



S.A.No.569 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.03.2024	Pronounced on: 22.03.2024
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CORAM :

THE HONOURABLE MR. JUSTICE P. B. BALAJI

S.A.No.569 of 2018

Gurumurthy

...Appellant

Versus

1.The Thasildhar,
Taluk Office,
Tindivanam.

2.The District Collector,
Collectorate Office,
Villupuram District,
Villupuram.

...Respondents

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 13.09.2017 in A.S.No.38 of 2007 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and Decree dated 15.06.2007 in O.S.No.448 of 2005, on the file of the Principal District Munsif, Tindivanam.

For Appellant : Mr. N. Suresh

For Respondents : Mr. V. Ramesh, Govt. Advocate



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JUDGMENT

The plaintiff, who suffered concurrent findings before the Trial Court as well as the Appellate Court is the appellant herein.

2. The parties are described as per their litigative status before the Trial Court.

3. The material facts that are necessary for deciding the substantial questions of law that have been framed by this Court, are as hereunder:-

3.1 The plaintiff claims that his mother purchased the suit property under Ex.A1, in the year 1951. The defendants have subsequently re-classified the suit property as a "Street". The case of the plaintiff is that the land was never vested with the Government, and the classification as a "Street" was wholly unsustainable. The plaintiff sought for declaration of title to the suit property and for a consequential direction by way of mandatory injunction to issue Patta for the suit property.



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4. The suit was resisted by the defendants on the ground that the property was "Natham" property right from the year 1929 and the defendants had every right to classify the suit property as a "Street". According to them, the public is using the suit property as only a public street and the plaintiff cannot be entitled to the declaration.

5. The substantial questions of law being framed on 10.10.2018, are hereunder :-

"i) Whether the Court below is right in dismissing the suit filed by the plaintiff without even considering the title of the plaintiff on the basis of Ex.A1, the Sale Deed in favour of plaintiff's mother?"

ii) Whether the Court below is right in dismissing the suit when the suit property is admittedly a "Grama Naththam" and the same never vested with the Government and as such the defendants cannot claim any right over the same? "

6. The learned counsel for the appellant would also submit that though the appellant filed an application for appointment of Advocate



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Commissioner before the First Appellate Court, the said interlocutory application was dismissed, however, in CRP.No.1254 of 2009, by an order dated 28.09.2016, the said Civil Revision Petition was allowed, and the First Appellate Court was directed to decide the application for appointment of Advocate Commissioner afresh. However, the learned counsel for the appellant states that the said application was again dismissed by the First Appellate Court.

7. The learned counsel would further submit that the sale deed under which the appellant's mother purchased the suit property is of the year 1951 and the property being "Grama Naththam" land, the Government cannot claim any title over the same, and the property never vested with the Government, and without initiating any Acquisition Proceedings, the property cannot be re-classified as a "Street". He would, therefore, pray for the Second Appeal being allowed.

8. The learned counsel for the appellant would place reliance on the decision of the Judgment of this Court in the case of *Dharmapura Adhinam Mutt rep. by its Adhinakartha Sri-la-sri Shanmugha Desika*



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Gnanasampanda Parmachariya Swamigal Vs. Raghavan and another
reported in 2012 (1) CTC 280.

9. The learned counsel for the appellant would conclude his submission stating that there is no difference between Grama Natham or Natham Porampoke lands and once the subject land has classified as Natham, admittedly, it would not vest with the Government.

10. Per contra, Mr.V.Ramesh, learned Government Advocate appearing for the respondents would submit that the Courts below have concurrently found that the suit property has been used only as a public street and despite the plaintiff's claim to Gramanatham patta, he has not availed of the same and therefore, the concurrent findings rendered by the Courts below, do not require interference and he would pray for dismissal of the Second Appeal

11. I have carefully considered the rival submissions advanced by the learned counsel on either side.

12. Though it is the case of the plaintiff that the suit property is a



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"Grama Naththam" property, and has been in the plaintiff's possession and the defendants have proceeded to re-classify the same as a "Street" without any right to do so, I find from the oral and documentary evidence adduced that the plaintiff has not been able to substantiate the factum of being in possession of the suit property.

13. On the contrary, the defendants have examined independent witnesses to establish that the suit property has been used only as a "Street".

14. Further, I find that despite the denial of the plaintiff's title by way of a written statement, the plaintiff did not choose to amend the plaint to seek any declaratory relief, challenging the re-classification. It is an admitted case that the plaintiff does not even have a patta for the suit property and one of the reliefs in the suit property is for a direction by way of mandatory injunction to issue a patta for the said suit property.

15. In the decision relied on by the learned counsel for the appellant, in *Dharmapura Adhinam Mutt's* case, referred herein supra, the



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facts of the case were entirely different. Dispute was not between the Government and private individuals, but inter se private parties. Moreover, the Hon'ble Division Bench held that Gramanatham is the village 'habitation' where the land holders may build houses and reside and they are also known as “House Sites” and they were classified as Gramanatham to differentiate from Inam lands, Ryotwari lands, Pannai lands and Waste lands. It was further held that Gramanatham never vested with the State.

16. Admittedly, the plaintiff has not put up any residential construction in the suit property. His only claim is under the registered sale deed, Ex.A1 in favour of his mother. Subsequently, it is seen that in the year 1988, the survey was conducted and the persons who were found to be in lawful possession were also issued House sites/Gramanatham patta. The evidence of D.W.2 and D.W.3, clearly establishes that subsequent to the UDR Scheme, the various allottees have been using the suit property to reach their respective properties. In fact, even P.W.1 has admitted in cross examination that the public are using the suit property to reach their respective houses. Therefore, the plaintiff has never been in



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possession of the suit property and as rightly found by the Courts below concurrently, the plaintiff has failed to establish his possession over the suit property by production of satisfactory evidence.

17. On the contrary, the defendants have let in any substantive oral as well as the documentary evidence to show that the suit property has always been used only as a street.

18. The records produced by the defendants establishes that in the year 1978, the subject lands have been classified as "Naththam" lands. However, in the UDR, "A"-Register, the lands have been classified as "Government Poramboke" lands and subsequently, classified as a "Street". When the Government classified the suit property as a 'street', it is seen that Tom Tom was effected and objections were invited. The plaintiff never objected to the same at any point of time, until the filing of the suit. At that time in 1988, if the plaintiff had shown that he was in possession, under Natham Nilavari Thittam, he would have been allotted the property, subject to his satisfying the requisite conditions. After missing the bus then, it is not open to the plaintiff to seek a declaration of his title in the



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year 2005, especially after much water has flown.

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19. The Courts below have found that the plaintiff has not established his physical possession of the suit property. On the contrary, by satisfactory, oral and documentary evidence adduced by the defendants, they have established that the suit property is only a street, and moreover, the Trial Court has also found that the plaintiff has not chosen to seek for declaratory relief and in the absence of challenge to the re-classification of the street, it is not open to the plaintiff, to seek declaration of the title.

20. Though the learned counsel for the appellant may be right in contending that it was not necessary for the plaintiff who claims title under Ex.A1, to challenge the re-classification, yet when the Courts below have concurrently found that the plaintiff was never in possession of the suit property, when he claims it to be a Gramanatham land and keeping in mind, the very purpose of recognising possession of such persons in possession was to only enable them to construct houses and reside there, in the present case, the suit property is vacant and there is overwhelming evidence to establish that it has been always used as a



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pathway/street by the general public even since 1988. In such circumstances, I do not find that the findings arrived at by the Courts below based on the material evidence available on record requires to be interfered with under Section 100 of the Code of Civil Procedure, 1908.

21. For all the above reasons, I do not find that substantial questions of law are required to be answered in favour of the plaintiff. The Courts below have rightly appreciated the oral and documentary evidence available on record and concurrently dismissed the suit for declaration and mandatory injunction and I do not find any illegality, irregularity, or perversity in the findings arrived at concurrently warranting under Section 100 of the Civil Procedure Code.

22. In fine, the substantial questions of law are answered against the appellant and the Second Appeal stands dismissed. There shall be no order as to costs.

22.03.2024

Index :Yes/No
Neutral Citation :Yes/No



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Speaking Order : Yes/No

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To :

1. The Principal Subordinate Judge, Tindivanam.
2. The Principal District Munsif, Tindivanam.



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P. B. BALAJI, J.,

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Pre-Delivery Judgment in

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