

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2018

PRONOUNCED ON : 21.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.131 of 2003

The Commissioner,
Dharapuram Municipality,
Dharapuram.

... Appellant/Appellant/Defendant

Vs.

1. K.Marimuthu (Deceased)
2. Janaki
3. Vignesh Prabhu
4. Pavithram (Minor)
(Rep. by his mother & natural
guardian Janaki)

(R2 to R4 brought on record as
Lrs of the deceased sole respondent
vide order dated 12.12.17 made in
C.M.P. No.141 to 143/10)in SA.131/2003

... Respondents/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree dated 22.03.2002
passed by Principal District Judge, Erode in A.S.No.179 of 2001
which confirmed the judgment and decree dated 18.8.2000 passed
by Sub Court, Dharapuram in O.S. No.30 of 1998.

For Appellant : Mr. N.Subbarayalu

For Respondents : Mr.S.Saravanan

JUDGMENT

Challenge in this second appeal is made to the judgment
and decree dated 22.03.2002, passed in A.S.No.179 of 2001, on
the file of the Principal District Court, Erode, confirming the
judgment and decree dated 18.8.2000, passed in O.S. No.30 of
1998, on the file of the Subordinate Court, Dharapuram.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that his family has been in possession and enjoyment of an extent of 2 acres and 40 cents in Town survey numbers 697/1, 697/2, 697/3, 697/4 and 697/2B as their ancestral properties and the suit property situated adjacent to the same measuring ten cents in Town survey number 703/A42 classified as Natham poramboke has also been in continuous possession and enjoyment of the plaintiff's family for more than 30 years and accordingly, the plaintiff's family had been in open, continuous and uninterrupted possession and enjoyment of the suit property for several years adversely, by constructing residential titled house in five cents and also put up a compound wall around the suit property and excepting the plaintiff's agricultural land, there is no other access to the suit property and also obtained electricity connection etc., for the house put up in the suit property and in the family partition, after the demise of the plaintiff's father, there was an oral partition between the plaintiff and his brother and the plaintiff filed suit in O.S.No.24/97, before the Subcourt Dharapuram, for partition and separate possession, the suit ended in a compromise and in the compromise decree, the plaintiff was allotted the suit property and other properties and the Government has also issued patta in favour of the plaintiff and the plaintiff has perfected his right in the suit property by way of adverse possession. While so, the defendant issued a notice dated 09.10.97, directing the plaintiff to remove the encroachment said to have been made in respect of the suit property threatening that on failing which, suitable action will be initiated against the plaintiff and left with no other alternative, the plaintiff has preferred W.P.No.15760/97 against the first defendant to quash the proceedings dated 09.10.97 and the High Court was pleased to stay the operation of the order passed by first defendant with a direction to the plaintiff to file a civil suit before the competent Court and accordingly, the present suit had been laid by the plaintiff for appropriate reliefs and inasmuch as the plaintiff has perfected his title to the suit property by way of adverse possession also as above stated and the suit property being a natham poramboke property, the defendant having no right or interest over the same in any manner and the Government had also issued patta with reference to the suit property in favour of the plaintiff, it is stated that the suit has been laid for seeking the necessary reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on

facts. The suit is vested with the defendant's Municipality and hence, the plaintiff cannot lay any claim of title, right or interest in any manner and it is false to state that the plaintiff had been in possession and enjoyment of the suit property for several years, openly, continuously, uninterruptedly and adversely and thereby, prescribed title to the suit property by way of adverse possession, by putting up a house construction and obtaining service connection etc., There is a separate access to the suit property. The plaintiff has no entitlement or legal right to encroach into the suit property and accordingly, proceedings had been initiated against the plaintiff by the defendant on 09.10.97, directing the plaintiff to remove the encroachment and in order to escape from the clutches of the same, the plaintiff has preferred the writ petition before the High Court and accordingly, the plaintiff had been directed to move the civil court for necessary reliefs and no final orders have been passed in favour of the plaintiff and inasmuch as the suit property is vested with the defendant for the use of the general public and the plaintiff had laid the suit suppressing the true facts, according to the defendant, the plaintiff has no cause of action and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A3 were marked. On the side of the defendant, DW1 was examined, Exs.B1 to B3 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, decreed the suit as prayed for in favour of the plaintiff. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the lower appellate Court was right in confirming the judgment and decree of the lower Court when the plaintiff did not implead the Government as defendant, as the plaintiff claims title to the "natham poramboke" land by adverse possession?

2. Whether the lower appellate Court was right in confirming the judgment and decree of the lower Court, when the lower Court observed in the judgment that it need

not answer the issue no.3 with regard to adverse possession and without going into the issue, finds in favour of the plaintiff, for the reason that the Government was not a party and that the defendant-Municipality failed to prove its title? And

3. Whether the judgment and decree of the Courts below are valid in law, when there was no finding with regard to adverse possession, when the plaintiff is claiming relief for the same?

9. On a perusal of the pleadings set out in the matter, particularly, the plaint pleadings, it is found that the plaintiff claims title to the suit property on two counts. According to the plaintiff, the suit property has been classified as natham poramboke, thereby, admitted the title of the Government in respect of the suit property and further claimed that he had been granted patta in respect of the suit property by the Government. Further, according to the plaintiff, on account of open, continuous and uninterrupted possession and enjoyment of the suit property by the plaintiff's family for several years adversely to one and all, including the defendant, it is pleaded that the plaintiff has prescribed title to the suit property by way of adverse possession. Only on the above said two pleas, the plaintiff has sought for the reliefs of declaration and permanent injunction.

10. Claiming that the suit property is vested with the defendant and complaining that the plaintiff had encroached into the suit property unlawfully, which is meant for the use of the general public, it is found that the proceedings had been initiated by the defendant dated 09.10.97, against the plaintiff. At that juncture, it is noted that the plaintiff has preferred W.P.No. 15760/97 against the defendant for quashing the proceedings initiated by it, as above stated. The copy of the order passed in W.P.No.15760/97 in the High Court has been marked as Ex.A1. On a perusal of Ex.A1, all that had been determined in the said writ petition is that, without going into the merits of the rival contentions of the either parties, the High Court, noting that the rival contentions putforth by the respective parties are to be determined by the competent civil Court, directed the plaintiff to approach the Civil Court of competent jurisdiction to work out its remedies within a period of four months from the date of the disposal of the writ petition and till such time of four months, the High Court had prohibited the defendant from interfering with the plaintiff's possession or from demolishing the structure put up in the suit property and accordingly, disposed of the writ petition.

11. According to the plaintiff, pursuant to the above said directions of the High Court, he has laid the present suit for necessary reliefs against the defendant. On two counts the plaintiff seeks the reliefs. Though the plaintiff would claim that the suit is classified as natham poramboke and belonged to the Government and that the Government had granted patta in his favour, the alleged patta said to have been issued in favour of the plaintiff by the Government in respect of the suit property has not been produced. The said patta has not seen the light of the day. However, it is found that oral evidence had been adduced by the parties concerned, as if, the plaintiff had been granted patta, which is stated to be marked as Ex.A2. However, on a perusal of Ex.A2, it is seen that the same is not the patta document and it is found that it is only a notice issued under Section 9(2) of the Tamilnadu Surveys and Boundaries Act, 1923 and in such view of the matter, the attempt made by the plaintiff to portray as if the document marked as Ex.A2 is the patta granted in his favour by the Government in respect of the suit property, as such, cannot be countenanced in any manner. Resultantly, Ex.A2 not being the patta, it is seen that as on date of institution of the suit, the plaintiff had not been granted patta by the Government in respect of the suit property. Therefore, the evidence adduced in the matter as if the plaintiff had been granted patta cannot at all be taken into consideration in any manner and to be ignored totally. Further, it is the claim of the plaintiff that the partition suit had been levied between him and his brother in respect of their family properties and the suit property and further, according to the plaintiff, the said suit ended in a compromise and the compromise decree has been marked as Ex.A3. No doubt, in Ex.A3, while describing the schedules allotted to the plaintiff, there is a reference about the suit property in the boundary recitals, as if, the same is in the possession and enjoyment of the plaintiff's family. However, as rightly put forth by the defendant's counsel, when neither the defendant nor the Government is a party to the above suit proceedings in O.S.No.24/97, the compromise entered into between the parties thereof would not in any manner bind the defendant or the Government. It is thus found that no reliance can be placed by the plaintiff for seeking a valid title to the suit property or valid possession and enjoyment of the suit property, based on the compromise decree marked as Ex.A3.

12. Other than Exs.A1 to A3, no other material has been placed by the plaintiff to show that he has a valid claim of title to the suit property. When according to the plaintiff, he had been granted the patta in respect of the suit property and when the same is found to be not substantiated with any reliable materials as above discussed and when Ex.A2 cannot at

all be construed as a patta document, it is found that the plaintiff's claim of title to the suit property as if the Government had granted patta in his favour falls to the ground. On that plea, the plaintiff is found not entitled to obtain the reliefs claimed in the suit.

13. The other claim of title to the suit property put forth by the plaintiff is by way of adverse possession. Now, according to the plaintiff, on account of long, continuous and uninterrupted possession and enjoyment of the suit property for several years beyond the statutory period adversely to one and all, he had perfected his title to the suit property by way of adverse possession. The same has been vehemently denied by the defendant. Other than the above discussed Exs.A1 to A3, not a shred of paper has been placed by the plaintiff to show that the suit property has been in his possession and enjoyment adversely to one and all including the Government and the defendant so as to enable him to lay a claim of title to the suit property by adverse possession. It is thus found that on factual matrix, the plaintiff has miserably failed to establish that he has perfected title to the suit property by way of adverse possession.

14. Further, the plaintiff, being the suitor, cannot be allowed to seek a claim of title to the suit property on the plea of adverse possession. Such plea cannot be allowed to made by the plaintiff for claiming the declaration of title in a civil suit has been determined by the Apex Court in the decision reported in (2014) 1 SCC 669 (Gurdwara Sahib Vs. Gram panchayat village sirthala and another). In said decision, it has been held by the Supreme Court that such a suit laid by the suitor claiming ownership on the basis of the adverse possession is not maintainable. It is thus found that suit laid by the plaintiff is not maintainable legally on the plea of adverse possession as such.

15. However, during the course of arguments, the contentions were put forth by the appellant's counsel that the suit property being a Grama natham, the Government cannot claim any title to the same as such and in this connection, he placed reliance upon the decisions reported in 2004 (3) CTC 270 (The Executive officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District Vs. V.Swaminathan and others), 1998-3-LW 603 (A.K.Thillaivanam and A.K.Dayalan Vs. The District Collector, Chengai Anna District at Kancheepuram and three others) and 2002 (3) CTC 221 (Krishnamurthy Gounder Vs. Government of Tamil Nadu rep. By the District Collector Cuddalore South Arcot District and two others) and the decision of this High Court dated 02.09.2014 in W.P.(MD) No.14471 of 2014. However, it is found that the above said decisions are found to be not applicable to the case at hand. The plaintiff having admitted in his plaint

and let in oral evidence also that the suit property has been classified as natham poramboke and vested with the Government and also endeavoured to lay a claim of title to the suit property on the basis of the patta granted by the Government, however, failing to produce the patta, now, cannot turn around and putforth inconsistent arguments that the suit property does not belong to the Government as such. As to what is the actual classification of the suit property, there is no material forthcoming on the part of the plaintiff. Having taken a plea and also adduced evidence that the suit property is classified as natham poramboke and vested with the Government and also claiming title to the suit property by way of the alleged patta said to have been granted by the Government, inconsistent to the above said pleas, the plaintiff, during the course of the arguments in the second appeal cannot be allowed to raise contentions that the suit property being a Grama natham, even the Government has no locus standi or title or right over the suit property. For taking the said plea as above pointed out, no material as such has been placed by the plaintiff to show that the suit property is classified as a Grama natham land, to which, none has title to the same, including the Government.

16. In the light of the above position, to contend during the course of arguments in the second appeal, even the Government has no title to the suit property, without placing any materials to show as to what is the actual classification of the suit property and having taken a plea that the suit property is only classified as natham poramboke and the Government is the owner of the same, the above said arguments projected by the plaintiff are found to be ill-founded and unacceptable. In such view of the matter, the above said decisions relied upon by the plaintiff's counsel are found to be not applicable to the case at hand.

17. On a perusal of the evidence adduced in the matter, the plaintiff, examined as PW1, during the course of cross examination, has admitted that way back on 31.01.88, it is only the defendant's Municipality which had been granted patta in respect of the suit property. However, subsequently, he had changed the above said version. It is thus found that as per the above said admission of the plaintiff, at the first instance, the patta had been granted in respect of the suit property only in favour of the defendant's Municipality and according to the plaintiff, thereafter, he had been granted patta. However, as above seen, the said patta document has not seen the light of the day. No doubt, it is found that the defendant has also not placed the patta document vesting the suit property with it by the Government. However, a copy of the extract taken from the Town Survey, Field Register, Dharapuram Town has been marked as Ex.B1 and from the same, it is found

that the suit property had been vested with the defendant's Municipality. Coupled with the above said admission made by the plaintiff as well as the other materials placed on record, when it is found that the plaintiff has no legal entitlement whatsoever to derive title, possession and enjoyment of the suit property as such and no acceptable and reliable materials has been placed by the plaintiff to evidence that he is in valid possession and enjoyment of the suit property and when the documents marked as Exs.A1 to A3 would not in any manner advance the case of the plaintiff as above discussed, as rightly argued by the defendant's counsel, it is found that the plaintiff is not entitled to obtain the reliefs sought for, on account of his failure to establish his claim of title possession and enjoyment of the suit property as projected.

18. The plaintiff having laid the suit claiming title to the suit property on the plea of adverse possession also, as rightly argued that the suit property having been stated to be classified as natham poramboke and belonging to the Government, for claiming title to the suit property by way of adverse possession, the plaintiff should have impleaded the Government as a necessary party to the proceedings. The trial Court has also not considered the plea of adverse possession projected by the plaintiff for its failure to implead the Government as a party to the proceedings. On that aspect, it is found that the suit laid by the plaintiff is not maintainable. In such view of the matter, the first appellate Court has erred in upholding the claim of title to the suit property as projected by the plaintiff without impleading the true owner of the suit property, namely, the Government and on that score, it is found that the judgment and decree of the first appellate Court is vitiated and untenable and the upholdment of the plaintiff's case by the Courts below without the plaintiff establishing its valid title to the suit property as projected, particularly, sans the production of any patta document and despite the failure of the plaintiff to establish the plea of adverse possession and also further noting that the plaintiff cannot maintain the suit for seeking the reliefs on the premise of adverse possession as above discussed, it is found that, on the whole, the reasonings and conclusions of the Courts below for accepting the plaintiff's case are found to be perverse, illogical and untenable. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

19. At the end both the judgment and decree dated 22.03.2002, passed in A.S.No.179 of 2001, on the file of the Principal District Court, Erode, confirming the judgment and decree dated 18.8.2000, passed in O.S. No.30 of 1998, on the file of the Subordinate Court, Dharapuram are set-aside and

resultantly, the suit laid by the plaintiff in O.S. No.30 of 1998 is dismissed with costs. Accordingly the second appeal is allowed with Costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Erode.
2. The Subordinate Judge,
Dharapuram.

Copy to

3. The Section Officer,
V.R.Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.SARAVANAN, Advocate, S.R.No. 21285
+1cc to Mr.N.SUBBARAYALU, Advocate, S.R.No. 21133

Pre-delivery Judgment in
S. A.No.131 of 2003

RSY(CO)
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