

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.12.2018	Pronounced on: 20.12.2018
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Coram

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.1234 of 2004

Selva Perumal,
S/o.Sukkiran @ Muthu Gounder,
U.Maramangalam,
Omalur Taluk,
Salem District. Appellant

/versus/

1. The Collector,
Salem District.
2. The Tahsildar,
Adi Dravidar Welfare,
Omalur.
3. The Village Administrative Officer,
U.Maramangalam,
Mettur Taluk,
Salem District. Respondents

Prayer: This Second Appeal has been filed under Section 100 of the Civil Procedure Code, 1908, praying against the Judgment and decree dated 27.09.2001 in A.S.No.136/1999 on the file of Subordinate Judge, Mettur, Salem District, confirming the judgment and decree dated 23.11.1995 in O.S.No.477 of 1986 on the file of District Munsif, Mettur.

For Appellant : Mr.V.Srinivasan

For R1 & R1 : Mr.N.Manikandan
Government Advocate

For R3 : No Appearance

J U D G M E N T

The appellant herein is the son of the plaintiff/Sukkiran @ Muthu Gounder in O.S.No.477 of 1986 on the file of District Munsif, Mettur. Pending suit, Muthu Gounder died. So his son was impleaded as the Legal representatives of the Sukkiran @ Muthu Gounder. The suit is filed for declaration, claiming that the plaintiff has perfected the title upon the suit property by adverse possession and for permanent

injunction restraining the respondents from interfering with the peacefully possession. After trial the suit was dismissed and same was confirmed by the First Appellate Court, on the ground that the suit property is the Government poramboke land and there cannot be a declaration or injunction against the true owner.

2. The case of the plaintiff is that the suit property bearing Survey No.35/1 in U.Maramangalam village, is an Agricultural land for an extent of 2.98 acres. By continuous possession and enjoyment, they have perfected the title by adverse possession against the defendants, who are the District Collector, The Tahsildar (Adi Davidar Welfare), The Village Administrative Office, U.Maramangalam village.

3. Relying upon the 2C Patta issued by the 3rd defendant and subsequent partition between the family members, it was contended by the plaintiff that originally the suit property was enjoyed by one Vaiyapuri Mudaliyar for more than 60 years without any hindrance. The said Vaiyapuri Mudaliyar sold the property to one Morali Gounder in the year 1955. The said Morali Gounder is the elder brother of the deceased plaintiff/Sukkiran @ Muthu Gounder. The sale deed was registered on 10.04.1955, since then, the plaintiff family are paying the tax and enjoying the property. On 06.09.1974, there was partition between the family members and the suit property morefully described in the "B" Schedule of the partition deed was allotted to the deceased first plaintiff Sukkiran @ Muthu Gounder. From that day onwards, he is in exclusive possession and enjoyment of the property. On 02.11.1983, the partition was effected between two sons of Muthu Gounder and the suit property was allotted to one of the son Selva Perumal, who is the present appellant. In the suit property, there was about 270 palm trees. He has developed the land by investing more than Rs.20,000/- and planted 85 coconut saplings besides, he is also cultivating maize plant. Presently, the palm trees have fallen. Only 63 coconut trees are in the suit property. While so, due to previous enmity, the defendants 4 and 5, who belong to different communities have approached the Government to get free housing site and forcing the Government to take over the suit land, which is in the possession of the plaintiff, for continuous period of more than 50 years.

4. The 2nd defendant/The Tashildar (Adi Davidar Welfare), Omalur has issued a notice expressing the intention of the Government to take over the land and had instructed the plaintiff not to make any alteration in the suit land. Therefore, to protect the possessory right, the plaintiff has filed the suit for permanent injunction.

5. The First Defendant/District Collector, Salem has filed written statement which has been adopted by the other defendants. According to him, the suit land is a Government

poramboke and continues to be a Government poramboke land. The claim of the plaintiff that originally the property was owned by Vaiyapuri Mudaliyar and the same was purchased by Morali Gounder, the elder brother of the first plaintiff Sukkiran @ Muthu Gounder are not correct or true. Vaiyapuri Mudaliyar or no other persons have any right in the Government land to alienate. Therefore, the sale of Vaiyapuri Mudaliyar in favour of Morali Gounder and subsequent partitions between the family members of the Morali Gounder are illegal.

6. As far as, the suit land is concerned, they cannot be an adverse possession. The plaintiff has illegally removed the palm trees standing in the suit land. The Government has taken a policy to allot the suit land for the landless Valluvar Pandaram Community people, for which the notice was also issued.

Hence, the plaintiff cannot seek declaration regarding the ownership of the suit property or an injunction restraining the true owner.

7. In the written statement filed by the 4th respondent, it was contended that Muthu Gounder who initiated the suit for declaration and injunction died pending suit, leaving behind two sons and a wife. When the wife and sons are alive, only one son has been impleaded himself as plaintiff. Non-impleading of other son Selva raj and wife Ganthammal renders the suit bad for non-joinder of necessary parties.

8. The trial Court, after considering the pleadings, evidences, oral and document has framed the following issues:

(i) Whether the plaintiff has perfected the title by adverse possession.

(ii) Whether the plaintiff is entitled for declarative relief and permanent injunction as prayed for.

(iii). Whether the plaintiff is entitled for any other reliefs.

Additional issues:

(i). Whether the plaintiff is bad for non-joinder of necessary parties.

9. Before the trial Court, the plaintiff has examined 4 witnesses and marked 34 Exhibits. On behalf of the defendants 2 witnesses and 18 Exhibits were marked.

10. Regarding the 1st issue, the trial Court held that the suit properties are not the property of the plaintiffs, It belongs to Government. Though, the plaintiffs are in enjoyment

of the property, they have been imposed penal tax, pursuant to the issuance of B-memo, since 1963. The plaintiff admitting encroachment of the Government land and enjoyment of the usufruct paying the panel tax under B-memo. After admitting the ownership of the Government and paying B-memo charge they cannot claim adverse possession against the state.

11. Regarding the 2nd issue, the trial Court has held that there cannot be declaration against the Government in respect of Government poramboke land. Injunction against the true owner/Government not heard. Therefore, restricting the relief sought as against the defendants 4 and 5 in respect of the injunction prayer, all the relief sought by the plaintiff against the defendants 1 to 3 has been rejected.

12. Regarding non-joinder of necessary parties, the Trial Court has held that when the plaintiff had no right or title over the suit property, the suit need not been rejected on the ground that for not impleaded the other legal representatives of the plaintiff who initiated the suit.

13. Thus, the Trial Court has partly allowed the suit, by granting injunction as against the 4th and 5th defendants who are the private parties and dismissed the suit in respect of declaration and permanent relief sought against the defendants 1 to 3.

14. On appeal, the First Appellate Court in A.S.No.136 of 1999 has confirmed the judgment of the Trial Court. Elaborating the reasons for issuance of 2C patta and holding that the issuance of 2C patta in favour of the plaintiff itself an indication that they were permitted to enjoy only the usufruct of the tree standing in the land and nothing further.

15. Analysing the Ex.P.2 and Ex.P.3, the Appellate Court has pointed out that in Survey No.35/1, 2C patta issued in favour of the plaintiff predecessor to enjoy the usufruct of the palm trees. Suppressing, the issuance of 2C patta, the plaintiff had filed the suit, as if, they are the absolute owner of the property and sought for declaration. Further, the Appellate Court has also pointed out that the plaintiff claims right and title over the suit property through the sale deed executed in favour of Morali Gounder in the year 1955. The said sale deed is marked as Ex.A.1. In the sale deed, the property is clearly described as palm grove poramboke land. The said Vaiyapuri Mudaliyar has alienated his right of 2C patta under this deed in favour of Morali Gounder.

16. Recital of Ex.A.1 clearly mentions that the right of 2C patta regarding palm trees and other trees is transferred in favour of Morali Gounder. Therefore, based on the said document which has transferred 2C patta, the plaintiff cannot

seek a relief of declaration or injunction as against the Government.

17. Aggrieved by the concurrent finding of both the Courts below, the present Second Appeal is filed. This Court has framed the following substantial questions of law.

(i). Whether the Courts below were right in holding that the plaintiff has not perfected title to the suit property by adverse possession?

(ii). Whether the Court below was right in dismissing the suit in its entirety that too having noticed that the plaintiff is in possession of the suit property, when it could have moulded the relief prayed by granting an injunction restraining the defendants 1 to 3 from interfering with the possession of the plaintiff except by due process of law?

18. The First substantial question of law framed by this Court, at the time of admission is unsustainable, in view of the fact unfolded through the witnesses and documents. As rightly pointed out by the Courts below, the plaintiffs trace their right through Ex.A.1 Morali Gounder himself is not the person to whom the 2C patta was issued. He under Ex.A.1 had purchased the right of usufruct given under 2C patta. Ex.A.1 had transferred only the usufructuary right of palm trees and not the title over the suit land.

19. As far as, the Government is concerned, the petitioners are only rank trespassers. Furthermore, the Ex.A.1 has transferred only the enjoyment of usufructuary right given under 2C patta in favour of Morali Gounder and not the title of the land. As rightly pointed out by the Trial Court and the Appellate Court 2C patta is meant for collecting penal charges from the person who is enjoying the usufruct of the trees, lying in the Government pormaboke land. When the parties have admitted the title of the state and paid the kist under 2C patta, the claim of adverse possession will not arise.

20. The Second Substantial question of law framed whether the Courts below ought not to have moulded the relief and granted injunction restraining the defendants 1 to 3 from interfering with the possession of the plaintiff, except by due process of law, also not sustainable in eye of law. When the defendants 1 to 3 has already pointed out that they are contemplating for allotting house sites for downtrodden and identified the suit land, the request to mould the relief does

not arise. It is admitted by the plaintiff themselves that they were served with notice by the defendants 1 to 3 on 20.06.1986 and 04.07.1986. It is to be presumed that the defendants 1 to 3 has not made any attempt to forcibly evict the plaintiff but they have commenced the process of taking possession by issuing notice. The said notice is marked as Ex.P.34. Therefore, in a suit for declaration and injunction, when the plaintiff has made a specific plea that he is the owner of the property and has perfected the title by adverse possession, which found to be false, the plaintiff deserves no relief. Therefore moulding the relief will not arise when the defendants have already commenced the process in accordance with law.

21. In the light of the above facts, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Learned Subordinate Judge, Mettur, Salem District.
- 2.The Learned District Munsif, Mettur, Salem District.
- 3.The Collector,
Salem District.
4. The Tahsildar,
Adi Dravidar Welfare,
Omalur.
5. The Village Administrative Officer,
U.Maramangalam,
Mettur Taluk,
Salem District.

Copy to
The section officer,
VR Section,High court,Madras

+1cc to Mr. S.Kalayarasan, Advocate SR.No. 88813
+1 CC TO GOVERNMENT PLEADER SR.NO. 89093

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A.SK(14/02/2019)