeals the following questions of law were framed by this Court:

(i) Whether the first appellate Court is correct in allowing the appeal ultimately dismissed the suit when the factum of possession was proved by the plaintiffs through oral and documentary evidences.

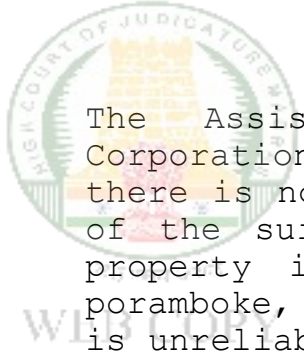
(ii) Whether the lower appellate Court is correct in not considering the suit property and came to deal with the predecessors in title as well as in the year 1968 under Ex.A2 as well as in the year 1989 under Ex.A.5 as well as, as per the judgment under Ex.A11 by virtue of Section 13 of the Evidence Act?



9. The learned counsel for the appellants relied upon the documents filed by the plaintiffs before lower Court and contended that the plaintiffs have proved their title to the suit property. It was further submitted by the learned counsel for the appellants that the documents filed by the plaintiffs would also show their continuous possession over the suit property and that the plaintiffs have in fact prescribed title by adverse possession. The plaintiffs relied upon the sale deed alleged to have been executed by one Ali in favour of Narayanakonar and the order passed by the Municipal Commissioner for the change of assessment in respect of the suit property and the proceedings of the Assistant Commissioner of the local body dated 30.12.2002 and the report of the Palayamkottai Tahsildar in respect of the suit property. The lower appellate Court has considered all the documents filed by the plaintiffs and came to the conclusion that the plaintiffs have not proved their title or enjoyment in respect of the suit property. Since the lower appellate Court considered the documents and the findings of the lower appellate Court are supported by valid reasons, the learned Senior Counsel appearing for the third respondent submitted that this Court cannot interfere with the findings of fact. Having regard to the fact that this is a case where the lower appellate Court has reversed the findings of the trial Court, this Court was inclined to consider the documents and evidence to find out whether the judgment of the lower appellate Court suffers from any irregularity or perversity.

10. From the documents filed by the plaintiffs, it may be seen that the plaintiffs have not produced any other document except the document Ex.A2 to prove that they are entitled to title to the property. This document Ex.A2 is a sale deed dated 12.08.1968 executed by one Ali in favour of Narayanakonar. The person executed the sale under Ex.A2 is one Ali son of "Mohammed Mytheen". However, there was no document to show that this Ali or his predecessor in interest were in enjoyment of the property or holding the property. The revenue records relied upon by the plaintiffs do not match the claim of the plaintiffs' title to one Ali. Therefore, the title of the suit property cannot be held in favour of the plaintiffs merely on the basis of the sale deed under Ex.A2.

11. A document Ex.A5 is also filed by the plaintiffs to show that the original assignment was in the name of one Khader Mohideen and Mohamed Hanifa. From the document Ex.A2, the vendor of the Narayanakonar was only a person by name Ali, son of Mohammed Mydeen. The property has been described as an ancestral property of the said Ali. However, the sudden entry of records in the name of Khader Mohideen and Mohamed Hanifa is contrary to the claim of title through on Ali who executed the document Ex.A2. The other two important documents relied upon by the learned counsel for the appellants/plaintiffs are Ex.A6 and Ex.A7. Ex.A6 is the proceedings of the Assistant Commissioner of the local body. The power or authority to pass such order is not traceable under any statute.



The Assistant Commissioner functioning under the Municipal Corporation Act is not a revenue authority. Further, absolutely there is no indication from this document that the title in respect of the suit property can vest with individuals. If really the property is a Government poramboke or an assignable Government poramboke, as contended by the third defendant, the document Ex.A7 is unreliable document. These revenue documents are expected to be filed by a person who had either prepared the documents or who is having the official custody of these documents. In the present case, since the documents were marked without any formal proof they cannot be accepted as genuine documents. The suit was filed in 2005 and the proceedings are just few years prior to the filing of the suit. Hence, the lower appellate Court is right in rejecting these documents as they have no evidential value in the absence of examination of the author of this document.

12. Further, it is the definite case of the defendants 1 to 3 that the suit property is a Government poramboke. The documents filed by the defendants and some of the documents filed by the plaintiffs also would show that the suit property has been classified as poramboke. Even assuming that the suit property is a property classified as natham, the person in possession can claim right of enjoyment from the Government if one proves that he is in continuous possession and that his possession is neither objected to nor denied by any other person having rival claim. The plaintiffs have not produced any document like patta or chitta or adangal. In such circumstances, the plaintiffs title cannot be presumed. It has been held by the Hon'ble Supreme Court in the case of **R. Hanumaiah v. Secretary to Government of Karnataka** reported in **(2010) 8 MLJ 998 (SC)** that all unoccupied lands are the properties of the Government unless any person establishes his right or title to such land. The Hon'ble Supreme Court has specifically observed that such property can be presumed to be the property of the Government and that it cannot be claimed by any individual. In the same judgment, the Hon'ble Supreme Court has also dealt with the nature of proof that is required to claim title by adverse possession. It has been held that mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. It has been held in paragraph 17 as follows:

"17. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary



to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government. Be that as it may."

13. It is to be noted that the plaintiffs have come forward with a specific case of title in this case. When the plaintiffs have not established their title, the defendants cannot be non-suited. The plaintiffs cannot pick up holes in the case of defendants. Apart from the fact that the plaintiffs have not proved their title, the property has been held to be in the enjoyment of the third defendant for the use of the women folk in a particular street for their convenience. The plaintiffs cannot insist declaration of title in a suit for bare injunction especially when the plaint discloses the rival claim by contesting defendants. The learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in the case of **Smt. Rebti Devi v. Ram Dutt and another** reported in **AIR 1998 SC 310** for the proposition that when both sides have led evidence, the question of burden of proof pales into insignificance and that the Court is expected to decide the issue on the basis of the evidence. I have no quarrel with the proposition for which the judgment of the Hon'ble Supreme Court is cited. However, in the present case, the plaintiffs have not produced any other document except Ex.A2 to prove their title. Since the vendor who had executed the document Ex.A2 had no title and the document relied upon by the plaintiffs to suggest their title were disbelieved by the lower appellate Court, the plaintiffs cannot succeed on the loopholes or weak side of the defendants. More over, in the present case, the case of the defendants is that the suit property belonged to Government and that the third defendant is in possession and enjoyment of the suit property. From the evidence, there is no construction over the suit property. Though the suit property is surrounded by well defined boundaries, the question whether the suit property is in the absolute enjoyment of the plaintiffs or not has been specifically addressed by the lower appellate Court. The lower appellate Court has categorically found against the plaintiffs that they have neither proved their title nor enjoyment. It is a well settled law that in a suit for bare injunction, the relief for declaration of title is not always



mandatory. However, when the suit for injunction is filed on the strength of title, the plaintiffs are not entitled to get their possession protected unless they establish their title or they establish that the third defendant has no better title than the plaintiffs. In the present case, the appellants have failed in both. The finding of fact that the plaintiffs are not in possession of the property has not been assailed by the learned counsel for the appellants on the basis of the evidence. In such circumstances, the learned counsel for the appellants placed reliance upon the judgment of the learned Single Judge of this Court in the case of **N.S.Kuppuswamy Odayar and another v. The Panchayat Narthangudi represented by its President Murugayyan and others** reported in **1971 (1) MLJ 190** to show that this Court has repeatedly held that the mere fact that in the Re-settlement Register, a particular piece of land has been prescribed as poramboke will not by itself establish the title of the Government to the land in question. The said judgment has no application to the fact of the present case when the plaintiffs have not established their title by acceptable evidence. The 8th respondent appeared as party in person made his submissions to the effect that the defendants have not produced records to prove their case. In a suit for injunction based on title, the burden lies on the plaintiffs to prove their case. Having regard to the specific findings of the lower appellate Court after analysing the entire records and evidence independently, this Court find no reason to interfere with the findings of fact. In view of my conclusions reached above, I do not find any merit in this Second Appeal and the questions of law framed by this Court are answered against the plaintiffs/appellants. The Second appeals are therefore dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional Subordinate Judge, Tirunelveli.
- 2.The Principal District Munsif, Tirunelveli.
- 3.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

- + 1 CC TO Mr.T.SELVAN, ADVOCATE IN SR No. 9277
- + 2 CC TO Mr.D.NALLATHAMBI ADVOCATE IN SR No. 9320

SRM

TE/CM-MSA : 02/03/2017 : 10P/7C