

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.02.2020

Date of Verdict : 10.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 944 of 2006

and

C.M.P.No. 1 of 2006

1.E. Ambica (Deceased)

2.Jothi

3.Jayanthi

4. Rajavelu

5. Srinivasan

6.Sathish Kumar

(Appellants 2 to 6 brought on record
as LRs of the deceased Sole Appellant
vide order of Court dated 23/07/2014

PSNJ made in MP Nos.1 to 3/14) ...Appellants/Plaintiffs

Vs.

1.The Collector of North Arcot

Ambedkar District,
Sathuvachari.

2.The District Forest Officer
(Special Welfare)

Vellore.

...Respondents/Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and Decree of the learned Sub-Ordinate Judge, Ranipet in A.S.No.42 of 2004 dated 19.08.2005 and conform the judgment and Decree of the learned District Munsiff, Arakkonam in O.S.No.399 of 1995 dated 27.02.2004.

For Appellants : Mr.K.Chandrasekar
for Mr.S.Sivakumar

For Respondents: Mr.S.T.S. Murthi
Additional Advocate General
assisted by
Mr.S.Jagannathan
Government Advocate (CS)

JUDGMENT

This second appeal has been preferred by the plaintiff as against the Judgment and Decree dated 19.08.2005, passed in A.S.No.42 of 2004, on the file of the learned Sub-Ordinate Judge, Ranipet, reversing the Judgment and Decree dated 27.02.2004, passed in O.S.No.399 of 1995, on the file of the learned District Munsif, Arakkonam.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief as follows:

3.1 The suit is filed for declaration and permanent injunction.

3.2. The suit property originally belonged to one Subramani and he was in possession and enjoyment of the same as absolute owner. In turn, he sold the said property to the plaintiff for valuable sale consideration under the registered Sale Deed, dated 09.12.1986 and delivered possession of the suit property. Thus, the plaintiff has become absolute owner of the suit property and she is in possession and enjoyment of the suit property. She and her predecessor in interest have also perfected their title to the suit property by way of adverse possession by being in open, continues and un-interrupted peaceful possession and enjoyment of the suit property. While being so, the defendants are attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Hence, the suit has been filed.

4. Resisting the same, the defendants filed written statement, stating that the averments and allegations made in the plaint are false and frivolous. The second defendant has raised plantation in the year, 1963 in the total area of 40 hectares inclusive of the suit land comprised in S.F.No.841/1 measuring an extent of 3 acres situated in Kattupakkam Village, Arakkonam Taluk. In fact, the second defendant effected first cutting of the plantation during the year 1973 and the second cutting was done in the year 1994 to 1995. The entire plantation were raised, maintained and harvested at an interval of 10 years as per the terms of stipulations of the Forest Department. The plaintiff was never in possession and enjoyment of the suit property. As per GO.Ms.No.426 Forest and Fisheries department dated 27.04.1977, any land under the control of the second defendant cannot be handed over either to other departments or any individuals, without the concurrence of the second

defendant, to whom it is harvested, since the suit property is a part of a large area of the second defendant. The alleged patta issued in favour of the plaintiff is not valid in law and not binding on the second defendant. The plaintiff had not even tested with the original of the title deed of her vendor Subramani and as such the sale deed, in which, the plaintiff purchased the suit property dated 09.02.1986 is not valid one. Further, stated that the suit itself is not tenable in law, since it hit under Section 80 CPC and no notice was issued to the defendants. Hence prayed for dismissal of the suit.

5. On the side of the plaintiff, she examined P.W.1 and P.W.2 and she had marked exhibits A1 to A6. On the side of the defendants, they have examined D.W.1 and marked documents Exs.B.1 to B.5. Based on the materials placed on record, both the oral and documentary and submissions made by the respective parties, the trial Court decreed the suit as prayed for. Aggrieved by the same, the defendants preferred an appeal suit in A.S.No.42 of 2004. The first Appellate Court reversed the findings of the trial Court and allowed the Appeal and dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff filed this Second Appeal.

6. The plaintiff filed petition in M.P.No.1 of 2006 under order 41 Rule 27 of CPC to receive the additional document as plaintiff's exhibits. At the time of admission of the second appeal on 08.09.2006, the following substantial questions of law were formulated for consideration:-

i) Whether the Appellate Court is right in allowing the Appeal filed by the respondents as against the appellant by ignoring the grant of assignment of suit property in favour of appellant's predecessor in title under "D" Form Patta granted by the Special Tahsildar (Assignment), Ranipet Division dated 14.03.1977 as per B.S.O.39?

ii) Whether the Appellate Court can ignore the entries made in the Patta Passbook in favour of the appellant which proves the prima-facie evidence of title as per section 6 of the Tamil Nadu Patta Passbook Act, 1986 and allow the appeal in favour of the respondents without any findings?

iii) Whether the Appellate Court is right in ignoring the grant of patta in favour of the appellant for the suit properties under Section 3 of the Tamil Nadu Patta Pass Book Act, 1986 which shall have effect notwithstanding anything

inconsistent therewith contained in any other law, custom or usage or contract as per Section 21 of the said Act?"

7. The learned counsel for the plaintiff submitted that the plaintiff has purchased the suit property from one K.Subramani, S/o. Khanna Reddy by the registered sale deed dated 09.12.1986. From the date of her purchase, she is in absolute possession and enjoyment of the suit property and also paying kist to the revenue authorities concerned for the suit property. Patta in Patta No.452 was also issued in favour of plaintiff in respect of the suit property. Her predecessor was also originally assigned the suit property by the Assignment Order of the Special Tahsildar, Ranipet Division dated 14.03.1977. At the time of filing the suit, the order of assignment was not available with the plaintiff and as such, she could not produce the same before the Trial Court. Thereafter, she traced out the said proceedings, and obtained certified copy of the said order and produced the same before this Court along with application to receive additional document.

8. He has further submitted that the First Appellate Court dismissed the suit, only on the ground that, the plaintiff failed to establish her predecessor in title over the suit property. She did not produce any document to show that her predecessor had valid title over the suit property. Further, she has failed to prove the possession and enjoyment of her predecessor in the suit property. Therefore, the first appellate Court dismissed the suit. As such, the plaintiff has now obtained the certified copy of the Assignment Order passed in favour of her predecessor and filed before this Court along with application to receive as additional document on the side of the plaintiff.

9. He has further contended that in the second appeal, the defendants took a new stand that the Revenue Standing Order 15 (5) clearly prohibits any authority concerned, to assign the land classified as Meikkal Poramboke. The defendants never whispered about the Revenue Standing Orders 15(5) in their written statement. Therefore, without any pleadings, they cannot raise a new plea, which is not permissible under law. Even assuming that the plea taken by the defendants can be considered, the Assignment Order was passed in favour of her predecessor on 14.03.1977. Therefore, in the year 1977, there was no prohibition for assignment. Even then, the competent authority assigned the suit property in favour of her predecessor. Therefore, the order of the assignment is valid under law and it can be marked before this Court by way of additional document. In support of his contention, he relied upon the following judgements:-

1. (1997)7 SCC 297 [Jaipur Development Authority Vs. Kailashwati Devi.]
2. 2019(6) SCC 82 [Jagdish Prasad Patel (Dead) Through Legal representatives and another Vs Shivnath and others]
3. 2008(8) SCC 92 [State Bank of India Vs. S.N.Goyal]
4. 2017(6) CTC 113 [M.R.Rathindran Vs. Saraswathi Narayanan and others.]
5. 2002(2) SCC 256 [Om Prakash Gupta Vs. Ranbir B.Goyal]

10. Per contra, the learned Additional Advocate General appearing on behalf of the respondents 1 and 2, submitted that the suit property is categorically classified as Meikkal Poramboke and as such, it should not be assigned to anybody. Under Revenue Standing Order 15(5), there is clear ban on assignment of land classified as Meikkal Poramboke. Further, the plaintiff failed to prove her predecessor in title over suit property before the Courts below. Now after a period of 10 years from the date of filing their suit, the Assignment Order is produced before this Court and the plaintiff did not state any valid and sufficient reasons, explaining the delay.

11. The learned Additional Advocate General further contented that the suit property is classified as Meikkal Poramboke as per the village "A" Register from the year 1960 to 1984. The suit property was handed over to the second defendant for cultivating trees in order to develop social forestry in that area. Therefore, the Tahsildar who issued the Assignment Order has no power to assign in favour of any individuals, the lands which are classified as Meikkal Poramboke. Therefore, the Assignment Order issued by the Tahsildar is not binding the Government. Notice was also issued to cancel the said Assignment Order and it is pending for enquiry.

12. At present, in the suit property, 426 red sandalwood trees are standing and its value is more than several crores of Rupees. However the cultivation of red sandalwood trees cannot be permitted by the private parties and the Forest Department is only empowered to cultivate red sandalwood trees. Further, the defendants categorically proved their possession and enjoyment of the suit property by marking Ex.B2 to B4 and prayed for dismissal of the appeal. In support of these contentions, he relied upon the judgement reported in 2014(2)SCC269 [Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others].

13. Heard the submissions made on both sides and perused the records.

14. The suit is filed praying for declaration and injunction. According to the plaintiff, she purchased the suit property from one K.Subramani for the valid sale consideration by the registered Sale Deed dated 09.12.1986 which was marked as Ex.A1. From the date of purchase, she is in possession and enjoyment of the suit property and she also paid kist before the concerned revenue authorities which were marked as Ex.A2 to A5. In fact, she was also granted patta which was marked as Ex.A6 on 17.02.2000, Whereas the defendants contented that the suit property belonged to Government and it is classified as Meikkal Poramboke. It was handed over to the second defendant and thereafter, the second defendant planted red sandalwood trees and maintained by them. In fact they also made two cuttings once in a 10 years from the year 1973 onwards. The plaintiff is never in possession and enjoyment of the suit property. On the strength of the Sale Deed she paid kist for the said property. As such, those documents do not prove her possession and enjoyment of the suit property.

15. At the time of filing the suit, the plaintiff did not produce the Assignment Order which was assigned in favour of her predecessor by name K.Subramani dated 14.03.1977. Though, the Trial Court decreed the suit on the basis of the kist receipt produced by the plaintiff and also the defendants failed to prove their possession and enjoyment of the suit property, the First Appellate Court reversed the findings of the trial Court on the ground that the plaintiff did not prove her the predecessor's title over the property. Whether the plaintiff's vendor had title over the property and no documents was produced by the plaintiff. Therefore, now in the second appeal, the plaintiff filed the application under Order 41 Rule 27 to receive the Assignment Order passed in favour of her vendor dated 14.03.1977 as additional document. The defendants also have taken steps to cancel the said Assignment Order and also issued notice to the plaintiff and it is pending for enquiry.

16. The learned counsel for the plaintiff contented that the plaintiff is a successive purchaser and she could not obtain the Assignment Order passed in favour of her vendor at the time of filing the suit. Now only she obtained the certified copy of the Assignment Order passed in favour of her vendor and produced before this Court.

17. In support of his contention, the learned counsel for the plaintiff, placed reliance on the following paragraphs of the cited judgments reported in 1997 (7) SCC 297[Jaipur Development Authority Vs. Kailashwati Devi.] as follows:

6. The intention of the sub-rule, in our view, is that a party who, for the reasons mentioned in the

sub-clause, was unable to produce the evidence in the trial Court, should be enabled to produce the same in the appellate Court. The sub-rule mentions the conditions which must be complied with by the party producing the additional evidence, namely that "notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him" in the trial Court. It is not one of the conditions that the party seeking to introduce additional evidence must have also been one who has led some evidence in the trial Court. Such a view amounts to introducing an additional condition not contemplated by the sub-rule. No distinction was intended by the sub-rule between a party who has produced some evidence in the trial Court and one who has adduced no evidence in the trial court. All that is required is that the conditions mentioned in the body of the sub-rule must be proved to exist. It is not permissible to restrict clause (aa) for the benefit of only those who have adduced some evidence in the trial Court.

2019(6) SCC 82[Jagdish Prasad Patel (Dead) Through Legal representatives and another Vs Shivnath and others]

47. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

2008(8) SCC 92[State Bank of India Vs. S.N.Goyal]

21. In the absence of appropriate pleading on a particular issue, there can be no adjudication of such issue. Adjudication of a dispute by a civil court is significantly different from the exercise of power of judicial review in a writ proceedings by the High court. In a writ proceedings, the High Court can call for the record of the order challenged, examine the same and pass appropriate order after giving an opportunity to the State or the statutory authority to explain any particular act or omission. In a civil suit parties are governed by rules of pleadings and there can be no adjudication of an issue in the absence of necessary pleadings.

2017(6)CTC 113[M.R.Rathindran Vs. Saraswathi Narayanan and others.]

17.The learned Counsel for the defendants/Respondents would further submit that for the first time before this Court, the Plaintiff has come forward with a plea as if the Defendants have committed fraud. According to the Counsel for the Defendants/Respondents, absolutely, there was no pleading or evidence to substantiate the same. When the plea of fraud was not raised anywhere in the plaint, the same cannot be permitted to be raised at the Appellate stage. In this regard, the counsel for the defendants/respondents relied on the decision in the case of Deoki Nandan v. Muralidhar and others, AIR 1957 SC 133, to contend that in the absence of pleading or evidence recorded before the Trial Court, the Appellate Court cannot render a finding outside the scope of such pleading and evidence. For the same proposition, reliance was also placed on the decision rendered in Trojan and Co.v. RM.N.N. Nagappa Chettiar, AIR 1953 SC 235, wherein it was held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be proved. Further, the learned Counsel for the Defendants/Respondents invited the attention of this Court to Order 6, Rule 4 of CPC to contend that the allegations of fraud cannot be made or raised at the Appellate stage. When allegations relating to fraud are not specifically pleaded in the Plaint it cannot be considered by this court in exercise of its Civil Appellate jurisdiction. In this regard, learned Counsel for the Defendants/Respondents relied on the decisions reported in Mohanlal v. Anantibai and others, AIR 1971 SC 2177; and Ram Sarup Gupta (dead) by L.Rs. v.Bishun Narain inter College and others, AIR 1987 SC 1242, to contend that in the absence of pleading in the plaint, any evidence, if any, produced by the parties, cannot be accepted. No party is permitted to travel beyond the pleading and all material and relevant facts should be pleaded by the party in support of the case set up by him. The object and purpose of pleading is to enable the other party to know the case it has to meet. The learned Counsel for the

Defendants/Respondents also relied on the decision in the case of Union of India v. Pandurang Kashinath More, AIR 1962 SC 630, wherein it was held that when an improper conduct is alleged, it must be set out with all particulars. A Plaintiff cannot complain iff general allegations made by him in the plaint are answered by equally general allegations in the Written Statement. Reliance was also placed on the decision rendered in Shanthi Kavar Bai and other v. Sushila, 2009 (4) CTC 842 (DB), wherein it was held that law is well settled that merely because the Plaintiff, who seeks the relief, has got a right to seek such relief, the relief should not be granted, but the Court should look into all the facts and circumstances attendant thereto. Further, it is well settled proposition of law that in a given case where there are leaches and inaction on the part of the Plaintiff in seeking the Specific Relief, the Court cannot but deny the relief sought for. By relying upon the above decisions, the learned Counsel for the Defendants/Respondents would contend that in the case on hand, evidence on record would show that the Plaintiff has to approach this Court with clean hands and therefore, he is not entitled to raise the plea of fraud as against the Defendants and consequently he is not entitled to the equitable relief of Specific Performance.

2002(2) SCC 256 [Om Prakash Gupta Vs. Ranbir B.Goyal]

11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In

Pasupuleti Venkateswarlu V. Motor & General Traders this Court held that a fact arising after the lis, coming to the notice of the court and having fundamental impact on the right to relief or the manner of molding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other dis entitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

In the decision reported in (2018) 9 SCC 445, in paragraph 13 of the said judgment, in respect of the issue to consider the application filed to receive the additional documents under Order 41 Rule 27 CPC, production of additional evidence whether original or documentary is permitted, the Honourable Supreme Court, held three circumstances which are:

1. Where the trial Court had refused to admit the evidences, though it ought to have been admitted.
2. The evidences was not available to the party despite exercise of due diligence. and
3. the Appellate Court required additional evidence so as to enable it pronounces judgment or any other substantial costs of like nature.

If the plaintiff was not diligent in producing the relevant documents before the trial Court, the application for production of additional evidence cannot be considered. In the above judgment, the Hon'ble Supreme Court of India held that where the additional evidence removes the cloud of doubt over the case, it may be allowed as additional evidence to take on record.

18. In the case on hand, the plaintiff purchased the suit property from one K.Subramani, S/o. Khanna Reddy, comprised in Survey No.841/1, at Kattupakkam Village, Arakkonam Taluk,

measuring at 3 acres. Admittedly it is classified as Meikkal Poramboke under Revenue Standing Order 15(5). The Meikkal Poramboke land cannot be assigned and it is banned. Revenue Standing Order 15(5) extracted hereunder.

"(5) What lands may be assigned and what may not: Only land, the assignment of which is unobjectionable shall be assigned. Such land may be assigned to individuals where they are in isolated bits or in compact blocks. Lands acquired for communal purposes shall not be assigned. grazing ground porambokes shall not be assigned unless there is sufficient grazing ground (other than Panchayat and Reserved Forests) available to serve the needs of cattle, without specific orders from the Government. Tank-bed lands should on no account be assigned without consulting the appropriate technical official including the Chief Engineer and without specific orders from the Government. Lands close to village sites which are likely to be required for communal purposes or provision of house sites should not be assigned. Applications for assignment of lands with dense valuable forest growth should be rejected. Such lands may be included in the Prohibitory Order Book.

G.O.Ms.901, Rev. dt.8.7.1986
Rev. dt.23.6.1987

G.O.Ms.959,

G.O.Ms.41, Rev. dt.20.1.1987

The assignment of land within 32 kms. From Chennai city limits is banned. The Collectors of Kancheepuram/Thiruvallur are competent to assign house sites subject to the instructions issued by the Government from time to time.

G.O.Ms.No.1135, Rev. dt. 16.3.1962

The agricultural lands near Chennai city belt area, other towns etc. are converted into house site. Assignment of lands for agricultural purposes around the towns should be avoided. The request for assignment should be considered after careful inspection and ensuring that the lands are not near the town sites or residential colonies and that they are not likely to be converted onto house sites In the near future, and then only orders of assignment should be issued. Where the assignment is to be ordered by the government,

proposals should be sent with the above details also.

Accordingly the grazing ground poramboke land should not assigned unless there is sufficient grazing ground (other than panchayat and Reserve Forests) available to serve the needs of the cattle, without specific orders from the Government. On a perusal of the document which is sought to be produced herein dated 14.03.1977, though it was assigned in favour of K.Subramani, S/o. Khanna Reddy by the Special Tahsildar (Assignment), Ranipet Division, there is nothing mentioned about the permission from the Government to assign the property in favour of said Subramani.

19. That apart in Clause (1) of the assignment reads as follows:-

“அடைமானம் முற்றிலும் நியாயமற்றதென்றாகிலும், சங்கதி பிசகினாலாவது, பொய்யாய்ச் சங்கதி தெரிவித்ததனாலாவது மோசத்தினாலாவது, அடைமானம் செய்யும் உத்தியோகஸ்திருக்கு போர்டாரின் 15 ம் நெ.ஸ்டாண்டிங் ஆர்டர் என்னும் நிலையான உத்திரவின்படி கொடுக்கப்பட்டிருக்கும் அதிகார வரம்புகளை மீறியாவது அடைமானம் செய்யப்பட்ட தென்றாகிலும் நடவடிக்கையில் கிரமப்பிக்கு இருந்ததென்றாகிலும் காணப்பட்டால், அந்த அடைமானம் ரத்து செய்யப்படுவதற்கு உள்ளாகும்.”

Therefore, if the assignment assigned is against the Revenue Standing Order 15, the assignment itself is liable to be cancelled and it is not valid. Admittedly, as extracted above, under sub clause 5 of the Revenue Standing Order 15, the grazing ground poramboke shall not be assigned unless sufficient grazing ground available to serve the needs of cattle without specific orders from the Government. The land which was assigned in favour of the predecessor of the plaintiff is classified as Meikkal Poramboke. It was handed over for plantation and maintenance in favour of the second defendant. They planted red sandalwood as well as sandalwood trees and they have already cut the trees in two terms, once in 10 years. It is also proved by the Ex.B2, B3 and B4. Therefore, the additional document which is sought to be marked by the plaintiff is not helpful to dispose of this appeal. Further, the plaintiff also did not state any reasons for the delay in production of the said document before this Court and also did not explain why she did not produce the said document before the trial court. Therefore, the above said judgments cited by the learned counsel for the plaintiff are not helpful to the case on hand.

20. Accordingly, this Civil Miscellaneous Petition 1 of 2006 is dismissed.

21. In view of the above discussion, this Court does not find any valid reason to interfere with the reasons and findings

rendered by the Lower Appellate Court for upholding the case of the defendants. As such, this Court is of the considered opinion that no specific questions of law are involved in this appeal. Be that as it may, the substantial questions of law are accordingly answered against the plaintiff and in favour of the defendants. In fine, this second appeal is dismissed. No orders as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Ranipet.

2.The District Munsif,
Arakkonam.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+3cc to Mr.S.Sivakumar, Advocate Sr.21097, 21098

+1cc to the Special Government Pleader Sr.21863, 21577

S.A.No. 944 of 2006
and C.M.P.No. 1 of 2006

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