

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24.7.2018

JUDGMENT PRONOUNCED ON : 31.07.2018

CORAM

THE HON'BLE SELVI JUSTICE V.M.VELUMANI

S.A.No.284 of 2017

1 M.Vijalakshmi
2 M.Sivakumar
3 M.Sundaravadivelu
4 M.Kalaiselvi ... Appellants/Defendants 2 to 5

Vs.

1 B.P.Prasad ... 1st Respondent/Plaintiff
2 Sri. Pachaimuthu ... 2nd Respondent/1st Defendant
(R2 is given up)

Second appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Sub Court, Tambaram, dated 30.11.2016 made in A.S.No.14 of 2009 reversing the Judgment and Decree, dated 6.2.2008, of the District Munsif Court, Alandur made in O.S.No.2480 of 1997.

For Appellants : Mr.R.Subramaniam
For Respondent No.1: Mr.S.Subbiah, Sr. counsel
for Dr.R.Gouri
Respondent No.2 : Given up

JUDGMENT

The appellants are the defendants 2 to 5 in O.S.No.295 of 1996 on the file of the District Munsif, Tambaram, transferred and renumbered as O.S.No.2480 of 1997 on the file of the District Munsif, Alandur. The first respondent is the plaintiff. The second respondent is the first defendant. The second respondent/first defendant is given up. The first respondent/ plaintiff has filed a suit for recovery of vacant possession of 'B' schedule property after ejecting the appellants and the second respondent therefrom and after removing the superstructure put up by the appellants over the same and for permanent injunction restraining the appellants and the second respondent from interfering with the first respondent's peaceful possession and enjoyment of the 'C'

schedule property or in any manner interfering with the first respondent's work of fencing the 'C' schedule property. The suit was dismissed after contest. The first respondent filed first appeal in A.S.No.14 of 2009. The learned first Appellate Judge allowed the appeal decreeing the suit. As against the decree, the defendants 2 to 5 filed the Second appeal.

2. The brief facts of the case are as follows:

According to the first respondent, the suit property originally belonged to one S.V.Subramaniam and his son and daughter. They have partitioned the suit property by registered partition deed, dated 20.1.1988. The first respondent purchased the A schedule property from K.V.Subramaniam and others by sale deed dated 17.1.1994. After purchase, patta was transferred in the name of the first respondent. The first respondent is paying land tax for A schedule property and in the year 1996, planted Banana saplings in the suit property. The second respondent was employed as watchman by the first respondent's vendor S.V.Subramaniam and he continued as watchman under the first respondent. The first respondent's vendor permitted the second respondent to put up temporary shed in a portion of 'A' schedule property. The said portion is described as 'B' schedule property in the plaint. When the first respondent demanded the second respondent to vacate and handover vacant possession, the second respondent has set up appellants alleging that the appellants have entered into an agreement with the first respondent's vendor to purchase suit property. There is no such agreement between the first respondent's vendor and the appellants. The portion of A schedule property where banana saplings were planted is described as C schedule property in the plaint. The first respondent engaged workers to fence the property. During fencing, the second respondent on 6.4.1996 picked up quarrel with the workers of the first respondent. Hence, the first respondent filed a suit for injunction to prevent the appellants and second respondent to illegally occupy the C schedule property. Based on the above pleadings, the first respondent has filed the suit.

3. The second defendant/first appellant filed written statement and it was adopted by other appellants/defendants. The appellants and second respondent (first defendant) denied all the averments made in the plaint. According to the appellants, there is no A, B and C schedule property as described in the plaint. The suit village was a Inam village. Inam was granted by Inam Commissioner in favour of Thiruvannamalai Kundarkudi Adinam as Inamdar. As such, the Inamdar is entitled to the suit schedule village and Inamdar had granted lease to the tenants. The lands were maintained as Iruvaram lands by Act 30 of 1963 by the Government of Tamilnadu Inams Abolition and Conversion into Ryotwari lands. The

Assistant Settlement Officer after inspection classified the suit property as playground. One Mathiyalagan, husband of the first appellant and father of the other appellants occupied the land several years ago. He constructed the watchman shed, levelled the ground and raised the ground by filling up earth and fenced the property with live fencing on the west and northern boundary. On the southern and eastern boundary, adjacent land owners raised compound wall. Mathiyalagan has removed the roof of the watchman shed and replaced the same by asbestos sheet in the year 1988. Alandur Municipality filed a criminal case as against the said Mathiyalagan as he has not obtained permission and the case was disposed of by the Judicial Magistrate No.II, Poonamallee which shows that he was in possession of suit property in the year 1988 itself. The vendor of the first respondent claimed to have purchased the property from one A.V.Mohanaragam Pillai. The land SLR shows one A.B.Mohanaragam was land owner and he has nothing to do with A.V.Mohanaragam Pillai as claimed by the first respondent. By passing of Act 30 of 1963, all the documents relating to Inam lands were ceased to have effect. The Competent Authority under the Act 30 of 1963 issued patta in favour of the appellants under Section 13(1) of Act 30 of 1963. Mathiyalagan died intestate leaving behind the appellants as his legal heirs and the appellants have succeeded to the estate of Mathiyalagan. The appellants filed writ petition before this Court against the Settlement Officer. This Court directed the Settlement Officer to conduct fresh enquiry and dispose of the case in accordance with law. The first respondent has created documents as if sale has been effected in his favour by Subramaniam and his family members based on fabricated sale deed, the first respondent divided the suit land and stated that the appellants and the second respondent are in possession in B schedule property only and the rest of the property is C schedule property which is under his occupation. The claim of the first respondent is devoid of merits and prayed for dismissal of the suit.

4. Based on the above pleadings, issues were framed and the learned trial Judge on 5.1.1999 framed additional issues in the suit.

5. Before the learned trial Judge, the first respondent was examined as P.W.1 and another witness was examined as P.W.2 and marked exhibits A1 to A12. On the side of appellants, D.W.1 to D.W.4 were examined and marked exhibits B1 to B36. Court documents were also marked as C1, C2 and X1.

6. The learned trial Judge considering the pleadings, oral and documentary evidence, dismissed the suit. Against the said judgment and decree, the first respondent filed an appeal in A.S.No.14 of 2009. The learned first Appellate Judge framed

necessary points for consideration. Considering the materials on record, judgment of the trial Court and the arguments of the counsel for the parties, the first Appellate Court held that the first respondent's title is better than title of appellants and the first respondent has proved his title by marking Ex.A2 to A6 and proved his possession through Ex.A7 to A9 and allowed the first appeal. As against the said judgment and decree of the first Appellate Court, the defendants 2 to 5 have preferred the present Second appeal.

7. At the time of admission, the following substantial questions of law are framed.

1) Has not the Lower Appellate Court omitted to see that the plaintiff having suppressed the filing of the earlier suit, is not entitled to equitable relief of injunction under Specific relief Act ?

2) Is not the Lower Appellate Court wrong in overlooking that the plaintiff has to seek to set aside the order in Ex.B19 and without doing so, the suit is not maintainable ?

8. The learned counsel for the appellants contended that the first Appellate Judge failed to see that the appellants denied title of the first respondent and claimed title to the suit property. The first respondent/plaintiff did not seek declaration of title. The first respondent/plaintiff has to prove his case on merits and he cannot rely on the weakness of the appellants' case.

8(i) In Ex.B19 Settlement Officer has held that the suit property is Government poramboke land and both appellants and the first respondent have not denied that suit property is mentioned in Ex.B19. The trial Court has considered this aspect and dismissed the suit. The first appellate Court failed to consider Ex.B19.

8(ii) The first respondent has not proved his possession in C schedule property and therefore he is not entitled to injunction.

8(iii) The reasoning of the first appellate Court that the appellants cannot dispute the title of the first respondent as husband of the first appellant and father of the other appellants had entered into an agreement of sale with the vendor of the first respondent is erroneous.

8(iv) The trial Court has discussed the first respondent's documents and held that suit property is poramboke

land. The first appellate Court without considering the reasoning of the trial court in this regard has extensively discussed title of the appellants which is erroneous.

8(v) The first appellate Court failed to see that only when the first respondent filed the suit based on possession he can claim relief of injunction against the appellants and the second respondent. The first appellate Court failed to see that the first respondent suppressed the fact of filing the earlier suit in O.S.No.5395 of 1995 against one Subramaniam and the first appellant in respect of the present suit property with the same averments. The first respondent/ plaintiff has fraudulently filed the said suit before the City Civil Court, Chennai though property is situated outside the jurisdiction. After the first appellant entered appearance and filed written statement, the first respondent withdrew the suit on 28.6.1996 without obtaining any liberty to file fresh suit. Ex.B13 is the decree in the suit. The present suit is hit by Order 23 Rule 1 (4) (b) of C.P.C.

8(vi) The first respondent failed to correlate byrnash No.251/1part, 251/2part and 251/3 mentioned in Ex.A2 to A5 with S.No.262/2. The first appellate Court erred in accepting Ex.A5 even though there is mistake in entering the name of Mohanarangan as A.B.Mohanaragam whereas the predecessor in title is A.V.Mohanaragam.

8(vii) The first appellate Court failed to see that D.W.3 has deposed that suit property is poramboke land and the same cannot be assessed for tax. The first appellate Court erred in not accepting the evidence of D.W.3 since Ex.A7 to A9 have been issued prior to the order, dated 31.1.1996.

8(viii) The learned counsel for the appellants further contended that the appellants have denied title of the first respondent in the present suit. Once title is denied, the first respondent cannot maintain the suit for possession and injunction without establishing his title by seeking declaration of title. In addition to the denial of title by appellants, the Settlement Officer after inspection and enquiry has held that the suit property is government poramboke land and nobody is entitled to riotwari patta. This Court passed orders in writ petition filed by the appellants directing the Assistant Settlement Officer to consider representation of the appellants, conduct fresh enquiry and pass orders on the representation of the appellants. As per the orders of this Court, the Assistant Settlement Officer after holding enquiry, issued patta in favour of the appellants. The first respondent filed revision before the Settlement Officer, Tanjore and the same was considered on merits and the Settlement Officer set aside the order of the

Assistant Settlement Officer and held that the suit property is government poramboke land. Without seeking declaration of title and impleading government, the first respondent is not entitled to maintain the suit for possession and injunction. The first appellate Judge erred in holding that the first respondent is the owner of the property without even claiming relief of declaration by considering the sale deed Ex.A2 to A6. The first appellant's husband and father of the appellants 2 to 5 Mathiyalagan was in possession and enjoyment of the suit property and he has put up watchman shed. When the said Mathiyalagan replaced the roof by asbestos sheet, Alandur Municipality prosecuted him. By order, dated 14.1.1991, he was acquitted. This clearly shows that Mathiyalagan from whom appellants have inherited the suit property was in peaceful possession and enjoyment of the suit property.

8(ix) In support of his submission, the learned counsel for the appellants placed reliance on the following decisions.

(1) In C. Venkata Swamy v. H.N. Shivanna, (2018) 1 SCC 604),

"13. As far back as in 1969, the learned Judge V.R. Krishna Iyer, J. (as his Lordship then was the Judge of Kerala High Court) while deciding the first appeal under Section 96 of the Code in Kurian Chacko v. Varkey Ouseph [Kurian Chackov. Varkey Ouseph, 1968 SCC OnLine Ker 101 : AIR 1969 Ker 316] reminded the first appellate court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned Judge held as under: (SCC OnLine Ker paras 1-3)

"1. The plaintiff, unsuccessful in two courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him

and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate court.

3.....

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179] at p. 188, para 15 and Madhukar v. Sangram [Madhukar v. Sangram, (2001) 4 SCC 756] at p. 758, para 5.)"

(2) In Moderator v. Rt. Rev. Dr. J.A.D. Jebachandran [(2014) 4 LW 179]

"14. According to me, it would be a clear abuse of process of Court, if the party is permitted to file two separate suits by impleading two different persons of the same organisation to get over the restriction under Order XXIII, Rule 1(4) of the CPC. Further, when the order of suspension was not issued by the defendant and was issued by the General Secretary, CSI, & Hony. Secretary CSI TA, the suit filed against the person/authority, who/which has not issued such an order is also not maintainable and on that ground also, the suit is liable to be rejected. Hence, I am unable to accept the contention of the learned Senior Counsel appearing for the defendant, and having regard to bar under Order XXIII, Rule 1

(4) of the CPC, the present suit filed by the respondent/plaintiff in respect of the same subject matter is not maintainable and is liable to be rejected.''

(3) In Karuppathal v. Arunachalam [(2014) 8 MLJ 434]

'9. The learned Counsel appearing for the Appellant mainly contended that the Suit property is a Government Poramboke land and hence, the Decree of Permanent Injunction cannot be granted unless the Government impleaded as a party to the Suit on the ground of non-joinder of the necessary party. The learned Counsel further pointed out that the First Appellate Court has wrongly relied upon the Report and Plan of the Advocate Commissioner and given the relief of Permanent Injunction and therefore, the above said findings of the First Appellate Court is perverse finding.'

9. I Per contra, the learned Senior counsel for the first respondent contended that the suit property was purchased by one Venugopal Pillai in Court auction in the year 1936 from that time onwards he was in possession and enjoyment of the suit property. Subsequently, the suit property was sold to one Sivaraman Iyer by sale deed, dated 5.6.1963 which is marked as Ex.A3. Sivaraman Iyer sold the suit property by two sale deeds, dated 16.9.1966 to S.V.Subramaniam Iyer and S.V.Sethuram Iyer. The first respondent purchased the suit property from S.V.Subramaniam Iyer by sale deed, dated 17.1.1994 which is marked as Ex.A6. The first respondent has traced his title from the year 1936 and his vendor and subsequently, the first respondent is in possession and enjoyment of the suit property. Inam Act came into force in the year 1963. Only after 25 years, the Assistant Settlement Officer held enquiry in the year 1988 without issuing any notice to the first respondent or his predecessor in title the Assistant Settlement Officer held that the first respondent is not in possession which was marked as Ex.B19. The appellants claimed that Mathiyalagan was in possession of the suit property and put up watchman shed. According to the appellants, Mathiyalagan entered into an agreement of sale with the vendor of the first respondent. In the agreement of sale, it is not stated that Mathiyalagan was put in possession as per the agreement of sale. The first respondent's predecessor in title was in possession of the suit property and from the date of purchase, the first respondent is in possession and enjoyment of A schedule property. B schedule

property is watchman shed in a small portion of A schedule property.

9(i) Even after the Assistant Settlement Officer and the Settlement Officer held that the suit property is a Government poramboke land, the name of the first respondent is not removed from the revenue records. He is still in possession of suit property. Mathiyalagan admitted title of the first respondent's vendor and entered into an agreement of sale and paid advance of Rs.10,000/-. Once title of the first respondent vendor is admitted by Mathiyalagan, the first respondent need not seek declaration of title.

9(ii) The second respondent was appointed as watchman by predecessor in title of the first respondent who was examined as P.W.2. The trial Court erroneously rejected the evidence of P.W.2. Watchman was appointed and was permitted to put up shed to look after the balance extent of property. The appellants admitted that Mathiyalagan was in possession of the suit property from the year 1982 only. Watchman shed was constructed in the year 1988.

9(iii) The earlier suit filed by the first respondent is based on different cause of action and against the different persons. It is not correct to state that the first respondent withdrew the earlier suit and the first respondent filed the present suit. When the earlier suit was pending, the first respondent filed the present suit and withdrew the earlier suit. In view of the same, Order 23 C.P.C. is not applicable.

9(iv) The claim of the first respondent is based on the sale deed from the year 1936. The appellants have not produced any documents of title. The first respondent has better title. The learned first appellate Judge has rightly appreciated the said fact.

9(v) In support of his submission, the learned Senior counsel for the first respondent relied on the following decisions:

(1) In JAYANTHI AND ANOTHER VS. DR.K.SELVARAJ AND OTHERS [2014(4) CTC 618] this Court held as under:

"8.1. It is not the case where the Plaintiff does not have possession. Though it is a Suit for Injunction simpliciter, the issue of title is not directly and substantially in issue, so far as Defendants 1 to 3 are concerned. It is a case where there are necessary pleadings with regard to title. The parties have been permitted to lead evidence on title. The issue regarding title is

simple and straight-forward. Therefore, it is possible to decide the issue regarding title even though the Suit is filed for injunction. As per the norms laid down in the above case, this case would be an exception to the normal rule that question of title will not be decided in a Suit for Injunction. The Plaintiff having clear title and possession, suing for injunction, should not be driven to costlier and more cumbersome remedy of Suit for declaration, merely because the Defendants 1 to 3 make a claim, when they are legally estopped from making any claim.''

(2) In MUDDASANI VENKATA NARSAIAH (DEAD) THROUGH LRS. VS. MUDDASANI SAROJANA [(2016)12 SCC 288], the Hon'ble Supreme Court held as under:

"11. In the aforesaid background of facts, we come to the question whether it was necessary to seek relief or declaration of title. In our opinion, the plaintiff has filed the suit for possession on the strength of title and not only on the basis of prior possession. It was not a summary suit for ejectment filed under Section 6 of the Specific Relief Act, 1963. Thus, plaintiff could succeed in suit for possession on the strength of the title. The issue had been framed on the question of title of the plaintiff as well as on the question of adoption of Defendant 3. On the basis of title claimed in the suit, both the parties have adduced their evidence in support of their respective cases. The main plea of Defendant 3 that she was an adopted daughter of Yashoda has not been found to be established by the trial court, the first appellate court or by the High Court. Thus, in our opinion, there was no serious cloud on the title of the plaintiff so as to force him to seek the relief for declaration of title in the instant case which was in fact based on the strength of the sale deed executed by Buchamma, who was the sole surviving heir of Balaiah as such succeeded to the property and had the right to execute the sale deed in favour of the plaintiff.

(3) In VALLABH DAS VS. DR.MADANLAL AND OTHERS [AIR 1970 SC 987] the Hon'ble Supreme Court held as under:

"5..... In the first suit the cause of action was the division of status between Dr Madan Lal and his adoptive father and the relief claimed was the conversion of joint possession into separate possession. In the present suit the

plaintiff is seeking possession of the suit properties from a trespasser. In the first case his cause of action arose on the day he got separated from his family. In the present suit the cause of action, namely, the series of transactions which formed the basis of his title to the suit properties, arose on the death of his adoptive father and mother. It is true that both in the previous suit as well as in the present suit the factum and validity of adoption of Dr Madan Lal came up for decision. But that adoption was not the cause of action in the first nor is it the cause of action in the present suit. It was merely an antecedent event which conferred certain rights on him. Mere identity of some of the issues in the two suits do not bring about an identity of the subject-matter in the two suits. As observed in *Rukhma Bai v. Mahadeo Narayan*, [ILR 42 Bom 155] the expression "subject-matter" in Order 23 of the Rule 1, Code of Civil Procedure means the series of acts or transactions alleged to exist giving rise to the relief claimed. In other words "subject-matter" means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. We accept as correct the observations of Wallis, C.J., in *Singa Reddi v. Subba Reddi* [ILR 39 Mad 987] that where the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have been brought in respect of the same subject-

(4) In *KANCHUSTHABAM SATYANARAYANA AND OTHERS VS. NAMUDRI ATCHUTARAMAYYA AND OTHERS* [(2005) 11 SCC 109] the Hon'ble Supreme Court held as under:

"11.....The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted inter alia on considerations of equity and justice, and the appellant who is himself guilty of inequitable conduct cannot claim such relief."

(5) In *DEIVANAI VS. J.MASILAMANI REDDI AND OTHERS* [(2015) 8 MLJ 784], this Court held as under:

"9.....It is common knowledge that if a poramboke land belonging to the Government is possessed by an individual the Government is at liberty to issue B-memo and collect penalty from the possessor. Similarly, if necessary, the

Government is always at liberty to evict such trespasser."

(6) In RAM DAAN (DEAD THROUGH LRS. VS. URBAN IMPROVEMENT TRUST [(2014) 8 SCC 902] the Hon'ble Supreme Court held as under:

"10. Though the appellant made assertions in the plaint that he became the owner of the suit property by adverse possession, he never sought a decree for a declaration of his title either by virtue of adverse possession or otherwise. As can be seen from the above extract, the prayer was simply for a permanent injunction.

11. It is settled position of law laid down by the Privy Council in *Perry v. Clissold* [1907 AC 73 (PC)] : (AC p. 79)

"It cannot be disputed that a person in possession of land in the 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. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."

The above statement was quoted with the approval by this Court in *Nair Service Society Ltd. v. K.C. Alexander* [AIR 1968 SC 1165]. Their Lordships at para 22 emphatically stated: (AIR p. 1175)

"22. The cases of the Judicial Committee are not binding on us but we approve of the dictum in *Perry v. Clissold* [1907 AC 73 (PC)] ."

12..... As can be seen from the judgment [1907 AC 73 (PC)] of the Privy Council referred to supra, a person such as the appellant in possession of land has a perfectly good title against the entire world except the rightful owner. However, the rightful owner must assert his title by the process of law within the period prescribed by the statutes of limitation applicable to the case.

14. Assuming for the sake of argument that the respondent has some authority to evict the appellant, the eviction must be by a process known to law i.e. either by filing a suit to evict the appellant or by resorting to some other procedure duly authorised by law.

15.....

16..... "16The uniform view of the courts is that if Section 9 of the Specific Relief Act is utilised the plaintiff need not prove title and the title of the defendant does not avail him."

(7) In M.S.JAGADAMBAL VS. SOUTHERN INDIAN EDUCATION TRUST AND OTHERS [1988 (Supp) SCC 144], the Hon'ble Supreme Court held as under:

"19..... "As a general rule possession of part is in law possession of the whole, if the whole is otherwise vacant".

(8) In Somnath Burman v. Dr.S.P. Raju and another [AIR 1970 SC 846] the Hon'ble Supreme Court held as under:

'9. It was next contended on behalf of the appellant that in a suit for possession brought on the basis of title, the plaintiff cannot succeed unless he proves his title to the suit property as well as its possession within twelve years. According to the appellant, except in a suit under Section 9 of the Specific Relief Act, the plaintiff for succeeding in the suit, has to prove both existing title to the such property and its possession within twelve years. We are unable to accept this contention as correct. In our opinion the possession of the plaintiff prior to 1945 is a good title against all but the true owner. The defendants who are mere trespassers cannot defeat the plaintiff's lawful possession by ousting him from the suit property. Possessory title is a good title as against everybody other than the lawful owner. In Ismail Arriff v. Mahomed Ghouse [ILR 20 IA 99] the Judicial Committee came to the conclusion that a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. Therein it was observed that the possession of the plaintiff was a sufficient evidence of title as owner against the defendant.

10. In Naryana Row v. Dharmachar [ILR XXVI Mad 514] a bench of the Madras High Court consisting of Bhashyam Ayyangar and Moore, JJ., held that possession is, under the Indian, as under the English law, good title against all

but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrong doer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person. The same view was taken by the Bombay High Court in *Krishnara'v Yashvant v. Vasudev Apa'ji Ghotikar* (deceased) by 1.rs [ILR 8 Bom 371]".

(9) In an unreported judgment *VIMLESH KUMARI KULSHRESTHA VS. SAMBHAJIRAO AND ANOTHER* [Appeal (civil) No.2976 of 2004, dated 5.2.2008]

"Admittedly, the second suit was filed before filing the application of withdrawal of the first suit. The first suit was withdrawn as an objection had been taken by the appellant in regard to payment of proper court fee. We, therefore, are of opinion that Order 23 Rule 1 of the Code was not applicable to the facts and circumstances of the present case."

(10) In *Karuppathal v. Arunachalam* [(2014) 8 MLJ 434] this Court has held as under:

17. As rightly pointed out by the learned Counsel for the Respondents in the instant case, the Respondents have filed a Suit for Permanent Injunction only against the Appellant and not seeking any relief against the Government and further, the possession of the Respondents is admitted. In the above said circumstances, the Respondents are entitled to the possession till the Government duly evict the Respondents if any encroachment over the Government property. Therefore, if the Respondents encroached any portion of the Government property, the Government is always having power to remove the encroachment as per the Provisions of the Act and Rules. The Appellant has no power to disturb the above said possession of the Respondent. Therefore, the First

Appellate Court has correctly held that even without impleading the Government as a party, the Respondents are entitled to Permanent Injunction. Therefore, the above said findings of the First Appellate Court are not perverse findings or illegal. Thus, it is clear that there is no questions of law much less substantial questions of law involved in this Second Appeal requiring interference in exercising jurisdiction under Section 100 of Code of Civil Procedure."

10. The learned counsel for the appellants in reply submitted that when title of the first respondent is in dispute and when there is legal obstacle, he has to seek the relief of declaration under Sec.34 of the Specific Relief Act. The first appellate Court has not considered Ex.B15 and B19, relied upon by the appellants. After 1966, all the transactions after coming into force of Inam Abolition Act in respect of the inam properties ceased to be valid. The first appellate Court erred in holding that the first respondent is having better title and failed to see that on the date of filing of suit, the first respondent did not have any title to the suit property. The person who is not having title but in possession of the property can protect himself. The judgment relied upon by the learned Senior counsel for the first respondent is not applicable to the facts of the present case. The first respondent is not having any title to the suit property. All the judgments relied upon by the learned Senior counsel for the first respondent relates to injunction and therefore, not applicable to the facts of the present case. The first respondent suppressed the order of the Settlement Officer in the Revision filed by the first respondent, held that the suit property is a government poramboke land. It is not correct to state that cause of action and parties are different in the earlier suit and the present suit. The first appellant in the earlier suit and the first defendant M.Subramaniam was employed only for the purpose of filing the case in the court at Chennai. He has been impleaded as employee of M.Subramaniam.

11. Heard the rival submissions of both sides and perused the materials available on record and the decisions cited.

12. Substantial Question of law No.1 :

The first respondent earlier filed O.S.No.5395 of 1995 on the file of 17th Assistant Judge, City Civil Court, Chennai. According to the appellants, after the first appellant entered

appearance, filed written statement, the first respondent withdrew the said suit without obtaining permission to file fresh suit on the same cause of action. The present suit filed by the first respondent is not maintainable in view of the earlier suit. According to the appellants, cause of action and parties are one and the same. Copy of the plaint in the earlier suit is marked as Ex.B18 and the judgment and decree of the earlier suit in O.S.No.5395 of 1995 were marked as Ex.B11 and B12. A reading of plaint averments shows that the first respondent has filed the said suit against one Subramaniam and the first appellant. The relief sought for is permanent injunction in the said suit. According to the first respondent, M.Subramaniam and the first appellant came on 21.3.1999 and 7.4.1995 and tried to trespass into the suit property and tried to put up hut on 25.7.1995. They came again along with two other persons and threatened watchman stating that some persons with political influence in the locality, allowed them to put up hut in the suit property. According to the first respondent, cause of action arose for the suit on 17.1.1994, 21.3.1995, 7.4.1995 and 25.7.1995. In the present suit, M.Subramaniam was first defendant in the earlier suit. Appellants 2 to 4 are not parties. In the present suit, the first respondent is claiming possession and permanent injunction. According to the first respondent cause of action arose for the present suit from January, 1995 and 6.4.1996 when the second respondent and the appellants threatened to trespass over the C schedule property. A reading of the plaint averments in both the suits reveals that the parties, cause of action and the relief sought for in both the suits are different. Both the courts below have considered the above facts and held that both the suits are different and Order 23 C.P.C. is not applicable and the present suit is not hit by the provision of Order 23 C.P.C. There is no error in the said judgment warranting interference by this Court.

13. In view of the above facts and reasoning of the courts below, it cannot be said that the first respondent has suppressed the filing of the earlier suit as it is nothing to do with cause of action and the relief sought for in the present suit. Therefore, the substantial question of law 1 is answered in favour of the first respondent.

14. Substantial question of law No.2 :

The first respondent has filed the suit for possession of B schedule property from the appellants and the second respondent and for permanent injunction restraining them from interfering with his peaceful possession and enjoyment of C schedule property. According to the first respondent, he has purchased the property by deed of sale, dated 17.1.1994 from S.V.

Subramaniam Iyer (Ex.A1). The first respondent traced his title from the year 1963 and marked Ex.A3, A4 and A5 sale deeds to prove his title.

15. On the other hand, it is the case of the appellants that the suit property is government playground and one Mathiyalagan, husband of the first appellant and father of the appellants 2 to 5 was in possession of the suit property for more than 50 years and he has put up watchman shed, now described as B schedule property. They denied that the first respondent's predecessor in title S.V.Subramania Iyer employed second respondent as watchman and permitted the second respondent to put up watchman shed and after purchase by the first respondent, the first respondent permitted the second respondent to continue to be his watchman. To prove that Mathiyalagan was in possession of the suit property, the appellants produced Ex.B21, dated 14.11.1991 which is certified copy of the summary trial register in S.T.C.No.2975 of 1990 on the file of the Judicial Magistrate No.II, Poonamallee. From Ex.B21, it is seen that Mathiyalagan was prosecuted by the Commissioner of Alandur Municipality for having put up a construction without obtaining permission from the Municipality. From the extract, it is seen that Mathiyalagan has put up superstructure on 28.12.1988 and the Commissioner, Municipality has given complaint on 3.7.1990. Subsequently, the Commissioner did not appear and Mathiyalagan was discharged from the criminal proceedings on 14.11.1991. The appellants also produced Ex.B20, dated 1.7.1989 issued by the Tahsildar, Saidapet to the effect that Mathiyalagan was in possession and enjoyment of the suit property for the past 7 years. These two documents were accepted by the learned trial Judge and held that Mathiyalagan was in possession of the suit property. The contention of the learned Senior counsel for the first respondent that the first appellant as D.W.1 admitted the title of S.V.Subramaniya Iyer, his predecessor in title and therefore, appellants are not entitled to dispute the title of the first respondent. The appellate Judge has extracted the portion of evidence of the first appellant in the judgment. In her evidence, the first appellant has stated that Mathiyalagan was in possession of the suit property for 40 to 50 years. Subramania Iyer claiming to be the owner of the suit property wanted Mathiyalagan to purchase the suit property for Rs.1,10,000/-. The first appellant has stated that subsequently they found that title of Subramaniya Iyer is defective as indicated in the record which itself shows that there is difference in the name of the owner of the property viz., A.V.Mohanarangam Pillay and A.B. Mohanarangam. In view of this, they did not purchase the property from S.V.Subramania Iyer. This part of evidence of the first appellant shows that Mathiyalagan did not purchase the property from S.V.Subramania

Iyer as his title is defective and Mathiyalagan was in possession for 40 to 50 years earlier as deposed by D.W.1 in his evidence.

16. The learned counsel for the appellants contended that the suit property is inam property and after Abolition of inam and coming into force of the Act 30 of 1963, any transaction subsequent to the Act is invalid. The appellants have produced Ex.B13, dated 20.5.1996, B15 dated 31.10.1996, Ex.B19, dated 29.9.1988 relating to the proceedings of the Assistant Settlement Officer and the Settlement Officer. As per Ex.B19, Assistant Settlement Officer, Tiruvannamalai has held that nobody has proved their possession in respect of the properties mentioned therein including the suit property. The Assistant Settlement Officer has held that the persons in possession of the properties have occupied the land only after 15.2.1965. In view of the same, the Assistant Settlement Officer classified the suit land as Government poramboke land. The appellants gave representation to the Assistant Settlement Officer for issuance of patta to them. The Assistant Settlement Officer did not pass any order. The appellants filed W.P.No.11607 of 1995 and this Court directed the Assistant Settlement Officer to conduct fresh enquiry and pass orders. The Assistant Settlement Officer by order, dated 11.3.1996 held that the appellants are in possession and that they are entitled to issuance of patta. The first respondent challenged the said order before the Settlement Officer, Tanjore by filing revision in R.P.No.4 of 1996. After notice to the parties, the Settlement Officer considered all the materials on record and set aside the order of the Assistant Settlement Officer, dated 11.3.1996 cancelling the patta issued in favour of the appellants and held that the suit property is Government poramboke land. The first respondent has not challenged the said order to establish his title to the suit property and to set aside the order of the Settlement Officer holding that the suit property is Government poramboke land. The consistent plea of the appellants is that the first respondent has no title to the suit property. The suit property is Government poramboke playground and Mathiyalagan, husband of the first appellant and father of the appellants 2 to 5 was in possession of the suit property for more than 50 years. In view of the denial of title of the first respondent by the appellants and the orders of the Settlement Officer that the suit property is Government poramboke land/playground, the first respondent cannot maintain a suit for possession and injunction without seeking a relief of declaration of title.

17. It is pertinent to note that the first respondent in earlier suit has stated that watchman employed by him is Veeraiyah whereas in the present suit, the first respondent has

come out with different version that the second respondent is a watchman originally under his vendor S.V.Subramaniya Iyer and he continues to be watchman under the first respondent. This contradiction also shows that the first respondent was not in possession of the B schedule property through the second respondent alleged to be his watchman.

18. It is well settled that the Settlement Officer is not acting as civil Judge. An aggrieved person can file a suit before the competent civil court challenging the order of the Settlement Officer in respect of the title of the property. In the present case, not only the appellants are denying title of the first respondent, but also the Settlement Officer has held that the suit property is Government poramboke land. In such situation, the first respondent ought to have filed a suit for declaration of title, possession and injunction. Considering these facts, the contention of the learned counsel for the appellants that the suit for possession and permanent injunction without the relief of declaration is not maintainable and the first respondent ought to have amended the plaint to include the relief of declaration of title has considerable force. The first appellate Court erred in not considering the fact that the first respondent did not seek to set aside the order in Ex.B19 and failure to do so, the suit filed by the first respondent is not maintainable. In view of the above facts, the second substantial question of law is answered against the first respondent.

19. In the result, Second appeal is allowed. The judgment of the first Appellate Court in A.S.No.14 of 2009 on the file of the learned Subordinate Judge, Tambaram is set aside. The judgment passed by the learned District Munsif, Alandur in O.S.No.2480 of 1997 is restored. No costs. Connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

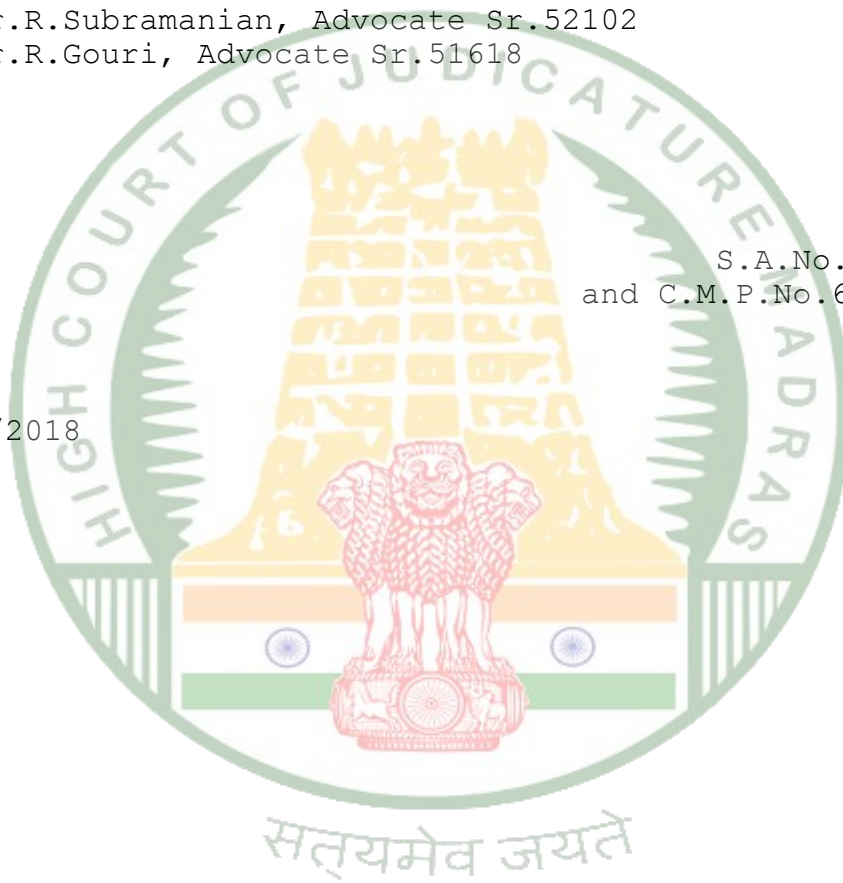
vaan
To

- 1 The Subordinate Judge,
Tambaram.
2. The District Munsif,
Alandur.

+1cc to Mr.R.Subramanian, Advocate Sr.52102
+1cc to Dr.R.Gouri, Advocate Sr.51618

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srg 03/09/2018

S.A.No.284 of 2017
and C.M.P.No.6799 of 2017



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