



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**W.A(MD)NO.111 OF 2018
and
C.M.P (MD)No.556 of 2018**

Melapalayam Mailakader Street Residential
Welfare and Muslim Women Arabi Matharasa
Committee,
through its President, K.M.Ahamed Meeran
S/o.K.M.Mohamed Ali,
No.207, Mailakader Street,
Melapalayam,
Tirunelveli District.

:Appellant/Third party

.vs.

1.K.S.Sahul Hameed

:First Respondent/
Writ Petitioner

2. The District Collector,
Tirunelveli District,
Tirunelveli.

3. The Revenue Divisional Officer,
Tirunelveli,
Collectorate Campus,
Tirunelveli District.

4. The Tahsildar,
Palayamkkottai Taluk,
Tirunelveli District.

5. The Inspector of Police,
Melapalayam Police Station,
Tirunelveli District.

: Respondents 2 to 5/
Respondents 1 to 4

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.P(MD)No.13180 of 2017, dated 2.8.2017



Prayer in WP(MD). 13180/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to grant adequate protection for construction of compound wall in Old Survey No. 521 in Ward No. 4, Block No. 20, T.S.No. 1846 in Melapalayam Mayila Kadhar Street (New Town Survey No. 32) based on the petitioner's representation dated 24.06.2017.

For Appellant	: Mr.M.Vallinayagam, Senior Counsel for M/s.D.Nallathambi
For Respondent-1	: K.S.Sahul Hameed (party - in - Person)
For Respondents 2 to 5	: Mr.D.Muruganantham Additional Govt.Pleader

JUDGEMENT

[Judgement of the Court was made by **K. RAVICHANDRABAABU, J.**]

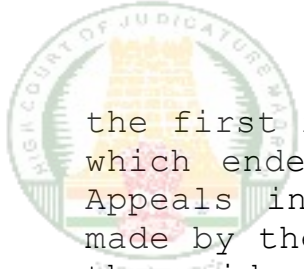
This Writ Appeal is directed against the order of the learned Single Judge in W.P(MD)No.13180 of 2017, dated 2.8.2017.

2.The appellant herein was not a party to the Writ Petition. After obtaining leave from this Court, they filed the present Writ Appeal. The first respondent herein, as Writ Petitioner, has filed the said Writ Petition for directing the respondents therein to grant adequate protection for construction of compound wall in Old S.No.521 in Ward No.4, Block No.2C, T.S.No.1846 in Melapalayam Mayila Kadhar Street(New Town survey No.32) based on the Petitioner's representation, dated 24.6.2017.

3.The learned Single Judge disposed the said Writ Petition by directing the fourth respondent therein namely, the Inspector of Police, Melapalayam Police Station, Tirunelveli District to consider the representation of the Petitioner, dated 24.6.2017 on merits and in accordance with law after providing opportunity to all the necessary parties.

4.The case of the Writ Petitioner before the learned Single Judge is that the subject-matter property belongs to him as a private patta land and therefore, he wants to put up a compound wall in the said property, for which, he sought for protection.

5.The case of the appellant before us is that the Writ Petitioner/first respondent herein is not the owner of the subject-matter property, as it is not a private patta land, as ~~it is not a private patta land~~. On the other hand, it is the case of the appellant that the said property is a Government Poramboke land and already,



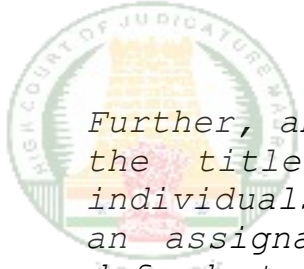
the first respondent herein lost his battle before the Civil Court which ended in a finding rendered by this Court in two Second Appeals in S.A(MD)Nos.331 and 332 of 2013 rejecting the claim made by the first respondent herein. It is their further case that the said property is used by the Muslim women of that particular area for decades with which the first respondent cannot have any claim or title. Thus it is contended that the first respondent herein is not entitled to any relief in the Writ Petition which was filed without disclosing these facts.

6. Heard the learned Senior Counsel appearing for the appellant, the first respondent as party-in-person and the learned Additional Government Pleader appearing for the other official respondents.

7. The first respondent, as Writ Petitioner, has sought for a Writ of Mandamus for providing adequate protection for constructing a compound wall in the subject-matter property. Though the first respondent herein claimed that the property belongs to him as a private patta land, it is not in dispute that a civil litigation which culminated into filing of two Second Appeals in S.A(MD)Nos.331 and 332 of 2017, ended against the first respondent herein, wherein, this Court while disposing of those Second Appeals on 20.2.2017, has observed at Paragraph Nos.10,11 and 12 as follows:

'10. From the documents filed by the plaintiffs, it may be seen that the plaintiffs have not produced any other document except the document Ex.A2 to prove that they are entitled to title to the property. This document Ex.A2 is a sale deed dated 12.08.1968 executed by one Ali in favour of Narayanakonar. The person executed the sale under Ex.A2 is one Ali son of "Mohammed Mytheen". However, there was no document to show that this Ali or his predecessor in interest were in enjoyment of the property or holding the property. The revenue records relied upon by the plaintiffs do not match the claim of the plaintiffs' title to one Ali. Therefore, the title of the suit property cannot be held in favour of the plaintiffs merely on the basis of the sale deed under Ex.A2.

11. A document Ex.A5 is also filed by the plaintiffs to show that the original assignment was in the name of one Khader Mohideen and Mohamed Hanifa. From the document Ex.A2, the vendor of the Narayanakonar was only a person by name Ali, son of Mohammed Mydeen. The property has been described as an ancestral property of the said Ali. However, the sudden entry of records in the name of Khader Mohideen and Mohamed Hanifa is contrary to the claim of title through on Ali who executed the document Ex.A2. The other two important documents relied upon by the learned counsel for the appellants/plaintiffs are Ex.A6 and Ex.A7. Ex.A6 is the proceedings of the Assistant Commissioner of the local ~~services~~ ^{services} or authority to pass such order is not traceable under any statute. The Assistant Commissioner functioning under the Municipal Corporation Act is not a revenue authority.



Further, absolutely there is no indication from this document that the title in respect of the suit property can vest with individuals. If really the property is a Government poramboke or an assignable Government poramboke, as contended by the third defendant, the document Ex.A7 is unreliable document. These revenue documents are expected to be filed by a person who had either prepared the documents or who is having the official custody of these documents. In the present case, since the documents were marked without any formal proof they cannot be accepted as genuine documents. The suit was filed in 2005 and the proceedings are just few years prior to the filing of the suit. Hence, the lower appellate Court is right in rejecting these documents as they have no evidential value in the absence of examination of the author of this document.

12. Further, it is the definite case of the defendants 1 to 3 that the suit property is a Government poramboke. The documents filed by the defendants and some of the documents filed by the plaintiffs also would show that the suit property has been classified as poramboke. Even assuming that the suit property is a property classified as natham, the person in possession can claim right of enjoyment from the Government if one proves that he is in continuous possession and that his possession is neither objected to nor denied by any other person having rival claim. The plaintiffs have not produced any document like patta or chitta or adangal. In such circumstances, the plaintiffs title cannot be presumed. It has been held by the Hon'ble Supreme Court in the case of **R.Hanumaiah v. Secretary to Government of Karnataka** reported in (2010) 8 MLJ 998 (SC) that all unoccupied lands are the properties of the Government unless any person establishes his right or title to such land. The Hon'ble Supreme Court has specifically observed that such property can be presumed to be the property of the Government and that it cannot be claimed by any individual. In the same judgment, the Hon'ble Supreme Court has also dealt with the nature of proof that is required to claim title by adverse possession. It has been held that mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. It has been held in paragraph 17 as follows:

"17. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and



visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government. Be that as it may."

8. It is further observed at paragraph No.13 therein that the plaintiffs in the suit have not produced any other document except Ex.A2 to prove their title. It is further observed therein that from the evidence, there is no construction over the suit property and that though the suit property is surrounded by well defined boundaries, the question whether the suit property is in the absolute enjoyment of the plaintiffs or not, has been specifically addressed by the Lower Appellate Court. It is also pointed out by this Court in the said judgement that the Lower Appellate Court has categorically found against the Plaintiffs that they have neither proved their title nor enjoyment. Thus this Court has dismissed the Second Appeals by observing that, when the suit for injunction is filed on the strength of title, the plaintiffs are not entitled to get their possession protected, unless they establish their title or they establish that the third respondent has no better title than the plaintiffs. When such being the findings rendered by this Court in those appeals, in respect of the possession and the nature of the property, we are of the view that unless the first respondent, who is one of the plaintiffs, succeeds in challenging such a finding rendered by this Court by filing further appeal before the Appellate Forum, he is not entitled to seek for a mandamus once-again by claiming that the subject-matter properties are his private patta lands and he is in possession and enjoyment of the same. In any event, as the prayer sought for is only for a Writ of Mandamus directing the respondents to grant adequate protection for construction of a compound wall and when a civil dispute over the same property has been decided against the plaintiffs, the Writ Petitioner and other plaintiffs as discussed supra, we find that the Petitioner is not entitled to seek mandamus as prayed for.



9. Accordingly, the Writ Appeal is allowed and the order of the learned Single Judge in W.P(MD)No.13180 of 2017, dated 2.8.2017 is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

WEB COPY

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Revenue Divisional Officer,
Tirunelveli,
Collectorate Campus,
Tirunelveli District.
3. The Tahsildar,
Palayamkottai Taluk,
Tirunelveli District.
4. The Inspector of Police,
Melapalayam Police Station,
Tirunelveli District.

+1cc to Mr.D.Nallathambi, Advocate Sr.No.59616

+1cc to Mr.K.S.Sahul Hameed, Party - in - Person, Sr.No.59595

+1cc to Spl.Government Pleader Sr.No.59648

VSN

VB/SKN/RSK/SAR4/18/04/2018/6P/8C

**JUDGEMENT MADE IN
W.A(MD)NO.111 OF 2018
and
C.M.P(MD)No.556 of 2018
03.04.2018**