

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:15.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.29654 of 2018 and
W.M.P.No.34617 of 2018

V.Kamaraj

.. Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Cuddalore District, Cuddalore.
- 2.The Tahsildar,
Office of the Tahsildar, Chidambaram
Chidambaram Town,
Cuddalore District, Tamil Nadu.
- 3.The Block Development Officer,
Office of the Block Development Officer,
Chidambaram, Cuddalore District, Tamil Nadu.
- 4.The Village Administrative Officer,
Office of the Village Administrative Officer,
Orathur Village Panchayat,
Orathur, Chidambaram Taluk,
Cuddalore District, Tamil Nadu.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the Respondents and his subordinates from interfering with the petitioner's peaceful possession and enjoyment of the land to an extent of 1.48 Acre in Survey No.74/2B, 76/4 and 78 at Orathur Village, Chidambaram Taluk, Cuddalore District without following due process of law.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R
[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioner, he is in possession and enjoyment of the land measuring an extent of 1.48 acres in Survey No.74/2B, 76/4 and 78 at Orathur Village, Chidambaram Taluk in which an extent of 90 cents in Survey No.78 was shown in the Revenue Record as 'Poramboke'.

4.The stand of the Petitioner is that originally the lands were in peaceful possession and enjoyment of his ancestors and they had raised Mango Trees in the said land. After their demise, he is in joint possession and enjoyment of the land along with his paternal uncle viz., Karunakaran, Kamalanathan of Orathur Village.

5.It is the version of the Petitioner that they had erected motor bore well and secured electricity connection [vide No.02054025494] and the same was used for the purpose of irrigation. In fact, the Village Administrative Officer of Orathur Village also had issued a certificate that they are in possession and enjoyment of the said land Survey No.78 over a long period.

6.The primordial plea taken on behalf of the Petitioner is that the Petitioner is in 'Continuous, 'Hostile' 'Actual Physical Possession and enjoyment' of the said land for more than the statutory period of 30 years with the knowledge of everyone including the Respondents and the age of the Mango Tree will show long and uninterrupted peaceful possession of the land in question. As a matter of fact, the Petitioner has perfected right and title over the said land by way of 'Adverse Possession' as per Section 65 of the Limitation Act, 1963.

7.At this stage, the Learned Counsel for the Petitioner submits that the revenue records in respect of the land has been classified as 'Poramboke' and that the Respondents are admitted to dispossess the Petitioner from the said lands, cut down all the Mango Trees in the land to facilitate the building contractor in putting up construction over the said land. The Petitioner had objected to this act and made a representation dated 23.08.2018 to the Respondents to recognise his long and uninterrupted peaceful possession and enjoyment over the said land, issue patta in their name. However, the said representation has not met with any positive response.

8.The Petitioner in his affidavit in Writ Petition at para 5 has categorically averred that he is given to understand that the 2nd Respondent/Tahsildar, Tambaram Town, Cuddalore is taking steps to remove the Mango Trees in the said land to put up certain building in the Government Scheme without issuing any notice to him.

9.Yet another argument projected on the side of the Petitioner is that the land in question is not a Government land falling under any category of the land mentioned in Section 2 of the Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) and the said land is only a 'Natham Poramboke'.

10.The other contention placed before this Court on behalf of the Petitioner is that even if the said land falls under the category of 'Government Property' and that the Petitioner is an unauthorised occupant of the said land, the Respondents have the power to restrict his possessory right over the land by imposing prohibitory assessment and in any event, they have no right to dispossess him from the said land without 'Due Process of Law'.

11.Expatiating his submission, the Learned Counsel for the Petitioner projects an argument that since the Petitioner is in possession and enjoyment of the land for well over statutory period of 30 years to stake a claim of 'Adverse Possession' even against Government and as such, the land could not be interfered without adhering to the procedure contemplated under Law viz., the Tamil Nadu Land Encroachment Act, 1905.

12.The pith and substance of the contention of the Petitioner is that though the Adverse Possession cannot be a ground to claim title as against the true title owner of the land, yet, it can be used as defence when a person has perfected title by Adverse Possession and that too when he sought to be evicted by the true owner after he had lost his right to claim possessory right over the property by means of the ingredients of Section 65 of the Limitation Act, 1963.

13.Lastly, it is the contention of the Learned Counsel for the Petitioner that either adopting or following the Due Process of Law, the Respondents cannot affect the Petitioner in a hasty manner and they cannot make an attempt to dispossess him and cut down the Mango Trees in the said land in an arbitrary and illegal manner. Since the Petitioner has no other option but to approach this Court, he has filed the present Writ Petition seeking the relief of Mandamus in restraining the Respondents and his subordinates and interfere with his peaceful possession and enjoyment of the land measuring an extent of 1.48 acre in

Survey No.74/2 B, 76/4 and 78 at Orathur, Chidambaram Taluk, Cuddalore District without following Due Process of Law.

14.A mere running of the eye over the contents of the representation dated 23.08.2018 made by the Petitioner addressed the 4th Respondent/Village Administrative Officer, Orathur Village Panchayat, Chidambaram Taluk, Cuddalore District latently and patently indicates that the Petitioner and his uncle Karunakaran and Kamalanathan, Orathur Village had jointly enjoyed in enjoyment of Survey No.78 measuring an extent of 19 cents in which there are 39 Mango Trees and further that, the age of each tree would be more than 30 years. In reality, the Petitioner, in his representation, had tacitly mentioned that the land in their possession viz., 90 cents in Survey No.78 was shown as 'Pathway Poramboke' in Government records. As such, the 3rd Respondent/Block Development Officer, Chidambaram is endeavouring to cut the Mango Trees in the said land and making an attempt to put up construction etc.

15.Apart from the above, the Petitioner, in his representation dated 23.08.2018, has also proceeded to state that by recognising their right in the land in question, they had applied for either the grant of patta or handing over of the land in question by recognising their long enjoyment and possession. Ultimately, the Petitioner has prayed for the Due Process of Law to be followed by the authorities concerned at the time of evicting the Petitioner from Survey No.74/2B, 76/4 and 78 measuring one acre and 19 cents. Furthermore, the Petitioner while making an averment in the representation dated 23.08.2018 to the effect that the age of the Mango Trees would be well over 30 years, has also claimed relief of 'Adverse Possession'.

16.It is to be pointed out that 'Possession' to be adverse is not only to be a continuous, but it should be a visible, exclusive and hostile one. Strict proof is very much essential to prove the acquisition of title by means of 'Adverse Possession' for the statutory period. In reality, the original/initial entry of a person was not under any right to possess the property, but it must begin in a wrong manner and is maintained against the right.

17.The Law of Adverse Possession will oust an owner on the basis of inaction within the limitation. The issue of 'Adverse Possession' is to be decided by a Court of Law of Competent Jurisdiction. To constitute possession in legal sense, there must exist not only the physical power to deal with the thing as one likes and to exclude others, but also the determination to exercise that physical power on one's behalf.

18.To acquire 'Adverse Possession', all the ingredients/ qualities of adequacy, continuity and exclusiveness must be present. It cannot be gainsaid that for acquiring the 'Adverse Possession', there must be actual and not constructive possession. Since a person who pleads 'Adverse Possession' is endeavouring to defeat the rights of a real/true owner, it is for him to plead in precise terms and to prove all the facts that are essential to establish his 'Adverse Possession'.

19.It is to be remembered that the plea of 'Adverse Possession' is one blended on 'Fact and Law', in the considered opinion of this Court. The issue of 'Adverse Possession' in respect of public property is to be looked into with utmost care and caution in view of the fact that it relates to the crushing/destruction of right and title of the concerned to the immovable property and showering on a stranger/ third party/encroacher, the title, which he has none.

20.Notwithstanding the fact that the Petitioner has emphatically come out with a plea that the Respondents are to follow the procedure contemplated as per Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905 and without resorting to the same, the Petitioner cannot be evicted from the subject property and also this Court keeping in mind a vital fact that the Petitioner in the Writ Petition is claiming 'Adverse Possession' by stating that he has perfected right and title over the said land as per Section 65 of the Limitation Act, 1963 based on the reason that his possession besides being a continuous, hostile and physical one for well over 30 years, this Court is of the earnest opinion that the Petitioner can seek the relief sought for by him in the present Writ Petition before the Competent Civil Court by raising all factual and legal pleas, of course, in the manner known to Law and in accordance with Law. If such a Civil Suit is filed by the Petitioner before the Competent Forum, then, it is open to the Petitioner to lay a claim for 'Adverse Possession' 'Continuous Possession', 'Hostile Possession' against the Respondents especially when the claim of the Petitioner in the Writ Petition itself that the land is only a 'Natham Poramboke'. Viewed in that perspective, this Court holds that the present Writ Petition is devoid of merits.

21.In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. Before parting with the case, this Court makes it quite clear that the dismissal of the present Writ Petition will not fetter the Petitioner to approach the Competent Civil Court, of course, in the manner known to Law and in accordance with Law and to seek for redressal of his grievances if he so desires/advised. In the Civil Suit, it is open to the Petitioner to let in oral, documentary evidence and

to take both factual and legal pleas, which are permissible in Law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

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+1cc to Mr.P.R.Thiruneelakandan, Advocate, S.R.No. 77820
+1cc to the Government Pleader, S.R.No. 79159

W.P.No.29654 of 2018

GN(17/12/2018)

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