



A.S.(MD)No.70 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2022

DELIVERED ON : 17.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.70 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013 and 1 of 2015

A.Valliammai Ammal

... Appellant / 2nd Plaintiff

-Vs-

1.State of Tamil Nadu,

Rep. by its District Collector,

Tiruchirappalli.

2.Trichy District Jaggery and Jiggery Powder,

Merchants Association,

Rep. by its President,

Gandhi Market, Tiruchirappalli-9.

... Respondents 1 and 2 /

Defendants

3.Nachiyarammal

4.K.Dhamodharan

5.Kanga Rethinam



A.S.(MD)No.70 of 2013

6.T.Soundarrajan

7.T.Lakshmi

8.T.Krishna Kumari

9.T.Narayanan

10.D.Padmavathy

... Respondents 3 to 10 / Plaintiffs 3

& 5 to 11

PRAYER: Appeal Suit is filed under Order 41 Rules 1 and 2 r/w Section 96 of the Code of Civil Procedure to set aside the decree and Judgment dated 20.02.2013 made in O.S.No.69 of 2005, on the file of the First Additional District Court, Trichy.

For Appellant : Mr.H.Lakshmi Shankar

For R1 : Mr.T.Villavankothai,
Additional Government Pleader.

For R2 : Mr.S.Parthasarathy,
Senior Counsel for Mr.K.Govindarajan

JUDGMENT

The appellant / 2nd plaintiff and the respondents 3 to 10 / plaintiffs 3 and 5 to 11 have filed the suit in O.S.No.69 of 2005, seeking declaration and possession, wherein the respondents 1 and 2 are the defendants.



A.S.(MD)No.70 of 2013

WEB COPY

2.The brief facts of the plaint are as follows:-

(i)One Ayyamperumal Konar, who is the husband of the plaintiffs 1 and 2, has purchased the suit property by way of Court auction on 29.07.1946 in pursuance of the orders passed in E.P.No.549 / 43 in S.C.No.2117 / 31. As per the sale certificate, the said Ayyamperumal Konar enjoyed the suit property till his death in the year 1969 and thereafter, the plaintiffs, who are the legal heirs of the said Ayyamperumal Konar had enjoyed the suit property till 1979. The suit property is a vacant site and it is not a cultivable land. During the settlement operations, no notice was given to the plaintiffs and straight away, the Government has declared the suit property as poromboke and by virtue of the proceedings of the 1st defendant, the property is vested to the 2nd defendant. Since the 2nd defendant was not willing to accept the same, they have not taken the possession. Since the plaintiffs apprehended that the 1st defendant might alienate the suit property, this suit has been filed.

(ii)The settlement proceedings, which treated the property as poromboke, is not valid and not binding on the plaintiffs. The plaintiffs can



A.S.(MD)No.70 of 2013

WEB COPY

simply ignore the proceedings of the Settlement Tahsildar as void *ab initio*.

Pending suit, the 1st plaintiff died. During her life time, the 1st plaintiff has executed a Will, bequeathing her rights over the properties in favour of the plaintiffs 3 to 5. During the pendency of the suit, the 4th plaintiff also died and the plaintiffs 6 to 11 were impleaded in the suit. Hence, the suit is altered by seeking declaration of the title to the 2nd plaintiff on one part and the supplemental plaintiffs 3 and 5 to 11 jointly on the other part and their consequential possession.

3.The brief facts of the written statement filed by the 1st defendant are as follows:-

The suit is legally unsustainable. The averment that the deceased Ayyamperumal Konar purchased the suit properties on 29.07.1946 in the Court auction, thereafter, he was in possession, is false. As per the Government Order, the suit property was omitted from the inam list and subsequently, during the settlement operations, S.F.No.60/3 was classified as Sengulam Eri and was vested with the Government. The land measuring 8.50.0 hectares (21 acres) was placed at the disposal of the 2nd defendant towards construction of shops, go-down and



A.S.(MD)No.70 of 2013

WEB COPY

office buildings. The lands were handed over to the President of the 2nd defendant. The association remitted the entire land value, stone value and sub division fees in three installments. The plaintiffs have filed this suit after five years from the alienation by the 2nd defendant. The possession of the land is with the 2nd defendant. Further, the Government, in its direction to the 2nd defendant, has directed them to start the construction work before 31.03.1981 and the same was not complied with. Since no interest was shown by the 2nd defendant, proposals were submitted for resumption of land. This proposal was recommended to the Commissioner of Land Administration to the Government. Hence, show cause notice was issued, as to why the said 21 acres of alienated land shall not be resumed from the 2nd defendant. Further, it was decided by the Government to grant the land to Tiruvalluvar Transport Corporation for its use as Headquarters at Trichy. In apprehension to this, the 2nd defendant has filed a suit in O.S.No.1162 of 1982 on the file of the District Munsif Court, Trichy, seeking permanent injunction. This suit is barred by Section 80 of C.P.C., and the suit property is not properly valued. Hence, the suit is liable to be dismissed.



A.S.(MD)No.70 of 2013

WEB COPY

4.The brief facts of the written statement filed by the 2nd defendant are as follows:-

The plaintiffs are not entitled for any relief. The plaintiffs have not specified, as to who is the judgment debtor in S.C.No.2117 of 1931 and how they become the owner of the suit property. The suit property is now shown as 'Eri' in the Government records. Hence, it cannot be owned by any private persons and no title can be conveyed to a third party. The plaintiffs are bound to establish the title by way of adducing adequate documents. The judgment debtor has no saleable interest at all in the suit property and no title could pass under the auction sale dated 29.07.1946. The possession taken by Ayyamperumal Konar is denied. The Government has handed over the possession to the 2nd defendant and the boundaries and stones were fixed, so as to demarcate the area on the all four sides. The 2nd defendant is in effective occupation and possession of the suit property. The attempt of the 1st defendant to assign the suit property in favour of Thiruvalluvar Transport Corporation Limited has been challenged by way of filing a suit in O.S.No.1162 of 1982 on the file of the District Munsif Court, Trichy against the 1st defendant and showing the Transport Corporation as the 2nd



A.S.(MD)No.70 of 2013

WEB COPY

defendant and permanent injunction is in force. The 1st defendant having received full consideration to transfer the land has delivered possession to the 2nd defendant. The 2nd defendant is a bonafide purchaser for the value. The plaintiffs have no right or title or interest over the suit property. Hence, the suit is to be dismissed.

5.Initially, the trial Court framed 7 issues. Thereafter, based on the pleadings and written statement, the trial Court recasted the following issues:-

“1.Whether the 2nd plaintiff and the supplemental plaintiffs 3 and 5 to 11 are entitled for joint title in the suit property?;

2.Whether the 2nd plaintiff and the supplemental plaintiffs 3 and 5 to 11 are equally entitled to half share each in the suit property?;

3.Whether the 2nd plaintiff and the supplemental plaintiffs 3 and 5 to 11 are entitled for possession?;

4.Whether the plaintiffs are entitled for future profits till the date of delivery of possession? and

5.To what other relief?.

6.In order to substantiate the case, during the trial on the side of the plaintiffs, the second plaintiff examined herself as P.W.1 and 8 documents were



A.S.(MD)No.70 of 2013

WEB COPY

marked as Exs.A.1 to A.8. On the side of the defendants, four witnesses were examined as D.W.1 to D.W.4 and 33 documents were marked as Exs.B.1 to B.33 besides three other documents were marked as Exs.X.1 to X.3.

7.On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court has held that the plaintiffs are not entitled for any relief, hence, dismissed the suit, by an judgment and decree dated 20.02.2013.

8.Challenging the said judgment and decree dated 20.02.2013, the 2nd plaintiff has filed the present Appeal Suit before this Court.

9.The learned counsel for the appellants would submit that the suit property originally belonged to the family of one Kaja Marook Sahib. The said property was brought to Court auction in S.C.No.2117 of 1931 in E.P.No.549 of 1943 on the file of the Sub Court, Trichirappalli. The suit property was purchased in the Court auction sale by one Ayyamperumal Konar. The sale certificate was issued in his favour, which is marked as Ex.A.1. The said Kaja Marook Sahib had purchased the property under Ex.A.2 and mortgaged the same in favour of



A.S.(MD)No.70 of 2013

WEB COPY

Arumuga Konar under Ex.A.3. The said mortgage in favour of the said Arumuga Konar under Ex.A.3 is also referred to in Ex.A.1 sale certificate. Hence, the mortgage under Ex.A.3 was redeemed by payment of the sale conducted in the Court auction. In view of Exs.A.1 to A.3, the said Ayyamperumal Konar has become absolute owner of the suit property and the respondents 1 and 2 have not produced any document to trace their title over the suit property. The said Ayyamperumal Konar has two wives. After the death of the said Ayyamperumal Konar, his wives are entitled to suit property.

10.He would further submit that all of a sudden, the Government has declared Sengulam Village as minor inam under the Act 30 of 1956. The said declaration was challenged by the said Ayyamperumal Konar in S.T.A.No.4 of 1959 before this Court. The Hon'ble Division Bench of this Court, by its order dated 04.04.1963, had declared that the inclusion of Sengulam Village in the notification by the Government under the Act 30 of 1956 is erroneous. Pursuant to the said order, Ex.A.5, amended notification was issued by the Government under the Act 30 of 1956, deleting the village of Sengulam. Therefore, the suit property is continued to be absolute property of the said Ayyamperumal Konar.



A.S.(MD)No.70 of 2013

WEB COPY

After the said amended notification, the Settlement Tashildar though has no power, reclassified the private property into a Kulam without issuing any notice or conducting enquiry, which would not bind the appellant. The erroneous reclassification by the Settlement Tahsildar will not oust the jurisdiction of the Civil Court in deciding the title to the suit property. The proceedings of the settlement Tahsildar was made in the year 1974 and the suit has been filed in the year 1982 and hence, the suit is filed within the period of limitation.

11.He would further submit that after the cancellation of declaration of Sengulam Village, possession was handed over to the said Ayyamperumal Konar along with other persons. One Bashurnnisa Beevi had taken possession of her property alone, not the property purchased by the said Ayyamperumal Konar in the Court auction sale. The said Bashurnnisa Beevi had never taken possession of the suit property in the year 1964 and the said Bashurnnisa Beevi, while executing the sale deeds in favour of third parties, had referred to the suit property as one of the boundaries, belonging to the said Ayyamperumal Konar. In order to prove the same, the appellant has also filed a petition under Order XLI Rule 27 of C.P.C., to receive the settlement deed executed by the said



A.S.(MD)No.70 of 2013

WEB COPY

Bashurnnisa Beevi in favour of his son, as an additional document. A perusal of the same shows that the said Bashurnnisa Beevi never took the possession of the suit property and she only took the possession of her property. Even at the time of settlement, the said Ayyamperumal Konar was the owner of the suit property. The trial Court failed to appreciate the fact that the said Bashurnnisa Beevi never took the possession and erroneously held that at the time of reclassification, the Government handed over the suit property to the said Bashurnnisa Beevi and she was in possession of the property, therefore, the plaintiffs lost title and possession, which is legally not sustainable.

12.He would further submit that in Ex.X.2 apart from the name of the said Bashurnnisa Beevi, other persons' names are also mentioned. If the original of Ex.X.2 is produced by the Government, the truth will come out. Therefore, purposefully, the 2nd respondent has not produced the original document of Ex.X.2. Therefore, the Court can draw adverse inference. As already stated, the said Bashurnnisa Beevi never took the possession and the Government never handed over the suit property to the said Bashurnnisa Beevi, since the said Ayyamperumal Konar, from the date of Court auction purchase under Ex.A.1 till



A.S.(MD)No.70 of 2013

WEB COPY

date, was in possession of the property. Though under the Act 30 of 1956, the Government wrongly included the suit property as minor inam, subsequently, it was reclassified as per the order of this Court. Therefore, after the demise of the said Ayyamperumal Konar, the appellant and the respondents 3 to 10 are in continues possession and enjoyment of the property.

13.He would further submit that since the suit property is a vacant site, possession follows title. Therefore, when the appellant was dispossessed from the suit property from in year 1979, the appellant had filed a suit for declaration and possession in the year 1982 within the period of 5 years. Therefore, the suit was filed within the time. However, the trial Court erroneously held that the suit was barred by limitation. The respondents 1 and 2, except Ex.B.27 reclassification order, have not produced any records to establish the rival titles of the suit property. Though the Government is attempting to claim title over the suit property only based on Ex.B.27 reclassification order, no other document has been produced. The order passed by the revenue authority, reclassifying the lands would not take away the title of the appellant. Therefore, the appellant proved her title and the trial Court failed to appreciate the evidences and erroneously,



A.S.(MD)No.70 of 2013

WEB COPY

dismissed the suit. However, in order to show that the said Bashurnnisa Beevi never took the possession, the deed of settlement made by the said Bashurnnisa Beevi in favour of her son has been produced as additional evidence, wherein the suit property was described as the property of Ayyamperumal Konar and shown as the boundaries to the properties of the said Bashurnnisa Beevi. Therefore, the document has to be received as additional evidence and if necessity, take the same as evidence in record directly or otherwise direct the trial Court to mark the additional document as evidence.

14.In support of his contention, the learned counsel for the appellant has relied on the following judgments:-

(i)***Pothukutchi Appa Rao and others Vs. Secretary of State for India in Council, represented by the Collector of Guntur*** reported in ***1938 2 MLJ 434*** ;

(ii)***Collector of Chengalpattu, MGR District at Kancheepuram Vs. S.P.Balakrishnan and another*** reported in ***(2014) 3 MLJ 678***.



A.S.(MD)No.70 of 2013

WEB COPY

15.The learned counsel for the respondents would submit that the suit property originally belonged to one Kaja Marook Sahib. Though the appellant has stated that her husband, namely, Ayyamperumal Konar had purchased the suit property under the Court auction, they have not taken the possession. The property was declared as minor inam. Since the property belonged to the Government, the 1st respondent sold the property to the 2nd respondent. Since the 2nd respondent has not taken effective steps to fulfil the conditions mentioned in the conditional sale deed, the 1st respondent cancelled the sale deed and allotted the lands to the Thiruvalluvar State Transport Corporation. Therefore, the 2nd respondent filed a suit and got interim order. The appellant is not in possession of the suit property and she has not proved the same. Even otherwise, she lost title by adverse possession. The trial Court has rightly decided that the 1st respondent sold the property to the 2nd respondent and now, the 2nd respondent is in possession of the suit property. The appellant has sought relief of declaration and also recovery of possession, which clearly shows that she is not in possession of the suit property and has not established her title. The appellant has not established the ingredients of Order XLI Rule 27 of C.P.C. The sale deed, which



A.S.(MD)No.70 of 2013

WEB COPY

is sought to be received as additional document, was executed in the year 1965.

The appellant has filed the suit in the year 1984 and she has not stated in her affidavit why she has not produced this document during the trial. Even otherwise, if the document is received as additional document and marked as exhibit, it will not improve the case of the appellant. Therefore, both the appeal and the miscellaneous petition are liable to be dismissed.

16.Heard both sides and perused the materials available on record carefully.

17.It is the case of the appellant that the plaintiffs 1 and 2 are the wives of one Ayyamperumal Konar, who had purchased the suit property through the Court auction sale in S.C.No.2117 of 1931 in E.P.No.549 of 1943. After the demise of the said Ayyamperumal Konar, they are in possession of the suit property and during the pendency of the suit, the 1st plaintiff died. Therefore, the plaintiffs 3 to 5 were impleaded and thereafter, the 4th plaintiff died, hence, the plaintiffs 6 to 11 were impleaded. Ex.A.2 is the original title deed to Ex.A.1. Originally, the suit property belonged to the family of one Kaja Marook Sahib and



A.S.(MD)No.70 of 2013

WEB COPY

he mortgaged the suit property in favour of one Arumuga Konar under Ex.A.3.

After the death of the said Ayyamperumal Konar, the appellant and the respondents 3 to 10 are in possession of the property. Though in the year 1964, the Government wrongly declared the suit property and surrounding properties as inam lands under the Act 30 of 1956, subsequently, amended notification was issued, deleting the suit property. Therefore, the appellant and the respondents 3 to 10 are in continuous possession of the suit property.

18.It is the further case of the appellant that the suit property is a vacant land, therefore, possession follows title and their possession was never disturbed. Even though the proceedings of the settlement Tahsildar was made in the year 1974, the suit has been filed in the year 1982, within 12 years from the date of dispossession. Hence, the suit was not barred by limitation. Even though the revenue proceedings shows that the suit property was handed over to the said Bashurnnisa Beevi, who is the successor to the vendor of the said Ayyamperumal Konar, she has never stated that she took the suit property in possession and she never claimed any right and title over the suit property. Even in Ex.X.2 revenue proceedings apart from the name of the said Bashurnnisa Beevi, other persons'



A.S.(MD)No.70 of 2013

WEB COPY

names are also mentioned. Therefore, it is very clear that the Government has never handed over the suit property to Bashurnnisa Beevi. The appellant has proved that under Exs.A.1 to A.3, except the appellant and the respondents 3 to 10, no other persons are entitled to the suit property. Therefore, the respondents have no right and title over the property. The alleged conditional sale deed made by the 1st respondent in favour of the 2nd respondent is not valid and the same will not bind the appellant.

19.The case of the respondents 1 and 2 is that the appellant or the respondents 3 to 10 have never proved that they had taken the possession of the suit property and they are enjoying the property more than the statutory period. However, the property is vested with the Government. The 1st respondent sold the property with certain conditions to the 2nd respondent, subsequently, cancelled the same and transferred the property to the Tiruvalluvar State Transport Corporation. According to the 2nd respondent, the appellant is never in possession of the property. As per the conditional sale deed, the 2nd respondent had taken possession of the property and the 2nd respondent is in possession of the suit property. When the 1st respondent tried to disturb the possession of the 2nd



A.S.(MD)No.70 of 2013

WEB COPY

respondent through third party, the 2nd respondent had filed a suit and got interim stay. Now, the 2nd respondent is in possession of the property.

20.It is settled proposition of law that a person, who claims title and possession and filed a suit, as a plaintiff has to prove his case on his own strength and he cannot take advantage of loopholes left out by the defendant. In this case, the Court has to see whether the appellant as one of the plaintiffs has proved title and possession and as such she is entitled for declaration of title and possession of the property.

21.A careful reading of Ex.A.1 shows that the husband of the appellant, namely, Ayyamperumal Konar had purchased the property in the Court auction proceedings in E.P.No.549 of 1943 and he was declared as Court auction purchaser. Ex.A.2 is the title deed of Ex.A.1 and the original owner is one Kaja Marook Sahib and he entered into mortgage deed cum conditional sale deed. Since they could not fulfil the same, the suit property was brought under sale by Court auction in S.C.No.2117 of 1931 in E.P.No.549 of 1943. Though the appellant is claiming title under Exs.A.1 to A.3, she has never established that she



A.S.(MD)No.70 of 2013

WEB COPY

was in possession of the property and has not produced any document to prove the same. The appellant has taken a stand that since the suit property is a vacant site, possession follows title, hence, there is no need to prove the physical possession. Though the Government under the Act 30 of 1956, had included the suit property as minor inam, since this Court in S.T.A.No.4 of 1959, by its order dated 04.04.1963, had declared that the inclusion of Sengulam Village in the notification by the Government under the Act 30 of 1956 is null and void, on 06.07.1964 the 1st respondent issued amended notification, deleting Sengulam village from the said Act. After the amended notification, the Tahsildar, who has no power to reclassify, has reclassified the private properties into Kulam, without issuing any notice neither to the appellant nor to the respondents 3 to 10.

22.It is pertinent to note that even in the appellant's documents Exs.A.1 to A.3, the suit property is not described as a vacant site, wherein it is described as Nanja lands. Even in Ex.A.1, it is described as Nanja land and also mentioned about both warams. If the property is a vacant site, there is no need to describe as nanja land and also mention both warams. It clearly shows that the suit property is not a vacant site and it is a nanja land. The appellant has not established that



A.S.(MD)No.70 of 2013

WEB COPY

subsequent to purchase of the property in the Court auction, her husband has taken physical possession, mutation has also been taken place, patta was issued and they are cultivating the land. They have not produced any patta or chitta and adangal. Mere production of the title deeds alone is not enough. The appellant is bound to prove that pursuant to the sale certificate Ex.A.1, her husband has taken possession and they are in continuous possession till filing of the suit.

23.As already stated, as a plaintiff the appellant has to prove her case on her own strength and she cannot take advantage of the loopholes left by the respondents / defendants. Since the appellant has filed the suit for declaration and also for recovery of possession, she is bound to prove not only the title but also possession of the property more than the statutory period, much less than before filing of the suit. In this case, the appellant has filed a petition in M.P. (MD)No.1 of 2015 under Order XLI Rule 27 of C.P.C., to receive the document as additional evidence. In the said settlement deed dated 08.01.1965 also, the suit property has been shown as one of the boundaries of the settler and even in the said document also, all the lands in and around the suit property have been shown as nanja lands and therefore, it is the cultivable land. Therefore, a person, who is



A.S.(MD)No.70 of 2013

in possession, has to file a patta or chitta and adangal. The appellant has never filed any patta or chitta and copy of adangal for any of fasli and also she has not produced any document that atleast from the year 1964 to 1984 ie., till filing of the suit, the appellant and her predecessor were in possession and enjoyment of the suit property and has not proved that the property is a vacant site.

24.No doubt, it is settled principles of law that if it is a vacant site, production of title deeds is enough, since possession follows title, whereas if it is a revenue land and it is described as nanja or punja lands, which are cultivable lands, it is for the person, who claims title and possession, has to prove not only the title but also possession of the property. Here, the appellant has stated that the property is a vacant site, whereas the document shows that it is nanja lands. Under these circumstances, this Court finds that the appellant has not established that she was in possession of the property from the date of the Court auction purchase till the date of possession taken by the 2nd respondent and the suit filed by the appellant and the respondents 3 to 10 is barred by limitation.



A.S.(MD)No.70 of 2013

WEB COPY

25.As far as the decisions referred to by the learned counsel for the appellant are concerned, the same are not applicable to the present case on hand on the ground that the facts and circumstances of the case are different from this case.

26.As this Court is the First Appellate Court as a fact finding Court, it has to re-appreciate the entire evidence independently and arrive at an independent conclusion. On re-appreciation, this Court does not find any perversity in the findings of the trial Court. As there is no merit in the appeal, the appeal is liable to be dismissed, accordingly, dismissed and the judgment and decree of the trial Court are confirmed No costs. Consequently, M.P.(MD)Nos.1 and 2 of 2013 are closed.

27.As already stated even if the document referred to in M.P.(MD)No.1 of 2015, is received as additional evidence, that will not help the case of the appellant. In the document itself, the suit property is referred to as nanja lands, not as vacant site. Though the appellant has stated that her predecessor took the possession and they are enjoying the property by paying revenue tax like kist, she



A.S.(MD)No.70 of 2013

has not produced any patta or chitta and adangal. Hence, the appellant failed to prove her possession of the property. Under these circumstances, since the document would not improve the case of the appellant, M.P.(MD)No.1 of 2015 is also dismissed.

17.08.2022

Index : Yes / No

Internet : Yes / No

Myr

To

1.The First Additional District Judge,
Trichy.

2.The District Collector,
Tirurchirappalli.

3.The Record Keeper,
V.R.Section,
Madeira Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.70 of 2013

P.VELMURUGAN, J.

Myr

Judgment made in
A.S.(MD)No.70 of 2013

17.08.2022