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S.A. No.21



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 214 of 2012
and M.P. No. 1 of 2012**

1. Gopalakrishnan
 2. Kandasamy ... Plaintiffs/ Appellants/ Appellants
- Vs.
1. The Tahsildar,
Paramathi Velur Taluk.
 2. The Revenue Divisional Officer
Namakkal.
 3. The District Collector,
Namakkal
 4. The District Revenue Officer,
Namakkal ... Defendants/ Respondents/ Respondents

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 22.06.2011 made in A.S. No.69 of 2009 on the file of the Subordinate Judge's Court at Namakkal confirming the Judgment and Decree dated 24.06.2008 made in O.S. No.149 of 2005 on the file of the District Munsif cum Judicial Magistrate Court at Paramathi.

For Appellants	:	Mr. T. Deeraj (For Mr. P. Valliappan)
For RR 1 to 4	:	Mr. T. Arunkumar



(Additional Government Pleader)

JUDGMENT

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This second appeal filed challenging the concurrent finding of both Courts dismissing the suit filed by the plaintiffs seeking for declaration and consequential injunction of the suit property.

2. The case of the plaintiffs is that the plaintiff's predecessors were in possession and enjoyment of the properties situated in Survey Nos.442/7 and 439/1, Pillaikalathur village, Valur Taluk, Namakkal District, classified as 'Kallankuthu Poramboke'. The Revenue Officials have also levied penal charges from the year 1991 onwards, recognizing their possession over the suit properties. From the year 1959 onwards, the suit properties were dealt with by predecessors of the plaintiff's vendor and in the year 1995, the plaintiffs have purchased the same and they also having the right of cart-track in those lands. They have also applied for issuance of assignment of those lands and the same was also considered, recommendation was also made in their favour vide separate proceedings of concerned Tahsildar dated 22.10.1997. However, the defendants trying to assign the land to some other third parties, hence they have come forward with the suit seeking declaration and injunction.



3. The defendants filed their written statement and contended that the subject property is classified as 'Kallankuthu Poramboke Land', which was never in possession of any third parties and it is a Government property and no one is entitled to convey these lands in favour of third parties. The plaintiff's vendors are not having any right to deal with the Government lands and they have never assigned the subject land to any one. The resolutions passed by the panchayat does not bind on the Government with regard to the assignment of lands, since 'Kallankuthu Poramboke' is objectionable land and the Tahsildar is not having power to deal with the lands.

4. After considering the pleadings and evidence placed on record, both the Trial Court and the Appellate Court have held that the plaintiff herein have no manner of right over the suit property and dismissed the suit. Aggrieved over the concurrent finding of both Courts below, the plaintiffs have come forward with this appeal. This Court before admitting this second appeal ordered notice regarding the admissions to the respondents herein.

5. The learned counsel appearing for appellants submits that, there are title deeds starting from the year 1947 to 1966 to show that the plaintiff's



predecessors were title owners and they were in peaceful possession and enjoyment of the suit property. He further submits that the northern side of the subject land, the plaintiffs are having lands and they are using the subject land as a pathway to the main road called Pillaikalathur Main Road. He further substantiated his arguments by relying on the proceedings issued by the Deputy Tahsildar dated 22.10.1997, wherein the concerned Deputy Tahsildar has recommended the Government to issue assignment in favour of the plaintiffs, stating that this land is not required for any other purpose. He further submits that both Courts have failed to appreciate the fact that the plaintiffs were in possession of the land for more than 30 years and thereby they have also perfected the title over the suit property, by way of adverse possession.

6. Per contra, Mr. T. Arunkumar, Additional Government Pleader appearing for respondents submits that the subject land is classified as 'Kallankuthu Poramboke' in the 'A' register and it is an objectionable land, which cannot be transferred in the name of any private individuals or third parties. He further submitted that before assignment of such lands, it has to be converted to any other assignable nature and only thereafter, it could be assigned. He further submitted that though, various sale deeds were produced to show that the plaintiff's vendors have dealt with the subject property and on



careful perusal of the sale deeds, no where they have stated about the survey numbers of the subject property, to link those documents with suit land. He further submitted that recently the Government has transferred the land in favour of the Regional Transport Officer for constructing a Regional Transport Office, Namakkal. Both Courts have categorically analysed the evidence placed on both sides and held that the plaintiffs have failed to prove their adverse possession (i.e.,) continuous 30 years of possession by them over the suit property. Subsequently, during the pendency of the suit, the plaintiffs have sold the property in favour of the third party, who has also been examined as witness before the Trial Court, whereas, he has stated that he was not in possession of the subject property, thereby the possession of the subject property was not proved by the plaintiffs.

7. I have considered the submissions made on both sides and perused the evidence placed on record. Both Courts by appreciating the evidences adduced on both sides have held that there is no proof established to prove the adverse possession over the subject property by the plaintiffs. On perusal of the sale deeds adduced on the side of the plaintiffs, no where the survey numbers of the property is mentioned. The learned counsel appearing for appellants had made an attempt to convince this Court by correlating the boundaries mentioned



in the sale deeds with the present day boundaries to establish the plaintiff's case.

However, this attempt of correlating the boundaries was also considered by the both Courts and held that the properties described in the sale deeds are not the same lands falls in the Survey Nos. 439/1 and 442/7. Since both the Courts have given a factual findings regarding the boundaries as well as the nature of the possession, held that the plaintiffs have failed to prove their possession as well as title over the suit property.

8. The scope of interfering with the concurrent findings of both the Courts below is well settled and the Hon'ble Apex Court in ***Hero Vinoth (Minor) vs. Seshammal [AIR 2006 SC 2234]*** has reiterated the jurisdiction of High Court to interfere in the concurrent findings of the Lower Courts and has held in paragraph Nos.12 to 16 as follows:

*“12. We shall first deal with the question relating to jurisdiction of the High Court to interfere with the concurrent findings of fact. Reference was made by learned counsel for the appellant to **Chandra Bhan v. Pamma Bai and Anr. (2002 (9) SCC 565)** **Sakhahari Parwatrao Karahale and Anr. v. Bhimashankar Parwatrao Karahale (2002 (9) SCC 608)**. So far as the first decision is concerned, in view of the factual findings recorded by the lower Court and the first Appellate Court it was held that interference with the concurrent findings of fact are not justified. The question related to possession and*



two Courts primarily considering factual position had decided the question of possession. In that background, this Court observed that jurisdiction under [section 100](#) CPC should not have been exercised. So far as the second decision is concerned, the position was almost similar and it was held that findings contrary to concurrent findings of lower Courts and having no basis either in pleadings, issues framed or in questions actually adjudicated upon by any of the lower Courts cannot be sustained. That decision also does not help the appellant in any manner as the factual scenario is totally different in the present case.

13. Though as rightly contended by learned counsel for the appellant the scope for interference with concurrent findings of fact while exercising jurisdiction under [Section 100](#) CPC is very limited, and re-appreciation of evidence is not permissible where the trial Court and/or the first Appellate Court misdirected themselves in appreciating the question of law or placed the onus on the wrong party certainly there is a scope for interference under [Section 100](#) CPC after formulating a substantial question of law.

14. As was noted in **Yadarao Dajiba Shrawane (dead) by Lrs. v. Nanilal Harakchand Shah (dead) and Ors. (2002 (6) SCC 404)** if the judgments of the trial Court and the first Appellate Court are based on mis-interpretation of the documentary evidence or consideration of inadmissible evidence or ignoring material evidence or on a finding of fact has ignored admissions or concession made by witnesses or parties, the High Court can interfere in appeal.

15. In **Neelakantan and Ors. v. Mallika Begum (2002 (2) SCC 440)** it was held that findings of fact recorded must be set aside where the finding has no basis in any legal evidence on record or is based on a misreading of evidence or suffers from any legal infirmity which materially prejudices the case of one of the parties. (See:



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*Krishna Mohan Kul alias **Nani Charan Kul and Another v. Pratima Maity and others** [(2004) 9 SCC 468J).*

*16. It is now well settled that an inference of fact from a document is a question of fact. But the legal effect of the terms or a term of a document is a question of law. Construction of a document involving the application of a principle of law, is a question of law. Therefore, when there is a misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under **Section 100 CPC**. If a document creating an easement by grant is construed as an 'easement of necessity' thereby materially affecting the decision in the case, certainly it gives rise to a substantial question of law. “*

9. In this case, both Courts have rendered its concurrent findings after holding that there is no misreading of the documents, more particularly, the sale deeds relied on by the plaintiffs and nature of the land described as 'Kallankuthu Poramboke Land'.

10. There is also categorical admission between the parties before the Trial Court that the plaintiffs have sold the subject property to the third party and the person, who have purchased also stated that he was not in possession of the subject property, which shows that only documents has been produced, in order to establish that they are in possession of the subject property. On careful analysis of the pleadings of the plaintiffs also shows that the plaintiffs have also



relied on the levy of penal charges to show their possession of the land. As per Section 3 of Tamil Nadu Land Encroachment Act, (Encroachment Act, hereinafter), the levy of penal charges on the persons, who is in unauthorised occupation, is permissible and it is collected to recognize that the party is in encroachment of the Government land. It reads as follows:

"Section 3. *Any person who shall unauthorizedly occupy in any area other than the transferred territory any land, which is the property of Government, shall be liable to pay by way of assessment.*

(i) *If the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of his occupation or a part thereof proportionate to the area occupied as the case may be, provided that, for special reasons, the Collector or subject to his control, the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied;*

(ii) *If the land so occupied be unassessed, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry wet rate of the village, as the case may be, or when no such rates exist in such manner as may be prescribed in rules or orders under Section 8.*

Provided that payment of assessment under this Section shall not confer any right of occupancy.



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11. The provision to Section 3 of the Encroachment Act, further clarifies that, collection of penal charges shall not grant any right in favour of the person, who is in unauthorized occupation. Therefore, mere payment of penal charges by the plaintiffs for the subject property does not confer any right over the same.

12. In ***Uttam Chand (D) through L.Rs. Vs. Nathu Ram (D) through L.Rs. and Ors. [2020 (11) SCC 363]***, the Apex Court has reiterated the principle and ingredients to claim any right on the basis of adverse possession in paragraph Nos.11, 12 and 13 as follows:

*“11. In **T. Anjanappa**, this Court has set aside the finding of the High Court that the Defendants claiming adverse possession do not have to prove who is the true owner. If the Defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. The Court held as under:*

12. The concept of adverse possession contemplates a hostile possession i.e. A possession which is expressly or impliedly in denial of the title of



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the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co owner, it cannot be considered adverse to other co-owners." (See Vidya Devi v. Prem Prakash [MANU/SC/0345/1995 : (1995) 4 SCC 496], SCC p. 504, para 24.)"

13. The Hon'ble Apex Court in ***R. Hanumaiah and Anr. vs. Secretary to Government of Karnataka, Revenue Department and Ors. [2010 AIR SCW 4544]*** has laid principles to establish the adverse possession against the Government, in paragraph Nos. 15 and 17 as follows:



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"15. Suits for declaration of title against the government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the government. All lands which are not the property of any person or which are not vested in a local authority, belong to the government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against government. This follows from Article 112 of Limitation Act, 1963 which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire state and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

....

17. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the government, a claimant has to establish a



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clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government. Be that as it may."

14. As discussed in the earlier paragraphs, the plaintiffs have failed to prove their case that their ancestors in title, were in possession and enjoyment of suit property for more than specified period, thereby, perfected their title. Per contra, the evidence placed on record only shows that, they were only recognized as unauthorised occupation of the Government Land and they paid penal charges for some period, thereby, the plaintiffs have accepted that they were allowed to stay in the suit property, after payment of penal charges, thereby, they could not claim any adverse possession of the Government Land.



It is also admitted case that, the land in which they were in possession is an objectionable land for assigning it to private persons. These points were properly appreciated by the Courts below.

15. In view of the above discussions, this Court finds no reason to interfere in the findings of both Courts below and no substantial question of law involved in this appeal filed by appellants.

16. Accordingly, this second appeal is dismissed. Consequently, connected miscellaneous petition stands closed. No cost.

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No



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1. The Tahsildar,
Paramathi Velur Taluk.
2. The Revenue Divisional Officer
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3. The District Collector,
Namakkal.
4. The District Revenue Officer,
Namakkal.
5. The Section Officer,
VR Section,
High Court, Madras.



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K. RAJASEKAR, J.

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