

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2019

PRONOUNCED ON:03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.576 of 2007

and

M.P.No.2 of 2007

Anbanathapuram Dharmabaham
Thiruvizhandur
Mayiladuthurai Town
Rep. By
Its Chairman
E.S.Ganapathy

[Cause title is accepted vide order
of Court dated 15.06.2007 made
in M.P.No.1 of 2007 in SASR.No.39018 of 2007]
... Appellant/Appellant/Plaintiff

Vs.

1. Government of Tamilnadu
Rep. By
The District Collector,
Nagapattinam
having office at
Nagapattinam.

2. The Revenue Tahsildar,
Mayiladuthurai
Having Office at
Pattamangala Street,
Mayiladuthurai Town,
Nagapattinam District ... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree dated 27.10.2006 passed in
A.S.No.84 of 2005 on the file of the Additional Sub Court,
[Principal Sub Judge (Incharge)] Mayiladuthurai confirming the
judgment and decree of Additional District Munsif Court,
Mayiladuthurai dated 23.03.2005 made in O.S.No.20 of 2004.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.N.Manikandan
Government Advocate (CS)

J U D G M E N T

In this second appeal challenge is made to the judgment and decree dated 27.10.2006 passed in A.S.No.84 of 2005 on the file of the Additional Sub Court, Mayiladuthurai confirming the judgment and decree dated 23.03.2005 passed in O.S.No.20 of 2004 on the file of the Additional District Munsif Court, Mayiladuthurai.

2.The suit is found to have been laid by the plaintiff against the defendants seeking for the relief of declaration that the defendants have no right over the suit property and for the consequential relief of permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property.

3.Briefly stated, according to the plaintiff, it has been in the possession and enjoyment of the suit property over a considerable period of time and also leasing out the suit property to third parties for the purpose of fishing and enjoying the income derived therefrom and using the same for the activities of the plaintiff and the defendants without any right whatsoever are endeavoring to challenge the right of the plaintiff over the suit property and also further endeavoring to interfere with the possession and enjoyment of the suit property by the plaintiff and hence according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

4.The defendants resisted the plaintiff's suit contending that the plaintiff has no right, possession and enjoyment of the suit property as putforth in the plaint and according to the defendants, the suit property is the Government promboke property and accordingly the plaintiff is not entitled to seek and obtain the reliefs as prayed for.

5.For sustaining that the suit property belongs to the plaintiff, the plaintiff is found to have relied upon certain suit proceedings between him and third parties in O.S.Nos.1/42, 68/48, 17/60 and however it is seen that the defendants are not the parties to the abovesaid suit proceedings, in such view of the matter, the abovesaid suit proceedings would not in any manner bind the defendants and accordingly it is found that the so called determination of the plaintiff's alleged right over the suit property in the abovesaid suits would have no valid

binding effect on the defendants and as the abovesaid position being also known to the plaintiff, it is evident that the plaintiff had also not endeavoured to seek any declaration of the right to the suit property, as such, based on the abovesaid suit proceedings. The abovesaid factors had been rightly assessed and determined by the Courts below and the reasonings and conclusions of the Courts below with reference to the abovesaid facts do not warrant any interference.

6. According to the defendants, the suit property has been recorded in the Government records as the poramboke property i.e., described as tank and hence the plaintiff is not entitled to claim any right in the suit property. In this connection, reliance is placed upon the 'A' Register extract marked as Ex.B2, which was prepared in the year 1969 and therein it is found that the suit property has been assigned in RS.No.1523/1 and described as tank. Furthermore, Exs.B4 and B5 also disclose that the suit property has been only treated as the Government poramboke land with the tank and vested with the Government. In such view of the matter, the case projected by the plaintiff that it has acquired title to the suit property, as such, cannot be believed. Equally the contention has been put forth by the plaintiff's counsel that the defendants have failed to establish the record prior to 1969 classifying the suit property as the Government tank and therefore the defence version, as such, cannot be accepted, however when the primary materials had been projected by the defendants showing the classification of the suit property as the promboke property and tank belonging to the Government, in such view of the matter, it is for the plaintiff to establish that the Government had ceased to retain its right or control over the suit property and that the plaintiff is enjoying the suit property absolutely and in entirety as such. As rightly contended by the defendants' counsel, when the defendants had directed the plaintiff to place the documents for establishing its title, instead of complying with the abvoesaid direction, the plaintiff is found to have laid the suit.

7. The plaintiff has not sought for the relief of declaration that the suit property belongs to it. Equally, the plaintiff has not come forward with the case that the suit property belongs to others than the defendants. On the other hand, the plaintiff would claim that the suit property has been in its possession and enjoyment over a considerable period of time and accordingly it has acquired prescriptive right to the suit property. Knowing fully well that the plaintiff cannot maintain the suit for asserting its adverse title as a suitor, it is evident that on that plea, the plaintiff has not sought for the relief of declaration of title to the suit property. In addition to that when the materials placed by the plaintiff are

not sufficient, adequate and convincing for upholding its alleged claim of adverse title to the suit property and when the documents projected by the plaintiff disclose that the so called auction conducted by the plaintiff in respect of the suit property is confined only to limited persons and self serving documents and when the same are rightly considered and assessed by the Courts below and when the so called hostile title of the plaintiff in respect of the suit property has been failed to be established by the plaintiff and when as per law, the plaintiff is also not entitled to seek for negative relief, particularly, without pleading or establishing that the suit property belongs to a specific person or entity other than the defendants and when the plaintiff has not endeavoured to seek any declaration of its own title to the suit property as such, in such view of the matter, the Courts below are found to be fully justified in non-suiting the plaintiff as legally unsustainable and accordingly rightly declined the reliefs prayed for by the plaintiff. I do not find any valid reason to interfere with the abovesaid conclusions of the Courts below for non-suiting the plaintiff.

8.The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in

1. 1971 (I) MLJ P.No.190 [N.S.Kuppusamy Odayar and another Vs. The Panchayat Narthangudi rep. by its President Murugayyan and others]

2. 2004 (1) SCC 769 [Rame Gowda (D) By Lrs Vs. M.Varadappa Naidu (D) by Lrs and another]

3. AIR 1988 ALL 160 [Food Corporation of India Vs. Mahabir Prasad Bhartiya]

4. AIR 1979 MP 61 [Ramnarayan and Others Vs. Firm Mangeram Radheshyam Hardoi]

5.AIR 1961 Cal 411 [Sanat Kumar Mitra Vs. Hem Chandra Dey and others]

6. 1966 Supp SCR 270 : AIR 1967 SC 436 [Veruareddi Ramaraghava Reddy Vs. Konduru Seshu Reddy]

and argued that the plaintiff is entitled to seek the relief of declaration which is not covered under section 42 of the Specific Relief Act and consequently the plaintiff is entitled to seek the negative relief as prayed for. However, considering the facts and circumstances of the case at hand, particularly, when the plaintiff has been unable to project its title to the suit property one way or the other, conveniently failed to seek any relief of declaration pertaining to the same and also not putforth any case of vesting of the title in favour of the third party or entity and when the materials placed on record go to show that it is only the Government which has the title to the suit property, the suit property being a tank and when there is no material on the part of the plaintiff for holding that the

suit property is vested with the third party, in all, as determined by the Courts below, it is only the Government which has the full ownership over the suit property, namely the tank and the plaintiff accordingly cannot be allowed to obtain the reliefs prayed for, particularly against the Government.

9. The counsel for the defendants in support of his contentions placed reliance upon the decisions reported in 1..MANU/TN/1124/1998 [The State of Tamil Nadu Vs. K.Purushothaman]

2.MANU/TN/2349/2010 [A.Ayisha Bivi Vs. Karaikudi Municipality]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

10. No substantial question of law is found to be involved in this second appeal. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Additional Subordinate Judge,
Additional Sub Court,
Mayiladuthurai.

2. The Additional District Munsif,
Additional District Munsif Court,
Mayiladuthurai.

Copy To : The Section Officer,
VR Section, High Court, Chennai.

+1cc to Mr.S.Sounthar, Advocate SR.No.44673

+1cc to Special Government Pleader (CS) SR.No.44601

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and

M.P.No.2 of 2007

SPD (CO)
GMY (17/10/2019)