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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
23-11-2018	29-11-2018

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR
S.A.No.15 of 2012

1. Ezumalai
2. Kuppan
3. Govindaraj
4. Lingesan
5. Kasinathan
6. Ramalingam
7. Jayaraman

... Appellants/Appellants/Defendants

Versus

Venkatesa Gounder

...Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. Against the Judgment and Decree dated 27.07.2011 made in A.S.No.22 of 2010 in the file of the Principal Subordinate Judge, Tindivanam, confirming the Judgment and Decree dated 16.04.2010 made in O.S.No.407 of 2006 on the file of Additional District Munsif, Tindivanam.

For Appellants : Mr.K.V. Ananthakrushnan
Mr.V.Chandrasekar

For Respondent : Mr.A.K. Kumarasamy
Senior Counsel for
M/s.S. Kaithamalai Kumaran

JUDGMENT

Aggrieved over the concurrent findings of the learned Additional District Munsif, Tindivanam and the learned Principal Subordinate Judge, the present Second Appeal has been filed.

2. The parties are referred as per the ranking before the trial Court. The suit property is Government Poramboke land. One Mr.Kannan encroached upon the same and paid penalty and enjoyed the property more than 50 years. Thereafter, the possessory right was transferred to the Plaintiff and one another Mr.Kannan for a sum of Rs.2,000/- vide receipt dated 19.02.1986. The Plaintiff is in possession of the suit property and planted cashew trees to the extent of one acre and another 1



½ acres cultivating native crops. The Plaintiff has applied for grant of patta. The Defendants tried to encroach upon the suit property. Hence, the suit filed by the Plaintiff for declaration of possessory right and also for permanent injunction restraining the Defendants.

3. It is the contention of the Defendants that the suit property is classified as Vettuvazhi Puramboke land and general public used to collect soil from the above area for festivals. In their village a temple known as "Muthumariamman Temple" was constructed. In order to acquire income for the maintenance of the temple all the villagers cultivated cashew trees and eucalyptus trees. Therefore, the Plaintiff has no right to claim possession over the suit property. The identification of the property was not given in the plaint. Similarly, the receipt dated 19.2.1986 relied upon by the plaintiff is not admissible in the evidence. Hence, he prayed for dismissal of the suit.

4. Initially three issues were framed by the trial Court which are as follows:

- (i) Whether the Plaintiff is entitled for Declaration?
- (ii) Whether the Plaintiff is entitled for Permanent Injunction?
- (iii) What other relief the parties are entitled to?

4.(a) Subsequently two additional issues were framed by the trial court. They are,

- (iv) Whether the receipt dated 19.12.1986 filed by the plaintiff is

admissible as plaintiff side evidence?

- (v) Whether the suit has been filed as against the relevant

parties?

5. On the side of the Plaintiff, P.Ws.1 to P.Ws.3 were examined and Exs.A.1 to Exs.A.7 were marked. On the side of the Defendants, two witnesses were examined and three exhibits were marked. Trial Court decreed the suit in favour of the Plaintiff. The First Appellate Court also confirmed the Decree and Judgment passed by the trial Court, as against which, present Second Appeal has been filed. While admitting the second appeal, the following substantial questions of law have been framed:

- (i) Whether the Court is correct in marking and considering Ex.A.1 by treating it as a mere receipt for payment, an unstamped and unregistered document conveying right, claim for



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possession in favour of the respondent, with full right of alienation?

(ii) Is it not the burden of proof lies on the plaintiff to prove his possession of vettukuzhi a proamboke Government land beyond doubt with documents of 'A' Register?

(iii) Whether kist payments under Ex.A2 to A7 made by Plaintiff is proof for plaintiff's possession, when the kist receipt Ex.A7 differs from other exhibits?

(iv) Whether a suit for declaration and possession in respect of natham property is maintainable without impleading the local body a necessary as a party to decide the issue?

(v) Does not the non consideration of the Commissioner application and reception of additional documents vitiates the judgment?

6. The learned counsel appearing for the Appellant/Defendants Mr.K.V. Ananthakrishnan mainly contended that Ex.A.1 is not admissible. Only based on the Ex.A.1 Receipt, possessory right was claimed by the Plaintiff. Ex.A.1 neither registered nor stamped. Therefore, it is not admissible in evidence and hit by Section 17 Indian Registration Act. Similarly, except kist receipt and penalty collected from the predecessor of the Plaintiff, no other documents were filed by the Plaintiff to prove his possession. It is the further contention of the learned counsel for the Appellant/Defendant that the Government was not made as party to the suit and necessary parties. The First Appellate Court did not consider the application filed for additional evidence to file 'A' Register to show the nature of the property. Hence submitted that without any document both the Courts erred in decreeing the suit. The Suit for Declaration for Government land is not maintainable. Further, it is the contention of the learned Counsel that the identification of the properties has also not been established by the Plaintiff. No boundaries have been shown in the suit schedule. Hence, it is the burden of the Plaintiff to establish the exclusive possession over the specific properties. Hence submitted that the Decree and Judgment passed by the court below have to be set aside.

7. Whereas it is the contention of the learned Senior Counsel Mr.A.K.Kumarasamy appearing for the Plaintiff that there is no dispute with regard to the identification of the properties. The suit property is not at all disputed by the



Appellant/defendant. The suit has been laid only based on the possession of the plaintiff to protect his possession against third parties. Therefore, the Government was not a necessary party to the suit. The Plaintiff being the encroacher and he is in settled possession of the property, he is entitled to protect his possession as against third parties. Ex.A.1 is a mere receipt. It cannot be considered as document creating any right. Both the courts have correctly held that the receipt is admissible. It is the further contention of the learned Senior Counsel that the evidence of the parties particularly the admission of D.W.1 and D.W.2 coupled with Ex.A.1 and Ex.A.2 clinchingly established the possession of the Plaintiff in the suit properties. When the plaintiff is able to establish his possession by the available materials, the Defendants have no right to object the possession of the Plaintiff. Hence, submitted that the concurrent findings of the courts below need not be interfered.

8. The suit has been originally laid for declaration to declare the possessory right and also for permanent injunction against the defendants from interfering the possession of the plaintiff. It is the case of the plaintiff that the suit property about 2 ½ acres originally encroached upon by one Mr.Kannan and paid penalty to the Government. Thereafter by Ex.A.1 receipt, he gave the possessory right to the plaintiff and P.W.2 one Mr. Kannan. Thereafter Mr.Kannan also abandoned his right and the plaintiff continued the possession of the property and cultivated cashew trees to the extent of one acre and cultivated native crops in another 1½ acres. Though the boundaries have not been properly provided in the plaint the extent of 2½ acres in the suit survey land said to be in possession of the Plaintiff is not in dispute. The defendant has not disputed the extent of the suit property. The Plaintiff has claimed declaration relief to declare the possessory right in the suit property based on Ex.A.1.

9. Ex.A.1 receipt when carefully seen, the original encroacher one Mr.Kannan has received Rs.2,000/- from the Plaintiff and another one Mr.Kannan for leaving his possessory right to be enjoyed by the Plaintiff and the said Mr.Kannan. The entire reading of the receipt Ex.A.1 clearly indicates that it is only a receipt for giving up his possession in the suit property and executed a receipt for a sum of Rs.2,000/-. It is to be noted that Section 18 of the Indian Registration Act deals with the documents of which registration is optional. Section 18(b) reads as follows:

18(b) instruments acknowledging the receipt
or payment of any consideration on account of
the creation, declaration, assignment,



that the plaintiff suit cannot be non-suited merely on the ground that the Government authorities are not made as parties. It is also well settled that the party who seeks for protection has to establish its possession first and seek equitable relief and also any other relief.

12. As stated above the Plaintiff examined P.W.1 to P.W.3 in his side and also exhibited the receipts issued by the Government authorities in respect of suit properties. Merely because there is some difference in one of the kist receipts i.e., Ex.A.7 with other kist receipts, that itself cannot be a ground to dispute the possession of the Plaintiff. The possession need not always be established only by way of documentary evidence but also by way of oral evidence. Apart from the evidence of P.W.1 and P.W.2 the contesting defendants evidence when carefully seen, D.W.1 in his cross examination categorically admitted that, apart from the suit property other Government lands is also situate in the village, which were in occupation of various third parties. He has also admitted that the villagers planted trees and cultivated crops in the suit property in order to augment income for the maintenance of the temple. Such evidence is highly improbable for the simple reason that his evidence indicates that the temple constructed only in the year 2003 and Kumbabhishegam was conducted in the year 2006. That being the position, planting the trees which has grown up now by the villagers for the temple is highly improbable. He has also admitted that for many years people are collecting soil and specifically admitted that the suit property is in the possession of the Plaintiff. In page 6 of his cross examination he has admitted that the entire suit field of 2 ½ acres is in the possession of the Plaintiff.

13. D.W.2 in his cross examination has also admitted that, apart from the suit property in other areas the villagers have encroached and the Plaintiff has planted Savukku trees 2 to 1 ½ acres besides D.W.2 also encroached some area. He has also admitted that even 10 years back he was told by the villagers that the Plaintiff is in the possession of the suit property. The entire evidence of D.W.1 and D.W.2 clearly indicate that only after construction of the temple there were some demand to retrieve the suit property for the temple. The entire evidence of D.W.1 and D.W.2 analysed along with the evidence of P.W.1 to P.W.3 it can be safely concluded that the plaintiff alone is in possession of the property. There was a dispute between the Plaintiff on one side and the Defendants on the other side to retrieve the property for the temple. Therefore, when the Plaintiff was in the exclusive possession of the property, the Defendants cannot disturb such possession. If at all they need such property for the benefit of temple, they should approach the concerned Government authorities for assigning of some land



for the temple and not by way of threat or dispossessing the plaintiff.

14. It is the further contention of the learned counsel for the Appellant that the trial Court has not considered the application filed by the Appellant for reception of additional documents. On a careful perusal of the application filed before the First Appellate Court, it is seen that the Appellant has filed the Application under Rule 76 of the Civil Rules of Practice seeking to file those documents as additional documents. On perusal of 'A' Register would show that the property is the Puramboke land. Of course the Appellate Court has not decided the above application. The Appellate Court ought to have given a finding in the above application, but has failed to do it. Whether failure on the part of First Appellate Court in giving finding in the application for additional documents filed only to file 'A' Register vitiates the entire finding has to be seen.

15. It is to be noted that the appellants have sought to file only 'A' Register to prove the character of property. Admittedly, there is no dispute with regard to the character of the property. The property is Government Poramboke land and classified as Vettukuzhi. There is no dispute at all. When there is no dispute with regard to the character of the property, mere filing of document to show that the property is the Poramboke land in no way affected the suit. Admittedly, the issue in the suit is whether the Plaintiff is in possession or not. As discussed above, the Plaintiff has established his possession not only by document but also oral evidence. The admission of D.W.1 and D.W.2 also clearly established his possession. Therefore, this Court does not find any error in the Judgment passed by the Appellate Court. Accordingly, the Substantial Questions of law are answered.

16. It is not in dispute that the property is a Government land and the Plaintiff is in possession of the property. Merely because the defendants are restrained by way of order of injunction, the plaintiff cannot get better title to the property. The suit property title always remain with the Government. It is for the Government authorities to safeguard the Government properties and evict all the encroachers. Despite there were rival claims over the property, the authorities have remained mere spectators all these days. This clearly indicates that that they are least bothered about the preservation and protection of the Government properties. The Courts have repeatedly held that the encroachers of the Government properties have to be removed and the properties have to be restored to the Government and should be preserved. But in this case, the authorities have remained mere spectators. The



authorities concerned are directed to take action against all the encroachers in the above property by taking proceedings as per law.

17. With the above direction, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ggs.
To

1.The Principal Subordinate Judge,
Tindivanam.

2.The Additional District Munsif,
Tindivanam.

Copy to
The Section Officer,
VR Section, High Court,
Madras. (2Copies)

+1cc to Mr.A.K.Kumarasamy, Advocate, S.R.No.81788

+1cc to Mr.K.V.Ananthakrushnan, Advocate, S.R.No.81781

S.A.No.15 of 2012

SSI (CO)
GSP (25/02/2019)