



SA(MD)No.56 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 18.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

S.A.(MD)No.56 of 2017

1.K.N.Sheik Mohammed (Died)

A.Muhaideen Abdul Khadar

(1st appellant substituted vide Court order,
dated 07.03.2023, in CMP(MD)No.624/2023)

2.Alagumani

... Appellants/Appellants/

Plaintiffs

Vs.

1.The State of Tamil Nadu,

Rep. by the District Collector,

Office of the District Collector,

Pudukottai.

2.The District Revenue Officer,

District Revenue Officer,

Office of the District Collector,

Pudukottai.

3.The Revenue Divisional Officer,

Revenue Divisional Officers' Office,

Public Office Building,

Pudukottai.



SA(MD)No.56 of 2017

4.The Tahsildar,
Tahsildar Office,
Thirumayam,
Thirumayam Taluk,
Pudukottai District.

5.R.M.Karuppaiah ... Respondents / Respondents /Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to call for the records relating to the judgment and decree, dated 07.10.2016 in A.S.No.36 of 2010, on the file of the Subordinate Judge, Pudukottai, confirming the judgment and decree, dated 11.03.2010 in O.S.No.121 of 2008 on the file of the District Munsif cum Judicial Magistrate, Thirumayam and to set aside the same and thereby, allow the Second Appeal.

For Appellants : Ms.AL.Gandhimathi, Senior Counsel
for Mr. C.Mahadevan

For Respondents : Mr.Senthil Ayyanar
Government Advocate for R1 to R4

Mr.Raghuvaragopalan
for Mr.S.Alagusundar for R5

JUDGMENT

The appellants herein are the plaintiffs, and the respondents herein are the defendants before the trial Court.



SA(MD)No.56 of 2017

WEB COPY

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

3. The suit in O.S.No.121 of 2008 has been filed in a representative capacity by the residents of N.Pudur Village against the defendants for the relief of declaration, to declare the judgment and decree, passed in O.S.No.25 of 2006 as null and void.

4. Shun of unnecessary details, the necessary pleadings for the disposal of the second appeal are that :

The suit property in S.F.No.966/5 in Vembakudi Village is an "unclaimed land" (அனாதீனம்). According to the plaintiff, the suit property as well the property on the southern side of the suit property, viz. S.F.No. 966/23, 30 to 35 were commonly used by the residents of N.Pudur Village, as a grazing land from time immemorial. It is also the submission of the plaintiff that even the suit filed by the fifth defendant herein in O.S.No.11 of 2004 was dismissed. After that, without impleading the the residents of



SA(MD)No.56 of 2017

the N.Pudur Village and the plaintiff herein, the fifth defendant filed a suit in O.S.No.25 of 2006 with false statement and prayed to issue a mandatory injunction to assign patta in respect of the suit property in his name. The plaintiff came to know about such decree only during 10.08.2008. According to the plaintiffs, the fifth defendant is an influential person and having men and material at his command. It is their submission that, the fifth defendant, by playing fraud and collusion with the other defendants, have obtained a decree in O.S.No.25 of 2006, so as to transfer the assignment of the suit property in his name. It is the specific submission of the plaintiffs / appellants that since the fifth defendant has obtained decree by playing fraud and collusion, the same is *non-est* before the law. Hence, prayed for declaration to declare the decree and judgment passed in O.S.No.25 of 2006 as null and void.

5. Resisting the above pleadings, the fourth defendant, states that the alleged fraud and collusion are false and baseless. According to the fourth defendant, the decree and judgment in O.S.No.25 of 2006 has been passed on merits. Hence, they pray to dismiss the suit.



SA(MD)No.56 of 2017

WEB COPY

6. Similarly, the fifth defendant has stated that, originally the property in S.F.No.727/2B was purchased by one Egammai Aachi, after the advent of upon Inam Abolition Act, to an extent of 4 Acres 95 Cents. This defendant further submit that, his daughter in law, one Manonmani, purchased the above land from Egammai Aachi, by virtue of registered sale deed, dated 13.03.1994. The land in S.F.No.992, 994/1, has been in the possession and enjoyment of this defendant for a long time. The old Survey No.727/2B was subdivided as S.F.No.966/5, in which an extent of 0.87 Cents was classified as Sarkar Poromboke Anatheenam qua unclaimed land. Since the said S.F.No.966/5 and 966/23 was in actual physical possession and enjoyment of this defendant, he planted various plants and trees. While that being so, he made a representation to the defendants 1 to 4, so as to value the property and to execute the sale deed, according to the existing Government Order. Since no order was forthcoming, he was constrained to file a suit in O.S.No.25 of 2006. As such, he would submit that there was no fraud or collusion in getting the decree and that he was constrained to file suit in O.S.No.25 of 2006, only to enforce his right flown from the Government Orders.



SA(MD)No.56 of 2017

WEB COPY

7. Before the trial Court, the plaintiff has examined 1 witness and has marked 10 documents as Ex.P1 to Ex.P10. On behalf of the defendants, no witness was examined and 13 documents were marked as Ex.R1 to Ex.R13.

8. After considering the pleadings, evidence and material on record, the trial Court has ultimately dismissed the suit, disbelieving the version of P.W.1 as he was not subjected himself for cross-examination, and also found that there are no materials to prove the plaintiffs allegations.

9. Aggrieved with the order, the plaintiff has filed an Appeal in A.S.No.36 of 2010. Even the first appellate Court has confirmed the judgment and decree of the trial Court. The First Appellate Court also found that the plaintiff did not even mark the decree which they sought to be set aside.

10. Aggrieved with the concurrent finding of the trial and the first Appellate Court, the appellant has come forward with the instant Second



SA(MD)No.56 of 2017

Appeal.

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11. The learned Senior Counsel, who appeared on behalf of the appellant, in her usual dexterity would submit that the very suit property is an unclaimed land (அனாதீனம்). Therefore, the Government has no right to assign patta to any individual, and that the defendants is a very influential person, and that by taking advantage of his close association with the Government official, he filed a collusive suit, in O.S.No.25 of 2006 without even impleading the plaintiffs, who are the necessary and proper parties. She would further submit that the decree in O.S.No.25 of 2006 is *non-est* and liable to be set aside. Hence, prayed to allow the Second Appeal.

12. Per contra, the learned Government Advocate, who appeared on behalf of the official respondents 1 to 4, would strongly object the defence of fraud and collusion. He would also contend that there are no materials placed by the appellant herein to prove the alleged fraud and collusion against the defendants 1 to 4. Hence, prayed to dismiss the second appeal.

13. In respect of the private respondent, viz., the fifth respondent,



SA(MD)No.56 of 2017

the learned counsel would submit that, though the plaintiff has sought for the declaration to set aside the decree in O.S.No.25 of 2006, there are no pleadings as to the material particulars of fraud and collusion. He would also submit that the documents, which the petitioner / plaintiff filed are only in respect of S.F.No.966/23 and not in respect of the suit property, viz., S.F.No.966/5. It is the specific submission of the learned counsel for the fifth respondent that, when the plaintiff came forward to project the case of fraud or collusion, he ought to have specifically plead the material particulars as per order 6 Rule 4 C.P.C., as to how the collusion took place or fraud has been committed, contrary to the statutory mandate they pleaded vaguely. Therefore, prayed to dismiss this Second Appeal by confirming the concurrent finding.

14. The learned counsel for the first respondent has relied upon the judgment of the Hon'ble Supreme Court reported in ***1977-1-SCC-179 (Varanaseya Sanskrit Vishwavidyalaya V. Rajkishore Tripathi)***. Wherein, the Hon'ble Supreme Court held that to prove fraud, collusion and misrepresentation, the general allegations are insufficient and a specific allegation against each particular person are essential to maintain a suit.



SA(MD)No.56 of 2017

Here, in our case, though the plaintiffs have pleaded fraud and collusion, such fraud and collusion has been stated generally in a sentence. There is no specific allegation against each of the official respondent as mandated in *Varanaseya Sanskrit Vishwavidyalaya* case (cited supra).

15. I have given my anxious consideration to the either side submissions.

16. This second appeal is pending in the stage of admission.

17. The main contention of the learned Senior Counsel is that, the very suit property is classified as unclaimed land (அனாதீனம்). Therefore, according to the plaintiff such land cannot be sold or assigned to any persons. The learned Senior Counsel would further submit that the classification of the suit property as unclaimed land is not in dispute. However, the learned Senior Counsel appearing on behalf of the appellants would submit that, if once the land is classified as unclaimed land, the Government has no power to assign patta in respect of such land.



SA(MD)No.56 of 2017

WEB COPY

18. However, the learned counsel for the fifth respondent would invite the attention of this Court in respect of the document submitted by the plaintiffs. Wherein, even the plaintiffs have sought for patta in respect of the Anaathinam land. It is the submission of the learned respondent counsel that, after the advent of Inam Abolition Act, all the lands were resumed to the Government. Therefore, he would submit that the Government is competent to deal with such property. In this regard, the learned counsel for the fifth respondent would invite the attention of this Court in respect of the judgment of the earlier suit in O.S.No.25 of 2006, which has been marked herein as Ex.P-B9, wherein, in paragraph - 2 of the judgment, it has been referred that by virtue of Standing Order 75, dated 05.02.2000 and G.O.No.168, Revenue Department, dated 27.03.2000, the Government is entitled to sell the property based upon the guideline value. But to contradict the above finding and to substantiate their contention that, the land which classified as unclaimed land, could not be dealt by the Government, no scarp of paper submitted by the appellants.



SA(MD)No.56 of 2017

19. The learned counsel for the fifth respondent would also rely upon the Full Bench judgment of this Court reported in **1998-1-CTC-630 (Srinivasan V. Sri Madhyarjuneswaraswami, Pattaviathalai)**. Wherein this Court has held after advent of Inam Abolition and Estate Abolition Act, all the lands previously part of the estate will vest with the Government.

20. As rightly contended by the learned counsel for the fifth respondent, the main ground urged by the plaintiff is that there was a fraud and collusion between the fifth defendants and other defendants and that the fifth defendant being an influential person and being the Government Contractor, he had colluded with the Government official and got patta in his name. It was also the submission of the appellant that this plaintiffs, who are the real contesting party, has not at all been impleaded in the suit in O.S.No.25 of 2006. But, more strangely, P.W.1, who is the representative of the plaintiffs, has not subjected himself for cross-examination.

21. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **1999-3-SCC-573 (Vidhyadhar V. Manikrao)**. The relevant portion of the judgment is as follows-



SA(MD)No.56 of 2017

WEB COPY

“17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr. . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors. , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.”

22. As per the above judgment, if the witness abstains from entering witness box, it would give rise to an adverse inference against



SA(MD)No.56 of 2017

him. Therefore, as rightly observed by the Court below, it is highly unsafe to rely upon the evidence of P.W.1.

23. Therefore, as rightly observed by the learned trial Judge as well as the learned first Appellant Judge, his oral evidence loses its sanctity. It is also the submission of the learned respondent counsel that though the plaintiffs say that the suit property is a grazing land, admittedly they did not submit any records to prove such a classification.

24. Therefore, this Court is of the firm view that as found by the Court below the so-called fraud and collusion has not at all been established.

25. At this juncture, the learned Senior Counsel, who appeared on behalf of the appellant, would submit that mere absence of P.W.1 for cross examination will not disentitle the plaintiff to get a relief and would contend that based upon the document submitted by the petitioner, the fraud could be proved. This Court has carefully perused the documents Ex.A1 to Ex.A10, but, all the documents are in respect of S.F.No.966/23.



SA(MD)No.56 of 2017

Wherein, the Villagers are seeking patta in their names, and this Court could not find any letters or correspondence which they made with the Government alleging the fraud or collusion against the fifth defendant, more particularly, in respect of the suit property. Therefore, even on the basis of the documents, which the plaintiff has filed, this Court could not find any semblance of proof towards collusion.

26. It is also the submission of the learned Senior Counsel that as per Ex.A7, the Tahsildar, who sent a report to the Collector, have referred about the enmity between the petitioners and the fifth defendant., vide his report, dated 21.01.2006. According to the learned Senior Counsel, if that being the case, when the fifth defendant filed a suit, he should have impleaded the residents of N.Pudur village. But, this Court could not accept this argument. Because, as discussed herein above, the land vest with the Government. Hence, the necessary and proper parties are only the official respondents and that they were rightly arrayed as party. As a matter of fact, here, that entire case of the plaintiff revolves around fraud and collusion. But, as found herein above, the same was not proved in a manner known to law. If that being so, the other defence such as non impleadment of the



SA(MD)No.56 of 2017

WEB COPY

Villagers in the suit in O.S.No.25 of 2006 will losses it's significance, and can't be a ground to set aside the decree. Therefore, this Court is of the firm view that no substantial question of law arises in this Second Appeal. Hence, the Second Appeal is liable to be dismissed.

27. In the result, this Second Appeal stands **dismissed**. There shall be no order as to costs.

18.08.2023

NCC : Yes/No

Index : Yes/No

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To

- 1.The Subordinate Judge,
Pudukottai.
2. The District Munsif cum Judicial Magistrate,
Thirumayam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD)No.56 of 2017

C.KUMARAPPAN.,J.

Ls

Judgment made in
S.A.(MD)No.56 of 2017

18.08.2023