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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.12.2021
PRONOUNCED ON : 13.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.819 of 2011
and
M.P.Nos. 1 to 3 of 2011

1. Vedha Padasalai rep.
By its Trustee Doctor
M.Meenakshisundaram (Deceased)

2. M.Sivagami
3. M.Nalliyan
4. M.Singaravelan

... Appellants/Plaintiffs

[Appellants 2 to 4 brought on record as LR's of the deceased sole appellant vide Court order dated 14.02.2017 made in CMP Nos.2686 to 2688 of 2017 in SA No.819 of 2011 [TRNJ]]

Vs.

Govindharaj (Died)

1. G.Lakshmi
2. Gnanasekaran
3. Panneerselvam
4. Anbezhagam
5. Pandiyan
6. Singaravelu
7. Davamani

... Respondents/
LRs of the sole Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 12.01.2011 made in A.S.No.57 of 2008 on the file of the Subordinate Judge, Nagapattinam, reversing the judgment and decree dated 30.09.2008 made in O.S.No.152 of 2005 on the file of the District Munsif, Nagapattinam.

For Appellants : Mr.V.Raghupathi

For Respondents : Mr.A.K.Sriram (for R1 to R7)
for Mr.A.S.Kailasam & Associates



J U D G M E N T

The present Second Appeal is directed against the Judgment and decree dated 12.01.2011 made in A.S.No.57 of 2008 on the file of the learned Subordinate Judge, Nagapattinam, reversing the judgment and decree dated 30.09.2008 made in O.S.No.152 of 2005 on the file of the learned District Munsif, Nagapattinam.

2. The deceased 1st appellant herein has filed a suit as against the defendant (now deceased) before the learned District Munsif, Nagapattinam, in O.S.No.152 of 2005, seeking the relief of declaration, declaring the possessory title of the plaintiff and consequently for the recovery of possession after removing the existing superstructure, damages for use and occupation and for costs. The learned District Munsif, Nagapattinam, by judgment and decree dated 30.09.2008, allowed the suit and passed the decree wherein, he directed the deceased defendant to handover the suit schedule property, after removing the superstructure.

3. Aggrieved over the said finding the defendant preferred an appeal in A.S.No.57 of 2008 on the file of the learned Subordinate Judge, Nagapattinam, praying to set aside the judgment and decree dated 30.09.2008, passed by the learned District Munsif, Nagapattinam. Pending appeal, the sole defendant died and his legal heirs viz., the respondents herein were brought on record.

4. The learned Subordinate Judge, Nagapattinam, by judgment and decree dated 12.01.2011 allowed the appeal and dismissed the suit filed by the plaintiff. Being dissatisfied with the same, the plaintiff is before this Court with the present Second Appeal. Pending Second Appeal, the sole appellant died and due to the same, his legal representatives were brought on record as appellants 2 to 4.

5. For the sake of convenience hereinafter the parties are referred to as per their litigative status before the trial Court.

6. The laconic averments made in the plaint, are as follows:

(i) The suit property belongs to the plaintiff Vedha Padasalai Trust and the suit property form part of the small strip of land situated north of Vedha Padasalai building abutting the Sannathi called the Nandavanam and the records of the Trust reveal that suit property was assigned to the Trust



and in any event, the plaintiff Trust only has possessory title over the suit property by virtue of its long, continuous and prescriptive enjoyment of the suit property.

(ii) The defendant during the life time of the adoptive father of present Trustee, had executed a Paguthi deed on 01.07.1970 in favour of present Trustee's adoptive father in respect of ground site of suit property and put up a small shed to sell articles of merchandise useful to the visiting pilgrims of famous Singaravelar Temple and after the present Trustee came into the Management, once again on 01.02.1975, the defendant executed another paguthi deed and the available accounts reveal the collection of paguthi amount from the defendant.

(iii) Recently, the defendant without getting the permission or approval of the Trustee made attempt to put up a pucca construction in the suit property and the Trustee coming to know about it, preferred a Police complaint and defendant's eldest son pacified the Trustee. In the complaint he gave in writing to lease out the property on his terms, but the defendant was obstinate and so the Trustee gave termination notice on 19.06.1995 for which defendant sent a reply on 03.07.1995 repudiating his status and asserting an independent right over the suit property.

(iv) The defendant having come into possession of suit property with the permission of Trust, is not entitled to set up independent claim that he came into possession of the suit property over three decades. The conduct of defendant in collusion with the Village Administrative Officer do not change the right of the plaintiff over the suit property and so under law the defendant must surrender possession before he set up a title to the third party. Conceding but not admitting that the property is a poromboke land, the defendant having come into possession through the plaintiff must be treated as an accretion to the estate of the plaintiff and so through casual B Memo receipts without knowledge of plaintiff and obtained behind the back of the plaintiff, the defendant is not entitled to claim right over the suit property.

(v) The present Trustee is a Surgeon in Government Hospital and due to pressure of his Office and profession he could not take steps to file the suit at an earlier date. Apart from recovery of possession of suit property, the defendant is liable to pay Rs.144/- as damage towards use and occupation for the past, which is actually paguthi arrears for three years period before July 1995 and future damages of Rs.25/- per month till the date of recovery of possession of suit property from him. Hence, the suit.



7. The case of the defendant, as averred in the written statement, is as follows:

(i) It is for the plaintiff to prove how he has got right to file the suit. The plaintiff has to prove the title over the suit property. It is not true that on 01.07.1970 and 01.02.1973, the defendant executed the paguthi deed. The suit property is a natham poromboke, belonging to the Government and long back the defendant has put up a Thatched shed in order to sell the archana articles.

(ii) The plaintiff's predecessors having hand in glove with the then Karnam claimed that the suit property is a separate property and so if the defendant wants to do business, he has to sign in some blank papers and the defendant also signed in some blank papers produced by Karnam and the defendant comes to know that the suit is filed using those blank papers with an ulterior motive.

(iii) Without mentioning the specific amount, the plaintiff is claiming the paguthi amount. Actually this defendant is paying B-Memo tax to the Government. The thatched shed of this defendant got damaged naturally and therefore, the defendant removed the thatched shed in the suit property and built a R.C.C. Building with the permission of Government and since the suit property does not belongs to the plaintiff, plaintiff did not take action immediately. After the completion of construction work on 19.06.1995, the plaintiff issued a legal notice to this defendant, for which the defendant gave a suitable reply on 03.07.1995.

(iv) The suit was filed belatedly after 10 years, without hearing the objections of this defendant. It is necessary to implead the Government as party to the proceedings, since the real owner of the suit property is the Government. It is not correct to say that the plaintiff is the owner of the suit property and the defendant took possession of the suit property from the plaintiff. Hence the suit filed by the plaintiff is liable for dismissal.

8. Based on the above averments, the learned District Munsif, Nagapattinam, framed necessary issues and tried the suit. On the side of the plaintiff, two witnesses were examined as PW1 and PW2 and nine documents were exhibited as Ex.A1 to Ex.A9. Similarly, on the side of the defendant, the defendant Govindaraj, examined himself as DW1 and marked seven documents as Ex.B1 to B7.

9. Having considered the materials placed before her, the learned District Munsif, Nagapattinam, allowed the suit in entirety. However, she directed the plaintiff to initiate separate proceedings under Order XX Rule 12 of Code of Civil



Procedure for future mense profits. In the appeal preferred by the defendant, the findings arrived at by the learned District Munsif, Nagapattinam, was reversed and ultimately, the learned Subordinate Judge, Nagapattinam, dismissed the suit.

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10. Feeling aggrieved over the same, the plaintiff is before this Court with the present Second Appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"1. Whether the lower Appellate Court has correctly and properly interpreted the Exhibits A1-Paguthi Deed, A2, A3 Paguthi Deeds and A7-Chitta relied on by the plaintiff to prove his continuous long, peaceful, uninterrupted lawful possession and enjoyment of the suit property for more than 70 years?

2. Whether the defendants are not estopped by their own conduct in denying the possessory title of the plaintiffs and their predecessors in title to the suit property?

3. Whether the plea of possessory title or adverse possession made by plaintiff has been correctly considered by the lower appellate Court despite its findings that even in the written statement itself, the defendants admitted signatures of the deceased first defendant in Ex.A2 and A3 Paguthi deeds which fact has also been corroborated by the PW2 Rajagopal?

11. Heard Mr.V.Raghupathi, the learned counsel appearing on behalf of the appellants/plaintiffs and Mr.A.K.Sriram, the learned counsel appearing on behalf of the respondents/defendants and perused the materials available on record.

12. It is the submission made by the learned counsel for the appellants that the lower appellate Court without properly and correctly interpreting the exhibits marked on the side of the plaintiff, came to the conclusion that the plaintiff has not proved his continuous long, peaceful, uninterrupted lawful possession and enjoyment of the suit property for more than 70 years. He would further submit that the lower appellate Court has wrongly found that the suit is bad for non-joinder of Government, as party-defendant, as there is no relief prayed against the Government which has assigned the suit property even 70 years back.

13. The further submission of the appellants' counsel is



that after admitting the signature of the defendant which was found in the Paguthi Deed, denying the same subsequently, cannot be entertained.

14. Repudiating the contentions raised by the appellants' counsel, the learned counsel for the respondents would contend that being the reason that the plaintiff seeks the relief of declaration, it is for him to prove his title and lawful possession. But here it is a case, the documents exhibited on the side of the plaintiff, are all having the survey numbers, which is contrary to the suit survey number. In this regard, the lower appellate Court correctly held that the documents relied on by the plaintiff is not sufficient to accept the title as alleged by the plaintiff.

15. The submissions made by the learned counsel appearing on either side are carefully considered.

16. It is the case of the plaintiff that in respect to the suit property, he acquired title through assignment and as well as by means of adverse possession. Hence, it is for him to prove his title. In this regard, in order to show the assignment alleged to be given by the government, the plaintiff gave evidence as by order dated 30.06.1922, vide D.Dis No.943 Rev of 22, the Sub Collector concerned assigned the suit property to Padasalai. In order to substantiate the said evidence, he has produced the said Assignment Deed dated 30.06.1992 as Ex.A1.

17. Now, on going through the contents of Ex.A1, it would reveal the fact that the Manager of the Sri Navaneetha Swamy Temple at Sikkal was informed by the Sub Collector as one thatched shed and Koradu (bfhuL) referred in the schedule of property was assigned to one Nallaiyan Chettiar, who is the father of the plaintiff.

18. Though it was stated that the said Thatched shed and Koradu (bfhuL) was assigned to the plaintiff's father, in the said order, the survey number in respect to the thatched shed and koradu has not been mentioned. Therefore, in the absence of any evidence in respect to the survey number pertains to the suit property, this Court cannot hold that property assigned to the plaintiff, is the suit property.

19. Here is the case, the defendant has not admitted the case of plaintiff as he is a paguthidar under the plaintiff in respect to the land comprised in resurvey number 201/11B, Natham of Sikkal village. However, in order to prove his case, the plaintiff had exhibited two documents as Ex.A2 and Ex.A3 alleged to be executed by the defendant in the capacity of Paguthidar.



20. In respect to the signature found in those documents, while at the time the defendant gave evidence as DW1, deposed that the signature found in those documents belongs to him. In support of the said evidence, PW2-Rajagopalan, gave evidence as the said document has been executed in his presence. In the said circumstances, it would be necessary to see whether the said documents are sufficient to hold that the suit schedule property belongs to the plaintiff.

21. As already stated, in the said documents, it was mentioned that the suit schedule property is a natham poromboke. Therefore, in the absence of any evidence in respect to grant of patta in favour of the plaintiff, this Court cannot hold that the plaintiff becomes the owner of the suit property. At most those documents are relevant to accept the possession of the plaintiff and in otherwise, it is not sufficient to accept the title as claimed by the plaintiff. In this occasion, it is necessary for the plaintiff to add the Government as a party to the proceedings and only in the said situation, this Court can ascertain the stand taken by the Government. But here it is a case, the Government is not a party and therefore, this Court cannot conclude that through Ex.A2 and Ex.A3, the plaintiff has proved his title.

22. At this juncture, since the suit has been filed for the relief of declaration, it would be necessary to refer to the judgment of our Hon'ble Apex Court in Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others, reported in (2014) 2 SCC 269, wherein our Hon'ble Apex Court held as follows:

"15. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by defendants in support of their case probabalises the



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case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in *Moran Mar Basselios Catholics v. Thukalan Paulo Avira* (AIR1959 SC 31) observed that "in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title."

18. In *Nagar Palika, Jind v. Jagat Singh* [(1995) 3 SCC 426], this Court held as under:

"the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.""

23. By applying the principles set out in the above referred judgment to the case on hand, it is quite clear that the plaintiff alone is having the duty to prove his title. But here it is a case as already discussed, the documents exhibited on the side of the plaintiff i.e., Ex.A1 to Ex.A3, will not be sufficient to prove the title of the plaintiff, as claimed by him.

24. Before the trial Court, the plaintiff filed a copy of the police complaint dated 14.06.1995, lodged against the defendant as Ex.A4. In the said document also, he made allegation against the defendant as he refused to vacate the property which was leased out in his favor. Further, the Advocate notice dated 19.06.1995 and the reply notice dated 03.07.1995 are marked as Ex.A5 and Ex.A6 respectively. Though, in Ex.A5, it was stated as the defendant is a tenant under the plaintiff, in the reply notice sent by the defendant, he has stated about the nature of the property as the same is a poromboke one.

25. In the said circumstances, the Chitta that pertains to the year of 1922 was marked as Ex.A7. Now on going through the contents of the said document, it shows that the same pertains to Survey nos.201/3 and 202/2. In otherwise the plaintiff has not produced the corresponding resurvey entires or



sub division entries to show that the said Chitta pertains to the suit survey number i.e. 201/11B.

26. The other document exhibited on the side of the plaintiff as Ex.A8, is the copy of the Adangal extract pertains to the Fasli 1361. The entries made in the said document shows that S.No.201/11 B is in the possession of the plaintiff-Padasalai, wherein the extent of the land is mentioned as 7 cents. On the other hand, the suit has been filed for an extent 10 ft. x 15 ft. Therefore, in the absence of any specific evidence in respect to the total extent pertains to Survey No.201/11B, this Court cannot hold that the Adangal Extract submitted by the plaintiff, pertains to the suit schedule property only.

27. Hence, in view of the above, all documents relied on by the plaintiff, are not sufficient to prove the case of the plaintiff as he is having the title and possessory right in the suit schedule property. Though, the documents marked on the side of the defendant would not go to show that the defendant is the owner of the suit schedule property, as rightly pointed out by the learned counsel for the respondents, in a suit for declaration of title and possession, the plaintiff could succeed only on the strength of his own title and that could be done only by adducing sufficient evidence to discharge the onus on him, irrespective of the question whether the defendants have proved their case or not. The lower appellate Court has also discussed the validity of the documents produced by the plaintiff meticulously and came to the correct conclusion that the plaintiff has not proved his case.

28. Therefore, in the light of the above discussions, the substantial questions of law, are all answered in favour of the respondents/defendants and the present second appeal is dismissed. The judgment and decree dated 12.01.2011 made in A.S.No.57 of 2008 on the file of the learned Subordinate Judge, Nagapattinam, is confirmed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To

1.The Subordinate Judge,
Nagapattinam.

2.The District Munsif,
Nagapattinam.

+lcc to Mr.V.Raghupathi, Advocate SR.No.66241

+lcc to Mr.A.S.Kailasam & Associates, Advocate SR.No.66454

S.A.No.819 of 2011

GSM(CO)

GN(01/03/2022)