



S.A.No.1210 of 2001

CMP.Nos.7403, 7408 and 7412 of 2022

in S.A.No.1210 of 2001

C.V.KARTHIKEYAN,J.,

Heard the learned counsel Mr.K.Shakespeare appearing on behalf of the appellants/defendants, Mr.P.Srinivas, learned counsel for the 11th respondent/The Commissioner, Arni Municipality, Arni, and Mr.Edwin Prabhakar, learned Special Government Pleader, assisted by Ms.E.Indhumathi, learned Government counsel for 12th and 13th respondents/The Tashildar, Arni Town, Arni and The District Collector, Thiruvannamalai District, Thiruvannamalai.

2.The individual respondents were the plaintiffs in O.S.No.171 of 1984 on the file of the District Munsif Court, at Arni. They had instituted the suit with respect to Government Poramboke land, which had been categorized at Kali Maidhanam,(காலி மைதானம்) in survey No.7/1 measuring 2.7772.5 Hectares seeking a declaration that the suit schedule property should be declared as a burial ground to be used by the plaintiffs and that the respondents, particularly, the Commissioner, Arni Municipality, should not put up any road in the said schedule property and remove the



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encroachments. The encroachments have been made by the appellants herein.

3. Written statement has been filed. Thereafter, the parties were invited to adduce the evidence. The trial Court also decreed the suit. Thereafter, a first appeal was filed in A.S.No.41 of 1996 before the Sub Court at Thiruvannamalai. By judgment dated 26.08.1999, the decree of the trial Court was affirmed and the first appeal was dismissed. This has necessitated the defendants 4 to 11 to file the present Second Appeal.

4. The second appeal has not been admitted so far. Notice of motion had been directed. Though notice had been served on the 1st to 10th respondents/plaintiffs and though the learned counsels Mr.P.Rathinam and Sathiyachandran had entered appearance on their behalf, the learned counsels had not appeared before this Court.

5. In the meanwhile, on 27.10.2017, the second appeal itself had been dismissed for non-prosecution.



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6.It had been stated that even prior to that particular date, the second appellant and the eighth appellant had died. Now, the present three applications in CMP.Nos. 7403/2022, 7408/2022 & 7412 of 2022 have been filed to restore the second appeal which had been dismissed for non-prosecution, to condone the delay of 1584 days in filing the application to restore the second appeal and to condone the delay of 1584 days in filing the application.

7.Heard learned counsel Mr.K.Shakespeare appearing for the petitioners on the petitions. Since notice had been directed, Mr.P.Srinivas, learned counsel had entered appearance on behalf of the 11th respondent, The Commissioner, Arni Municipality, and Mr.Edwin Prabhakar, learned Special Government Pleader, assisted by Ms.E.Indhumathi, learned Government counsel for 12th and 13th respondents, The Tashildar, Arni Town, Arni and The District Collector, Thiruvannamalai District, Thiruvannamalai.



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8.This is an unfortunate case, where, the plaintiffs had filed a civil suit and both the Courts below have misdirected themselves by granting a decree of right over Government Poramboke land. The land is under the control of the Revenue Authorities. If any right regarding possession or declaration is to be granted with respect to the land under the control of the revenue authorities, the authorities will have to be first approached and they may or may not grant such relief/permission and in the event of denial of permission, further remedy will have to be worked out by the plaintiffs in manner known to law.

9.The jurisdiction of the civil Court under Section 9 of the C.P.C. has been carved out and jurisdiction has also been conferred to other judicial authorities and quasi judicial authorities. When the civil Court has no jurisdiction to examine the issues raised in a suit, it is only appropriate that the civil Court respects such restriction of jurisdiction and refrains from granting any relief.

10.The plaint proceeds on the basis that the plaintiffs have been using the particular land as described in the schedule as burial ground and therefore, seek a declaration that they should continue to use such land as



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burial ground. The revenue department is the controller of the lands. It is seen from the records that the lands have been described as “*Sarkar Poramboku and Kaali Maidhanam*” (சர்க்கார் புறம்போக்கு மற்றும் காலி மைதானம்). The proper authority to object grant of relief are the revenue authorities.

11.It is also the grievance of the plaintiffs before the trial Court that the named defendants, quite apart from the Municipality and the Thasildar/Collector, have been in unlawful, illegal occupation of the said lands. If the said encroachments are to be removed to facilitate peaceful use of the lands as a burial ground again, it is the revenue authorities who should be first approached since the encroachment is on the Government Poramboke Land. By moving away from that particular process and instituting a civil suit is not a procedure enunciated or recognized in law. It is really unfortunate as both the Courts below have not taken into consideration this particular fact. It is also quite possible that while taking into consideration a suit filed by a group of individuals as plaintiffs, the mind of the Court is also influenced and there is a possibility that fundamental principles and basic principles of law are over looked.



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12.It is really unfortunate that the plaintiffs and also the 1st to 10th defendants independently have been in occupation for past 2 ½ decades when neither of them have any manner of right or title over the suit lands. Their right and title depends on the grace shown by the revenue authorities and not by any decree to be granted by the civil Court.

13.It is admitted that the present appellants have no title over the lands but have entered on the land and put up constructions and buildings have been erected. The municipality has also assessed such properties to tax and have been collecting tax on the buildings. But production of few tax receipts would neither give any right nor even give rise to seek prescription of title by adverse possession.

14.It must be stated that possession should be hostile and mere payment of tax receipts would not establish hostility to the Government authorities or to the revenue authorities.



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15. Therefore, both the plaintiffs and the present appellants herein/defendants necessarily have to approach only the revenue authorities to regularize their possession.

16. In view of the reasons stated, I hold that the judgements of both the Courts below have to be set aside. It is made very clear that the plaintiffs in the suit and the appellants /defendants have no manner of right, title or interest to occupy the said land. If at all they seek permission to occupy the said land, they should approach the proper revenue authorities and seek permission to occupy and a considered decision will be taken by the Revenue Authorities. It is entirely left to the discretion of the Revenue Authorities whether, the place is to be used as burial ground or not. If the place is to be used as a road to facilitate approach to the burial ground, then the revenue authorities, after following due procedure, may consider the same. If the present appellants are found to be in unlawful and illegal occupation, then the revenue authorities shall proceed to issue notice as per the appropriate provision of law and seek to obtain possession of the lands. If the Municipality, has any right, title or the interest over said land, they may claim manner known to law. It is advisable that the civil Court does not



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entertain any discussion on the nature of the possession or the interest or title of either the appellants herein or the plaintiffs in the suit.

17.The second appeal has already been dismissed for non prosecution.

18.There is no bonafide in the present applications. The delay of 6952 has to be explained properly with respect of the death of the 8th appellant. With respect to the death of the 2nd appellant, the delay has been 5276 days, nearly 14 ½ years.

19.The present applications seeking to set aside the abatement and condone the delay in filing such applications have no merits. The applications are dismissed.

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Internet:Yes/No
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