



S.A(MD)No.251 of 2018 & 359 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.02.2023

Delivered on : 01.03.2023

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

S.A(MD)No.251 of 2018 & 359 of 2022

and

C.M.P(MD)Nos.6899 & 6900 of 2018 & 4241 of 2022

S.A(MD)No.251 of 2018

- 1.K.Kumar
- 2.C.Muthuvel
- 3.E.Fernandes
- 4.D.Pathinettampatyan

... Appellants/Appellants/Plaintiffs

-vs-

- 1.Mahaboomariam Beevi
- 2.Ummul Fausia
- 3.Mohaideen Kasali
- 4.Rajendran
- 5.The Revenue Tahsildar,
Thiruvadanai.
- 6.The District Revenue Officer,
Ramanathapuram.
- 7.The District Collector,
Ramanathapuram.

..Respondents/Respondents/Defendants



S.A(MD)No.251 of 2018 & 359 of 2022

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, to set aside the Judgment and Decree dated 29.01.2018 passed in the appeal in A.S.No.19 of 2010 on the file of the Subordinate Judge, Ramanathapuram confirming the Judgment and Decree dated 18.01.2010 passed in O.S.No.51 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Thiruvadanai.

For Appellants ... Mr.J.Barathan

For Respondents ... Mr.H.Arumugam for
Mr.J.Madhu for R2 & R3

Mr.A.Baskaran
Addl. Advocate General assisted by
Mr.D.Gandhiraj
Spl. Govt. Pleader for R5, R6 & R7
R1 – Died
No appearance for R4

S.A(MD)No.359 of 2022

1.K.Kumar
2.C.Muthuvel
3.Fernandes
4.Pathinettampatiyan
5.Janatha
6.Mallika
7.Annapoorna
8.Kannu

... Appellants/Thrid parties

-VS-



S.A(MD)No.251 of 2018 & 359 of 2022

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Mahaboomariam Beevi (died)

- 1.Ummul Bavusiya
- 2.Mohaideen Kasali
- 3.Syed Abdul Kadar
- 4.Jei Nambu Deevi
- 5.Siththi Pathima
- 6.Yusuf Sulaika

7.The Government of Tamilnadu
rep. by the District Collector,
Ramanathapuram.

8.The Revenue Divisional Officer,
Dathams Bungalow Road,
Ramanathapuram.

..Respondents/ Appellants & Respondents/
Plaintiffs and Defendants

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, to set aside the Judgment and Decree dated 09.06.2003 passed in the appeal in A.S.No.111 of 2000 on the file of the Principal District Judge, Ramanathapuram reversing the Judgment and Decree dated 26.06.2000 passed in the suit in O.S.No.48 of 1995 on the file of the Subordinate Judge, Ramanathapuram.

For Appellants ... Mr.J.Barathan

For Respondents ... Mr.H.Arumugam for
Mr.J.Madhu for R1 & R2

Mr.A.Baskaran
Addl. Advocate General assisted by
Mr.D.Gandhiraj
Spl. Govt. Pleader for R7 & R8



S.A(MD)No.251 of 2018 & 359 of 2022

No appearance for R3
R4 to R6 – Ex parte

COMMON JUDGMENT

Since the issues involved in both the second appeals are connected, the appeals are taken up together and decided together.

S.A(MD)No.359 of 2022

2. The appellants are fishermen claiming to be residents of Lanjiyadi Singaravelan Nagar, Sozhiyankudi Village, Thiruvadanai Taluk, Ramanathapuram District. They were not parties in the suit. They have filed the above appeal in representative capacity on behalf of the other fishermen residing in the said village. This Court had allowed the appellants to file the above appeal in the representative capacity. It is their case that the entire property called as Lanjiyadi Singaravelan Nagar is a poramboke land belonging to the Government and the fishermen in that area are residing therein by putting up small huts stocking their catch and selling fishes for nearly 100 years. The houses of fishermen



S.A(MD)No.251 of 2018 & 359 of 2022

are assessed to property tax by the Panchayat. They were also given electricity connection and identity cards showing their address as belonging to Lanjiyadi Singaravelan Nagar.

3. The respondents 2 and 3 herein filed a suit in O.S.No.48 of 1995 on the file of the Sub-Court, Ramanathapuram as against the 7th respondent herein, namely, the Government of Tamil Nadu for a decree of declaration of title and for a consequential decree of permanent injunction restraining the defendants therein, namely, the Government from interfering with their possession and enjoyment. Their claim was that the suit property measuring an extent of approximately 12 Acres belonged to one Nainar Mohammed, he having acquired a portion of it by sale deed dated 10.11.1954 and the remaining portion were his ancestral property. On his demise, the suit property devolved on his wife and children, namely, the respondents 2 and 3/plaintiffs and the fourth respondent/first defendant. Their further claim was that the suit properties were assigned to them by the Government and later, at the instance of the fishermen occupying the suit property, the Government cancelled the assignment orders.



S.A(MD)No.251 of 2018 & 359 of 2022

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4. The 7th respondent/Government represented by the District Collector, Ramanathapuram, filed a written statement. It was their case that the suit properties are poromboke lands belonging to the Government. The said properties were assigned to the respondents 2 and 3/plaintiffs and the respondents 3 to 6/defendants 1 to 4 on the basis of their applications for assignment on the ground that they are poor landless persons. Since the respondents 2 to 6 violated the conditions of assignment and let the fishermen use the lands assigned, the Government cancelled the assignment, after due enquiry.

5. Before the Trial Court, the respondents 2 and 3/plaintiffs examined P.W.1 to P.W.5 and marked Exs.A1 to A9 on their side. The Government examined D.W.1 and marked Exs.B1 to B.14 on their side.

6. The Trial Court found that the respondents' claim for declaration of title, cannot be accepted only on the basis of sale deeds, which were marked as Exs.A7 and A8. The Trial Court further found that the respondents 2 and 3's father had applied for Ryotwari patta and the Settlement Officer had rejected the claim for Ryotwari Patta and the same has not been challenged. Subsequently, the plaintiffs admitting the



S.A(MD)No.251 of 2018 & 359 of 2022

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ownership of the Government, sought for assignment patta and the same was granted. The said assignment pattas were cancelled subsequently, since the respondents 2 to 6 had violated the conditions of assignment. The Trial Court further found that the respondents had not established as to how the vendors in the two sale deeds (Exs.A7 & A8) had acquired title. No documents were filed to establish the title or possession and hence, dismissed the suit.

7. The respondents herein filed A.S.No.111 of 2000 before the Principal District Court, Ramanathapuram. The Lower Appellate Court found that merely because the Settlement Officer had rejected the claim of the respondents for patta, the right to file a suit and pray for declaration of title is not precluded. The Civil Court can independently consider the plaintiffs' prayer for declaration of title. The Lower Appellate Court further found that the case of the plaintiffs was based on Exs.A7 and A8 and since the Government has not specifically denied the said documents and the title of the predecessors in title of the plaintiffs and the first defendant in their written statement, the case of the plaintiffs has to be accepted. Therefore, the Lower Appellate Court set aside the Trial Court's Judgment and granted the relief as prayed for.



S.A(MD)No.251 of 2018 & 359 of 2022

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8. The appellants, who are fishermen, claiming to be aggrieved persons, who are in possession of the suit schedule properties, have challenged the above Judgment after obtaining leave from this Court. It is pertinent to point out that the 7th respondent Government has not filed any appeal challenging the said Judgment.

9. Before we deal with the rival contentions, the facts in the connected case filed by the appellants has to be discussed, which is the subject matter of S.A(MD)No.251 of 2018.

S.A(MD)No.251 of 2018

10. The appellants/plaintiffs had filed a suit in O.S.No.51 of 2016. They had filed the said suit as representatives of the fishermen community living in Vanjiyadi Singaravelan Nagar against the plaintiffs in O.S.No.48 of 1995 and the Government. It is their case that the fishermen have been living in the suit schedule properties continuously for 70 years. They have built huts and were in continuous uninterrupted possession. The suit schedule properties are Government poramboke



S.A(MD)No.251 of 2018 & 359 of 2022

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lands and they had made representation in the year 1975 to the Tashildar for granting patta in their favour. Since the Tashildar promised that the patta has to be issued in their names, they were awaiting the orders for grant of patta. While so, they came to know that the Government had issued assignment patta in favour of the plaintiffs in O.S.No.48 of 1995. They objected to the assignment and thereafter, the Government had cancelled the assignment in the year 1995. Subsequently, the Government Officials promised the plaintiffs that they would be granted patta as per their request. While so, the defendants 1 to 3 had filed the suit in O.S.No.48 of 1995 for declaration of title in respect of the suit schedule properties against the Government. The said suit was dismissed and thereafter, in the first appeal, the Judgment of the Trial Court was set aside and the prayer sought for by the defendants in the instant suit was granted. Thereafter, for some reasons, the Government had not filed any second appeal. By taking advantage of the Judgment in A.S.No.111 of 2000, the defendants were attempting to disturb the peaceful possession of the plaintiffs. Hence, they filed the suit for permanent injunction.

11. The defendants therein, who are the plaintiffs in O.S.No.48 of 1995, filed a written statement through their power agent, namely, the



S.A(MD)No.251 of 2018 & 359 of 2022

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fourth defendant, stating that the plaintiffs are not in possession of the suit property and denied all other averments made in the plaint. The plaintiffs are aware of the suit in O.S.No.48 of 1995 and the averment that they came to know about the suit only after the Judgment of the Appellate Court is false. The defendants further contended that they were entitled to the suit schedule property by virtue of two sale deeds executed in the year 1954 and 1944 in favour of their father Late Nainar Mohammed. The plaintiffs are in possession of the suit schedule property as tenants of the first defendant, namely, Mariam Beevi. The fourth defendant, as power agent, had constructed the huts, in which, the plaintiffs were residing. Hence, their case that they were residing for the past 70 years is false. The Judgment of the Principal District Judge, Ramanathapuram in A.S.No.111 of 2000 has become final, by which, the title of the defendants 1 to 3 had been accepted.

12. The Tahsildhar who was the 5th defendant, had denied the claim of the plaintiffs that they were in possession of the suit property.

13. Before the Trial Court, the plaintiffs examined P.W.1 and P.W. 2 and marked Ex.A1. The defendants have examined D.W.1 and marked Exs.B1 to B5. The Trial Court dismissed the suit.



S.A(MD)No.251 of 2018 & 359 of 2022

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14. The First Appellate Court confirmed the findings of the Trial Court and held that the plaintiffs cannot maintain the suit in representative capacity. The possessory right of the residents is an individual right and they cannot be said to possess common interest in respect of the plaint schedule property. The Appellate Court further held that out of 85 houses in the suit schedule property, only 53 residents are not paying rent and the remaining persons have admitted the title of the defendants and paid rent. Therefore, the Appellate Court found that even if a decree is passed, it would be inexecutable as the schedule of property has not been clearly spelt out by the appellants and hence, dismissed the appeal. Against which, the appellants are before this Court.

15 This Court admitted the S.A(MD)No.251 of 2018 on the following substantial question of law:-

“Whether the Lower Appellate Court was right in dismissing the suit for injunction filed by the plaintiffs, solely on the ground that the suit for declaration of title filed by the defendants 1 to 4 has been decreed, without deciding the factum of possession?



S.A(MD)No.251 of 2018 & 359 of 2022

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16. Mr.H.Arumugam, learned counsel for the respondents submitted that the Appellate Court did not dismiss the suit for injunction on the basis of the declaration of title in favour of the defendants 1 to 4. The Appellate Court had dismissed the suit only on the ground that the plaintiffs' suit filed in representative capacity was not maintainable as they had individual possessory right. Therefore, there is a factual error in the question of law and hence, no substantial question of law arises in the above second appeal and prayed for dismissal of the second appeal.

17. On reading of the Appellate Court's Judgment, this Court finds that the appeal was dismissed on the sole ground that the suit was not maintainable by the appellants in their representative capacity. They have filed the suit in respect of 5 Hectares approximately measuring an extent of 12 acres, though they are in possession in the specific portion of the plaint schedule property. The possessory right of the appellants is an individual right and hence, they are not entitled to the prayer for permanent injunction in respect of the entire extent of 5 hectares. The factual finding further is that only 53 residents have defaulted in payment of rents and the remaining tenants are regularly paying the rents.



S.A(MD)No.251 of 2018 & 359 of 2022

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Therefore, for that reason also, the plaintiffs' suit has to be dismissed since there is no common interest to maintain the representative of the suit. Therefore, the Appellate Court had not dismissed the suit for injunction solely because the declaration of title has been decreed in favour of the defendants 1 to 4 in another suit. Since the Appellate Court's finding is not based on the decree of declaration, the question of law raised by the appellants is factually incorrect. There are no other substantial questions of law in the above second appeal. Therefore, for the above reasons, the second appeal in S.A(MD)No.251 of 2018 deserves to be dismissed and the same is dismissed.

S.A(MD)No.359 of 2022

18. As regards the other second appeal in S.A(MD)No.359 of 2022, the appellants have filed the above appeal in the representative capacity after obtaining leave from this Court though they were not parties to the suit and the first appeal. This Court had passed an order on 28.03.2016 permitting the appellants to file the second appeal in their representative capacity. The respondents have not challenged the said order. However, the learned counsel for the respondents has raised the



S.A(MD)No.251 of 2018 & 359 of 2022

preliminary objection at the time of final hearing and submitted that even if this Court had permitted the second appeal to be filed by the appellants, the respondents are entitled to show that as to how the appellants have no right to maintain the appeal. Hence, this Court proposes to decide the preliminary objection first.

19. As stated earlier, this Court had passed an order permitting the appellants to file the appeal. The respondents have not challenged the said order, though they had earlier challenged the order condoning the delay in favour of the appellants before the Hon'ble Supreme Court. The respondents have also not filed any petition to revoke the leave granted. The learned counsel for the respondents relied upon the Judgment of the Hon'ble Division Bench reported in *AIR 1953 Mad 485 (DB) (K.Ponnalagu Ammal vs. State)* stating that even if leave is granted, the question as to whether the appeal is maintainable, can be decided at the subsequent stage of final hearing. Even in the facts of that case, this Court had originally granted leave to file appeal ex-parte and thereafter, held at the time of final hearing that the appeal was not maintainable by a third party to the original proceedings. The above decision makes it clear that mere grant of leave to file appeal does not preclude the appellants in



S.A(MD)No.251 of 2018 & 359 of 2022

questioning the maintainability of the appeal filed by the appellants.

Therefore, this Court has to see whether the appellants have established their right to maintain the appeal.

20. In **Ponnalagu Ammal's case** (cited supra), this Court held as follows:-

“19. Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceeding, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings. We can give as an instance the case where an Official Receiver impugnes an alienation by the insolvent and sues to set it aside and fails. If he does not appeal the decision of the trial Court would be final and binding not only on him but also on all the creditors. In such a case, if the Official Receiver does not choose to file an appeal an aggrieved creditor should ordinarily be given leave to appeal if he



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S.A(MD)No.251 of 2018 & 359 of 2022

shows a prima facie case against the order sought to be appealed. A more or less similar test has been applied to cases where a successful party has been allowed to file an appeal against an adverse finding. (Vide--'AIR 1924 Mad 689' (J) and -- '62 Cal 701 (K).)'

Therefore, the test is as to see whether the appellants are aggrieved persons, who would be bound by the decree and judgment and would be precluded from attacking the correctness in other proceedings.

21. The Hon'ble Apex Court in **2020(9) SCC 501 (V.N.Krishnamurthy vs. Ravikumar)** had held that Sections 96 and 100 provide for an appeal from any original decree or from decree in appeal, respectively. It does not enumerate the categories of persons who can file an appeal. The Hon'ble Apex Court further held that it is well settled position of law that an appeal cannot be preferred by a person unless he is an aggrieved person. The Hon'ble Apex Court has held as follows:-

“15. Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal.



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S.A(MD)No.251 of 2018 & 359 of 2022

However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court. Reference be made to the observation of this Court in Smt. Jatan Kumar Golcha Vs. Golcha Properties Private Ltd.(1970)3 SCC 573:-

“It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment.”

16. This Court in State of Punjab & Ors. Vs. Amar Singh & Anr.2 while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus :-

“Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co., [(1894) 2 Ch 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it.”

17. In Baldev Singh Vs. Surinder Mohan Sharma and Ors (2003) 1 SCC 34., this Court held



S.A(MD)No.251 of 2018 & 359 of 2022

that an appeal under Section 96 of the Civil Procedure Code, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:-

“15...A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned.”

18. In A. Subash Babu Vs. State of A.P. and Anr. 4, this Court held as under:-

“The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant’s interest and the nature and extent of the prejudice or injuries suffered by complainant.”

19. The expression ‘person aggrieved’ does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (vide Shanti Kumar R. Canji Vs. Home Insurance Co. of



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S.A(MD)No.251 of 2018 & 359 of 2022

New York 5 and State of Rajasthan & Ors. Vs. Union of India & Ors.6).

20. In Srimathi K. Ponnalagu Ammani Vs. The State Of Madras represented by the Secretary to the Revenue Department, Madras and Ors .7, this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:-

“Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.”

22. The learned counsel for the respondents further relied upon the following observations of the Allahabad High Court in ***AIR 1976 All 121 (State of U.P. vs. Smt. Ram Sri and another):-***

“8. Section 96 of the Civil P. C. deals with appeal from original decrees. It does not enumerate the persons who can



S.A(MD)No.251 of 2018 & 359 of 2022

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*file an appeal under the aforesaid section. It only lays down that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the Court authorised to hear the appeals. It is, however, fundamental that in order to be entitled to file an appeal, the person must be aggrieved against the judgment against which he is filing the appeal. In other words, the right to file an appeal against a judgment or decree exists only in the person who is aggrieved or prejudiced thereby. A party, therefore, who would benefit from the change in the judgment has an appealable interest. This interest, of course, should not be contingent speculative or futuritive. It must be substantial, immediate and pecuniary. Such an interest must have invaded legal rights of the person filing an appeal. It is, therefore, clear that an aggrieved party is one who is injuriously affected by the judgment or whose rights are directly affected by the operation of the same. The question relating to the controversy as to when a person can be said to be aggrieved has been a subject-matter of decision in various cases. The well known judgment which laid down the definition of the phrase "Aggrieved person" is by James, L. J. in *Re Sidebotham: Ex p. Sidebotham* (1880) 14 Ch; D. 458. It was observed that the words 'person aggrieved' in Section 71 of the Bankruptcy Act of 1869 meant:*

"not really a person who is disappointed of a benefit which he might have received if some order had been made. A 'person aggrieved' must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully



S.A(MD)No.251 of 2018 & 359 of 2022

deprived him of something, or wrongfully refused him something or wrongfully affected his title of something."

9. *The important thing which may be noted in this definition is that the person filing an appeal must have "legal grievance" against the decision which "wrongfully deprives him of something" or "affects his title to something". This definition was, however, subsequently treated as not exhaustive. Corpus Juris Secundum, Volume IV, page 356, 1 Edition, dealing with the same observed as follows:*

"Broadly speaking, a party or person is aggrieved by a decision when, only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights",

10. *From these citations, it is clear that the mere fact that a judgment is wrong, does not entitle a person to file an appeal against the same. It is necessary that such a person must be deprived of the results of the litigation which he was expecting in his favour in case the judgment went against him. This will give rise to a grievance which may be taken up in appeal by such a person. Dealing with this in Re Riviere's Trade Mark (1884) 26 Ch. D. 48, Lord Selborne observed;*

"..... it must be a legal grievance, it must not be a stet pro rations volun-tas; the applicant must not come merely saying 'I do not like this thing to be done', it must be shown that it tends to his injury, or to his damage, in the legal sense of the word".



S.A(MD)No.251 of 2018 & 359 of 2022

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that:-

23. From the reading of the above judgments, it would be clear

(a) Sections 96 and 100 do not enumerate the categories of persons, who can file an appeal.

(b) a third party to the suit cannot be permitted to file an appeal unless he is an aggrieved person or is prejudicially affected by the Judgment and Decree or he is bound by the Judgment and Decree.

(c) An aggrieved person (third party) does not include a person who would suffer from psychological or imaginary injury. He must be one whose interest has been adversely affected or jeopardized.

(d) The grievance must be substantial, immediate and pecuniary. It should not be contingent, speculative or futuristic.

24. The appellants claimed that they had been in possession for over 70 years. Their specific case is that the land belongs to the Government. Though the Government had contested the suit for reasons best known to them, they did not challenge the impugned Judgment. The appellants' right to possess the suit schedule property could be adversely affected if the declaration of title is in favour of the respondents. They claimed that their possession was not disturbed for the past 70 years



S.A(MD)No.251 of 2018 & 359 of 2022

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since it belonged to the Government. If an erroneous Judgment is unchallenged, then their rights would be directly affected and hence, they fall within the category of person aggrieved.

25. This Court finds force in the said submission of the learned counsel for the appellants. It is the admitted case of all concerned in all the proceedings that the fishermen are in possession of the suit schedule property though the respondents would claim that the fishermen are only in a portion of the property. There is nothing on record to show that the fishermen are occupying only a portion of the suit schedule property. It is the admitted case of the Government, the respondents herein and the plaintiffs that they are at present in occupation of the suit schedule property.

26. The Government/7th respondent represented by the Additional Advocate General Mr.A.Baskaran would state that the State ought to have filed an appeal and there is a lapse on the part of the Officials in not preferring the appeal, though it is their specific case that the land is the Government poramboke land. The learned Additional Advocate General, therefore, submitted that the Judgment of the Appellate Court deserves to



S.A(MD)No.251 of 2018 & 359 of 2022

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be set aside and there is no evidence adduced by the respondents to establish title.

27. This Court is of the view that the appellants cannot be said to be total stranger to issue on hand. Their possession is admitted by all concerned. The declaratory relief obtained by the respondents is bound to prejudice their right to possess the land and hence, they fall within the expression 'aggrieved person' whose interest would be prejudicially affected by the declaration of title in favour of the respondents. Therefore, this Court holds that the appeal filed by the third party/stranger to the original proceedings is maintainable.

28. As regards the merits, the substantial question raised is as follows:-

“Whether the Lower Appellate Court was right in allowing the appeal, declaring title of the plaintiffs, based on Ex.A7 and Ex.A8, without considering the question of estoppel by conduct, more so, when the plaintiffs themselves have admitted the title of the Government and obtained order of assignment?”



S.A(MD)No.251 of 2018 & 359 of 2022

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29. In this regard, Mr.J.Barathan, learned counsel for the appellants made the following submissions:-

(i) The plaintiffs/respondents have no right over the suit schedule property. Their claim in the suit was that their father late Nainar Mohammed acquired the property through sale deed dated 10.11.1954. However, they are not produced any documents to show as to how Nainar Mohammed's vendors were entitled to the property. The vendors claim is that they were in possession of the suit schedule property, however, no documents have been produced to establish the same and the Trial Court rightly dismissed the suit.

(ii) The other document relied upon by the plaintiffs/respondents is a sale deed of the year 1944. However, the plaintiffs have not pleaded about the said document in their plaint. In the absence of pleading, the said document ought not have been accepted by the Lower Appellate Court. He relied upon the Judgment of the Hon'ble Apex Court reported in ***(2020)10 SCC 729 (Biraji Alias Brijraji and another vs. Surya Pratap and others)*** and ***(2012)8 SCC 148 (Union of India vs Ibrahim Uddin and another)***, in support of his said submission. Even in that document, the vendors were not able to show as to how they acquired the suit's property.



S.A(MD)No.251 of 2018 & 359 of 2022

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(iii) The property was classified as “Anatheenam” and it is the case of the plaintiffs that they came to know in the year 1985. They failed to file the suit for declaration within a period of 3 years as per Article 58 of the Limitation Act. Hence, the suit is barred by limitation.

(iv) The plaintiffs did not enter into witness box and the evidence adduced by the power of attorney is of no avail to them. The power agent can only depose about facts within his knowledge and he cannot depose about facts which are within the personal knowledge of his principal. He relied upon the Judgments of the Hon'ble Apex Court reported in *(2005)2 SCC 217 (Janki Vashdeo Bhojwani vs. Indusind Bank Ltd)*, *(2013)12 SCC 64 (S.Kesari Hnuman Goud vs. Anjum Jehan)* and *(2019)9 SCC 358 (Mohinder Kaur vs. Sant Paul Singh)*.

(v) The learned counsel further submitted that the applications submitted by the respondents for Ryotwari patta were rejected in the year 1962. Subsequently, they had admitted the title of the Government and requested for assignment of property, which was granted in the year 1985. Since they had admitted title to the property, they are estopped from challenging the title of the Government later in view of Section 115 of the Indian Evidence Act. He relied upon the Judgments of the Hon'ble



S.A(MD)No.251 of 2018 & 359 of 2022

Apex Court reported in ***(2003)2 SCC 355 (B.L.Sreedhar and others vs. K.M.Munireddy (dead) and others)***.

(iv). The learned counsel further submitted that in any event, the Lower Appellate Court ought not to have declared title merely on the basis of Exs.A7 and A8 title deeds, in the absence of any documents to show as to how the vendors in the two sale deeds acquired title, merely because, the Government had not made any specific denial in the written statement about the two sale deeds.

30. Mr.A.Baskaran, learned Additional Advocate General appearing for the 7th respondent would submit that the Judgment of the Lower Appellate Court declaring title in favour of the respondents is liable to be set aside since the respondents had not established their title in the manner known to law. Further, he would submit that though the Government has not filed any appeal, they would support the appellants as regards their challenge to the finding of the Lower Appellate Court on the respondents' claim for title. The learned Additional Advocate General, however, was unable to justify the Government's action in not preferring an appeal against the Judgment of the Lower Appellate Court. The learned Additional Advocate General reiterated the submissions



S.A(MD)No.251 of 2018 & 359 of 2022

made by the learned counsel for the appellants and pleaded that the Judgment of the Lower Appellate Court deserves to be set aside.

31(i). Mr.H.Arumugam, learned counsel for the respondents 1 to 4 submitted that the appellants have no *locus standi* to file the above appeal. They had no vested interest and they are encroachers. The appellants had filed earlier suits for permanent injunction and in all the suits, they had failed. In fact, in an order passed by this Court in CMA No.17 of 1999, in a collateral proceeding, the conduct of the fishermen was commented upon. They were aware of the claim made by the respondents and hence, this appeal is not maintainable.

(ii). The learned counsel further submitted that the Government has never denied the title of the respondents. The land vested with the Government only after the introduction of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Civil Court was competent to decide the question of title irrespective of the decision taken by the Settlement Officer and hence, the Appellate Court has rightly decided the question of title. The decree of the Lower Appellate Court was based on two sale deeds and those two sale deeds had clearly



S.A(MD)No.251 of 2018 & 359 of 2022

established that the respondents have title over the suit schedule property. The Government has not denied the execution of the sale deeds in their written statement. In such circumstances, the decree passed by the First Appellate Court is justified in law.

(iii) As regards the plea of estoppel, the learned counsel for the respondents 1 and 2 would submit that their right to property in the constitutional right and it cannot be deprived merely on the basis of the admission. There cannot be any estoppel against their constitutional right. The learned counsel relied upon the Judgments reported in ***1998(9) SCC 603 (Sri-La-Sri Sivaprakasa pandara Sannadhi Avargal vs. T.Parvathi Ammal)***; ***2017(7) MLJ 718 [SC] (State of Panjab and another vs. Dharam Pal)***; ***AIR 2002 SC 2171 (A.V.G.P. Chettiar and sons vs. T.Palanisamy Gounder)***; ***(2020)9 SCC 356 (Hari Krishna Mandir Trust vs. State of Maharashtra and others)***; and ***(2022)8 SCC 713 (Krishnaraj vs. Banaras Hindu University)***.

(iv) The learned counsel further submitted that the first respondent was a Pardanashin lady and she was in a subservient position. Merely because, she had made an application for assignment, which was pursuant to the direction given by the Government officials her right to claim title cannot be taken away. The learned counsel further submitted



S.A(MD)No.251 of 2018 & 359 of 2022

that as regards the plea of limitation, the assignment in favour of the plaintiffs was cancelled only in the year 1995 and therefore, their right was infringed only in the year 1995 and hence, the suit was not barred by limitation.

(v) As regards the submission that there was no pleading in respect of Ex.A8 sale deed dated 25.09.1944, the learned counsel submitted that the said document is a registered document and the Government cannot dispute it. The object of pleading is to enable the adverse party to know the case they have to meet. In substance, the respondents knew the case of the plaintiffs and absence of pleading has not prejudiced the respondents in any manner. He relied upon the Judgments reported in ***AIR 1987 SC 1242 (Ram Sarup Gupta (dead) by L.Rs. vs. Bishun Narain Inter College and others)*** and ***(1999)7 SCC 288 (Hari Singh vs. Kanhaiya Lal)*** in support of his submission.

(vi). As regards the deposition of Power Agent, the learned counsel submitted that the power agent did not speak any fact within the personal knowledge of the principals. The power agent had spoken only about two registered documents and hence, even in the absence of any evidence, those two documents can be considered.



S.A(MD)No.251 of 2018 & 359 of 2022

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32. Heard the learned counsels appearing on either side.

33. Admittedly, the plaintiffs are in possession of the suit schedule property. Though the respondents claim that it is only in respect of a portion, they have not stated as to which portion, the plaintiffs are in possession. It is also the admitted case of the respondents/plaintiffs that the land vested with the Government pursuant to the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1948. It is also their case that they had applied for Ryotwari patta and the same was rejected by the Settlement Officer in the year 1962. They had not filed any suit at that stage to declare their title. Even in the plaint, the respondents have not mentioned about the sale deed which is marked as Ex.A.8 dated 25.04.1944. The plaintiffs have not established as to how the vendors in the two sale deeds have acquired title. In both the sale deeds, the vendors claim that they were in possession of the property mentioned therein. However, no documents have been filed to show that they were in possession of the properties concerned therein. That apart, this Court finds that once the property vests with the Government, admittedly, the vendors in 1954 sale deed had no right to deal with the property, even assuming that they had title to the suit property originally.



S.A(MD)No.251 of 2018 & 359 of 2022

WEB COPY

34. The respondents had not challenged the order passed by the Settlement Officer. They had not filed any suit to declare the title at the relevant point of time. However, they had applied for assignment patta in the year 1985 admitting the title of the Government. The Government had cancelled the said assignment pattas in the year 1995 for the reason that the plaintiffs/respondents have violated the conditions of the assignment. Only thereafter, the plaintiffs thought it fit to file the suit for declaration of title. Be that at it may. The Trial Court on consideration of the pleadings and evidence on record held that the plaintiffs/respondents have not established title since they had not produced any document apart from Exs.A7 and A8 to prove title. The Lower Appellate Court had found that since the two sale deeds have not been specifically denied by the Government, the plaintiffs are entitled to declaration of title on the basis of the two sale deeds.

35.This Court is of the view that the two sale deeds were registered documents and it cannot be denied by any one much less the Government. Merely because, the Government has not denied the execution of these two sale deeds, it cannot be held that the Government has accepted the plaintiffs' title. The Government has denied the



S.A(MD)No.251 of 2018 & 359 of 2022

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plaintiffs' title in the written statement and has marked documents to substantiate their claim. The mere fact that the Government had not denied the execution of these two sale deeds, which they obviously cannot deny, it does not take away the plaintiffs burden to prove their title by independent evidence. This Court is of the view that the Lower Appellate Court has committed a fundamental error in accepting the plaintiffs' case only because there is no specific denial by the Government. The specific denial of the Government with regard to the title of the respondents/plaintiffs has been over looked by the Appellate Court. Further, this Court finds that the respondents have admitted the title of the Government and made a claim for assignment patta. It is not once that they have admitted title. Even in the year 1962, the had applied for Ryotwari patta, which was declined by the Government. They did not chose to file any suit for declaration then. It is no doubt true that there cannot be any estoppel against the constitutional right. But when the existence of the right is in question, that does not arise.

36. The Lower Appellate Court had proceeded on the basis that the respondents had established title based on the sale deeds Exs.A7 and A8. The Appellate Court unfortunately has not properly considered the



S.A(MD)No.251 of 2018 & 359 of 2022

WEB COPY

question as to whether the vendors in Exs.A7 and A8 sale deeds had title over the suit schedule property. Mere execution of the sale deeds in favour of the respondents by some persons cannot confer title to the respondents. The Lower Appellate Court ought to have considered this aspect. It is trite that the plaintiffs who pray for declaration of title, have to establish their title by acceptable evidence. Exs.A7 and A8, in the absence of any evidence to show that the vendors of Exs.A7 and A8 were in possession of the suit schedule property, cannot be the basis for declaring that the respondents are the title holders of the suit schedule property.

37. This Court, therefore, is of the view that the Lower Appellate Court's Judgment has to be set aside only on the ground that it had not independently considered whether the plaintiffs/respondents have established title and on erroneous application of law on facts and held that the plaintiffs are entitled to declaration of title to the suit property. Therefore, this Court does not feel it necessary to deal with the other contentions raised on either side for the purpose of deciding the above second appeal. The substantial question of law is answered accordingly. The Judgment of the Lower Appellate Court is therefore, liable to be set aside and the second appeal deserves to be allowed.



S.A(MD)No.251 of 2018 & 359 of 2022

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38. In the result, S.A(MD)No.359 of 2022 is allowed and S.A(MD)No.251 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

01.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
skn

To:

- 1.The Principal District Judge, Ramanathapuram.
- 2.The Subordinate Judge, Ramanathapuram.
- 3.The District Munsif-cum-
Judicial Magistrate, Thiruvadanai.



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S.A(MD)No.251 of 2018 & 359 of 2022

SUNDER MOHAN, J

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Common Judgment made in
S.A(MD)No.251 of 2018 & 359 of 2022
and
C.M.P(MD)Nos.6899 & 6900 of 2018 & 4241 of 2022

01.03.2023