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SA.Nos.1114 of 2002 and 1028 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.Nos.1114 of 2002 and 1028 of 2003

SA.No.1114/2002

1. Vasantha (Deceased)
 2. Nagarajan
 3. Murugesan
 4. Karpagam
- (Appellants 2 to 4 brought on record as LR's of
sole appellant vide order dated 14.08.2018 made in
CMP.No.4200 of 2018)

... Appellants

- Vs -

1. Velur Sri Vaidhyanathaswamy
Devastanam, Vaitheeswarankoil
rep. by its hereditary Trustee
Sri La Sri Masilamani Desiga Gnanasambanda
Paramacharya Swamigal
(respondent name substituted vide order dated 04.07.2022
made in CMP.No.10528/2022)
2. State of Tamil Nadu
rep. by District Collector,
Nagapattinam District.
3. Thasildar,
Sirkali.

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code
against the judgment and decree of the Principal Subordinate Judges Court,



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Myladuthurai passed in A.S.No.103/2000 dated 18.02.2002 confirming the decree and judgment of the District Munsifs Court, Sirkali passed in O.S.No.228 of 1994 dated 05.09.2000.

For Appellants : Mr.V.K.Vijayaraghavan
For Respondents : Mr.S.Girish
for Mr.M.Karthikeyan for R1
Mr.M.Muthusamy
Government Advocate for R2 & R3

SA.No.1028/2003

1. Vasantha (Deceased)
2. Nagarajan
3. Murugesan
4. Karpagam

(Appellants 2 to 4 brought on record as LR's of
sole appellant vide order dated 14.08.2018 made in
CMP.No.4201 of 2018)

... Appellants

- Vs -

1. Velur Sri Vaidhyanathaswamy
Devastanam, Vaitheeswarankoil
rep. by its hereditary Trustee
Sri La Sri Masilamani Desiga Gnanasambanda
Paramacharya Swamigal
(respondent name substituted vide order dated 04.07.2022
made in CMP.No.10528/2022)

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code praying to set aside the judgment and decree of the Principal Subordinate Judges Court, Myladuthurai in A.S.No.111/2000 dated 18.02.2002 confirming the decree and judgment of the District Munsifs Court, Sirkali passed in O.S.No.241 of 1994 dated 05.09.2000.



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For Appellants : Mr.V.K.Vijayaraghavan

For Respondent : Mr.S.Girish
for Mr.M.Karthikeyan

COMMON JUDGMENT

Both the appeals are arising against the judgment and decree of two different suits in O.S.No.228 of 1994 and O.S.No.241 of 1994. It is pertinent to mention here that, both the suits have been disposed of independently. However, the judgement was pronounced on the same day qua 05.09.2000. The subject matter of both the suit is one and the same. The parties are also one and the same. Apart from that, the facts, law and documents involved in these two Second Appeals are intertwined and interconnected. Hence, this Court deems it appropriate to take up both the Second Appeals together for disposal.

2. The appellant in both the appeals is one Vasantha, who was the defendant in O.S.No.228 of 1994, and the plaintiff in O.S.No.241 of 1994. The plaintiff in O.S.No.228 of 1994 and the defendant in O.S.No.241 of 1994 qua Dharmapuram Aadeenam is the respondent in both the appeals. Besides



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Aadeenam, in SA.No.1114 of 2002, Government was also arrayed as respondents 2 and 3.

3. For the sake of convenience, this Court deems it appropriate to refer the parties according to their litigative status in O.S.No.228 of 1994.

4. The brief facts which give rise to the instant two Second Appeals is that, the suit property was originally belongs to the plaintiff by virtue of the sale deed dated 03.10.1972. Ever since the date of purchase, they have been in actual, physical possession and enjoyment of the same. While so, the plaintiff has issued a notice to the Government qua defendants 1 and 2 vide notice dated 06.08.1992 under Section 80 of CPC, on knowing that the 3rd defendant (appellant) is attempting to get patta in respect of the suit property. After receipt of the said notice, the Government has sent a reply calling upon the plaintiff to give their explanation. The Government has also sought for the copy of the documents. In spite of the said fact, the Government did not enquire the matter and has ultimately attempted to issue patta in respect of the suit property in favour of the 3rd defendant. Hence, the plaintiff has come forward with the present suit, not to issue any patta and in the meanwhile, if



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any patta had been issued, sought for a declaration that said patta is null and void and also sought for the relief of recovery of possession.

5. The said suit was resisted by the 3rd defendant Vasantha, who is the appellant herein by contending that she has obtained a patta in respect of the suit property vide patta dated 25.08.1994 and that, in pursuance of such patta, she has also filed a suit in O.S.No.241 of 1994 seeking for the relief of permanent injunction not to disturb her peaceful possession and enjoyment of the suit property. It is also contended by the 3rd defendant that they have been in possession and enjoyment of the suit property for more than 20 years, and that the said patta has been issued to an extent of 32 cents. Since the Government has issued patta in the name of the 3rd defendant, the plaintiff cannot challenge such patta. Hence, prayed to dismiss the suit.

6. The Government has also resisted the suit on the ground that the suit property is the Government Poramboke Natham. Therefore, the sale deed, which stands in the name of the plaintiff will not bind upon the Government and that they have already issued the patta after following the due procedure. Hence, this defendant has also prayed to dismiss the suit.

7. It is pertinent to mention here that the plaint pleading in O.S.No.241 of 1994, where Vasantha filed a suit for injunction, and the pleading in the



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Vasantha's written statement in O.S.No.228 of 1994 are one and the same.

Similarly, the written statement filed by Dharmapuram Aadeenam in O.S.No.241 of 1994 is nothing but the plaint averment in O.S.No.228 of 1994. Therefore, this Court does not want to burden this judgment by again reproducing the pleadings from the suit in O.S.No.241 of 1994.

8. In O.S.No.228 of 1994, the plaintiff has examined one witness as PW1 and marked 18 documents as Exs.A1 to A18. On behalf of the defendants, 3 witnesses were examined as DW1 to DW3 and 7 documents have been marked as Exs.B1 to B7. Similarly, in O.S.No.241 of 1994, on behalf of the plaintiff Vasantha, 2 witnesses were examined as PW1 and PW2 and 2 documents have been marked as Exs.A1 and A2. On behalf of the defendants, 1 witness was examined as DW1 and 12 documents have been marked as Exs.B1 to B12.

9. In both the suits, the Trial Court, after having considered the oral and documentary evidence, has decreed the suit filed by the Dharmapuram Aadeenam/plaintiff in O.S.No.228 of 1994 and dismissed the suit filed by Vasantha/plaintiff in O.S.No.241 of 1994. Aggrieved with the same, Vasantha



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preferred the first Appeal in A.S.No.103 of 2000 against the decree and judgment in O.S.No.228 of 1994, and also filed A.S.No.111 of 2000 against the decree and judgment in O.S.No.241 of 1994. The First Appellate Court has concurred with the findings of the Trial Court, and dismissed the First Appeals. Therefore, Vasantha preferred S.A.No.1114 of 2002 against the judgment made in A.S.No.103 of 2000 in O.S.No.228 of 1994. Similarly, filed another Second Appeal in S.A.No.1028 of 2003 against the order in A.S.No.111 of 2000 in O.S.No.241 of 1994.

10. At the time of admission of S.A.No.1114 of 2002 on 28.06.2002, this Court has formulated the following substantial question of law:-

“(1) On the facts and circumstances, when the plaintiff has contended that the suit B Schedule property was let out to appellant's husband Nagarajan, is the suit filed without impleading him sustainable in law?

(2) Was it correct for the Courts below to consider the title of 1st respondent when the same was specifically disputed and when the dispute is only about the patta proceedings?

(3) Whether the suit as framed by the plaintiff for declaring patta proceedings alone as illegal is sustainable when the 3rd defendant has claimed title to the suit properties?

(4) Whether the order of assignment dated 5.8.1994 could



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be challenged in the Civil Court?

(5) Whether the suit as framed by the plaintiff against the appellant sustainable when plaintiff has pleaded appellant's husband is the tenant of suit B schedule property and his tenancy was not lawfully terminated?"

11. Similarly, at the time of admission of S.A.No.1028 of 2003 on 28.07.2003, this Court has formulated the following substantial question of law:-

“On facts and circumstances, was it correct for the courts below to consider the title of respondent in a suit for injunction filed by the appellant when possession alone was a relevant consideration for the grant of the said relief?”

12. The learned counsel for the appellant/defendant would vehemently submit that, the very suit filed by the plaintiff/Dharmapuram Aadeenam for cancellation of patta is hit by bar of jurisdiction. It is also contended by the learned counsel for the appellant/defendant that when the Government has challenged the rights of the plaintiff, the remedy available to the plaintiff, should only to file a suit for declaration and that the suit filed for cancellation of patta is contrary to law. It was also contended by the learned counsel for the appellant/defendant that the defendant Vasantha has been in actual,



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physical possession and enjoyment of the property and that she has been assigned patta and that the Government, who issued patta, has categorically set up title with themselves as the land was classified as Government Poramboke. Therefore, the learned counsel for the appellant contended that both the Courts below have committed a concurrent error in dismissing the suit. Hence, prayed to interfere with the findings of both the Courts below and prayed to allow the Second Appeal, thereby, dismissing the suit in O.S.No.228 of 1994 and decree the suit in O.S.No.241 of 1994.

13. The learned Government Advocate supports the case of the appellant.

14. Per contra, the learned counsel for the respondents/plaintiff would vehemently contend that there was a concurrent findings by both the Courts below that the suit property belongs to the plaintiff/Dharmapuram Aadeenam and that such finding has not been challenged by the Government, who set up title with them. Therefore, contended that the challenge made by the 3rd defendant/Vasanth against the title of the plaintiff is unenforceable and not maintainable. It was also contended by the learned counsel for the plaintiff that, the suit as framed by the plaintiff/respondent is perfectly in order. It was also contended by the learned counsel for the respondent/plaintiff that, even



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according to the Government, the suit property is Natham Poramboke. Even if we construed the suit property is Natham Poramboke, the Government has no right title to assign the land to the 3rd defendant. The learned counsel for the respondent would also further contend that the documents relied by the 3rd defendant viz., the patta is not in respect of the suit property, but, for the property in S.F.No.136 and that there was a material alteration in the said patta. Therefore, such patta could not be relied.

15. It is the contention of the learned counsel for the respondents/plaintiff that when the property belongs to the plaintiff, the suit filed by the defendant on the strength of the patta cannot be entertained and the same is liable to be dismissed. Thus, the learned counsel for the respondents would submit that there are no grounds to interfere with the well considered judgment of both the Courts below. Hence, prayed to dismiss the appeals.

16. I have given my anxious consideration to either side submissions.

17. Before we delve into the factual aspects of the matter, this Court deems it appropriate to discuss the judgment relied upon by the appellant. The learned counsel for the appellants relied upon the judgment in ***R.Sivaji Rao***



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Saheb Seervai Vs. Akilandathammal and others reported in (1962) AIR (Madras) 417, to buttress his contention that the Civil Court has no jurisdiction to deal about the assignment granted by the Government. But, while perusing the facts of the reported case, it deals about the Government lands. Further, the ratio put forth in the above reported judgment is that if there is any procedural irregularities in assigning the Government land, the same cannot be challenged before the Civil Court. But, here the very core issue is, whether the suit property is the Government land or the property belongs to the plaintiff Aadheenam.

18. It is an admitted fact that according to the entry in the Revenue records such as Exs.B2 and B7, the suit property has been referred as Natham at one place, and Natham jari in another place, and in yet another place, it has been referred as Natham Poramboke. Therefore, the entire issue revolves around the interpretation of the classification of the land. According to the respondents/plaintiff, such classification are *prima facie* proof that, the suit property is not the Government land. In this regard, the learned counsel for the respondents relied upon the following judgments in support of his contention:-

1. **Sivasanmugam Vs. The District Collector, Tiruppur**
District and Ors reported in MANU/TN/8804/2022;



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2. ***K.Ilangovan Vs. The District Collector, Coimbatore and Ors*** reported in ***MANU/TN/2404/2013***;
3. Unreported judgment of this Court in the case of ***Gunaseelan and 2 others Vs. Kutchanur Sri Saneeswara Baghavan Temple*** made in ***S.A.(MD).No.43 of 2014***.

19. In all the above cases, this Court has categorically held that there is no distinction between Natham and Natham Poramboke and mere classification of Natham Poramboke will not vest such land with the Government. Therefore, in the place where the above scenario, the judgment relied by the learned counsel for the Appellants/defendant in ***Sivaji Rao***'s case (cited supra) is not applicable to the facts of the case in hand, as the reported case dealt the Government land.



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20. The learned counsel for the appellants has also relied upon a off-quoted judgment of Hon'ble Supreme Court in **Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs & Ors** reported in **2009-2-L.W.546**, and would contend that when the Government challenges the rights of the plaintiff/Dharmapuram Aadeenam, they ought to have come forward with a suit for declaration. Therefore, without the prayer for declaration to declare the rights of the plaintiff, the very filing of the suit to cancel patta is not maintainable. But, even in the above judgment, it has been clearly held that, when a person having clear title and possession cannot be driven to a costlier and more cumbersome remedy of a suit for declaration.

21. It is pertinent to mention here that the plaintiffs relied upon the sale deed dated 03.10.1972, which is marked as Ex.A12 to prove their title over the property. But, it is the contention of the Government that the property referred in the said sale deed is the Government land. As stated supra, they have stated that the suit property is a Government land only based upon the classification of such land as Nathan Poramboke. But, the Trial Court as well as the First Appellate Court have rightly concluded that the classification of Natham or Natham Poramboke would by itself is evident to prove that the suit property is



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not at all the Government property. Therefore, in such a background, this Court is of the firm view that the judgment of **Anathula Sudhakar's** case (cited supra) has no application to the facts and circumstances of the present case.

22. The learned counsel for the appellant has also relied upon the following judgments in support of his contention:-

1. **Muniammal Vs. Muthu Gounder (died) and others** reported in (2003) 1 MLJ 565;
2. **T.Rajam @ Kaveri Kutty rep. by her General Power of Attorney Agent Mr.A.Radhakrishnan Vs. The Government of Tamil Nadu rep. by its Secretary and others** reported in 2016-5-L.W-217;
3. **D.Srinivasan Vs. K.Amavasai & others** reported in 2023-4-LW-54.

In all the above judgments, it was a ratio that when there is a violation in issuance of assignment order, and when there is a challenge in respect of the assignment of patta, the same should be before the appropriate Authority and not before the Civil Court. While harmoniously reading the above judgment in **T.Rajam's** case (cited supra) the classification of the land referred to therein is an “Anadeenam land”. Therefore, the said ruling has no application to the



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facts of this case. The other rulings referred hereinabove are also not applicable to the facts and circumstances of the instant case.

23. At this juncture, it is pertinent to refer the latest judgement of the Hon'ble Supreme Court in ***T.V.Ramakrishna Reddy Vs. M.Mallappa and others*** reported in ***AIR 2021 SC 4293***. Wherein the Hon'ble Supreme Court after relying the ratio on ***Anathula Sudhakar***'s case (cited supra) has reiterated the principle that, only in a case of complicated question of facts and law relating to title, the Court must relegate the parties to the remedy by way of a comprehensive suit for declaration of title. And whenever there is a simple and straight forward case, even without the prayer for declaration, mere injunction suit is maintainable and the issue regarding title can be considered. Therefore, this Court is of the firm view that the suit as framed is maintainable and in this regard, the findings recorded by both the Courts below is liable to be confirmed.

24. Coming to the facts of this case, at the out set, this Court would state that from the submissions of the learned counsel for the appellant, no perversity could be established. According to the learned counsel for the



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respondents, the Trial Court has elaborately considered the oral and documentary evidence and has decreed the suit in favour of the Temple, on the ground that the document (Ex.B2) relied by Vasantha refers only the S.F.No.136. However, the suit property is S.F.No.138. Apart from that, the Trial Court found that there is a material alteration in Ex.B2. As stated supra, when the classification is Natham, then as rightly found by both the Courts below the Government has no right title over the property to assign any patta to the 3rd defendant-Vasantha. Therefore, such patta on the above two grounds is liable to be set aside as it suffers with material alteration and also has been issued without having any title over the suit property by the Government.

25. The learned counsel for the appellants has also relied upon the judgment of this Court in *M.R.Samiappan Vs. The Secretary to Govt. Revenue Dept, Madras* reported in *1988-1-LW-165* and would contend that the Civil Court has no jurisdiction to deal about the Government land. But the classification deals in the reported judgment is 'Manthai Poramboke' and not 'Natham Poramboke'. It is pertinent to mention here that in the reported case B Memo has been issued in favour of the assignee. Whereas in the case on hand, though Vasantha/3rd defendant contended that she has been in possession and



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enjoyment of the property for more than 20 years, no such B Memo has been issued by the Government. Therefore, this Court is of the firm view that the findings recorded by the Trial Court that the suit property belongs to the plaintiff/Dharmapuram Aadeenam, and the patta issued in favour of the 3rd defendant is not valid is perfectly in order. As concomitant, the plaintiff/Dharmapuram Aadeenam is entitled to have the possession from the 3rd defendant. Therefore, this Court could not find any perversity in the judgment of both Courts below in order to exercise the powers under Section 100 of CPC.

26. As held supra, the Government has no power to issue patta in the name of the 3rd defendant/Vasantha and that such patta is null and void. Therefore, as a result of which, naturally the plaintiff/Dharmapuram Aadeenam will have right to recover possession. In such an event, the 3rd defendant/Vasantha cannot have any relief for injunction.



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27. Thus, in view of the above detailed discussion, the substantial questions of law formulated in SA.No.1114 of 2002 and S.A.No.1028 of 2003 are answered in favour of the respondents.

28. In the result, both the Second Appeals stand dismissed. There shall be no order as to costs.

24.04.2024

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Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The Principal Subordinate Judges Court,
Myladuthurai.

2. The District Munsif Court,
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C.KUMARAPPAN, J

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