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S.A.No.1052 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 24.07.2024

JUDGMENT PRONOUNCED ON: 02.09.2024

CORAM

THE HON'BLE MRS JUSTICE N.MALA

S.A.No.1052 of 2021
and CMP.No.19845 of 2021

Karnan

...Appellant

VS

Sadaiyappan

...Respondent

Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree in A.S.No.43 of 2017, on the file of the Subordinate Judge, Tittagudi dated 30.08.2019 in reversing the well considered judgment and decree in O.S.No. 64 of 2013 on the file of the District Munsif Court, Tittagudi dated 10.07.2017.

For Appellant : Mr.Aloysius Raja Pragash

For Respondent : Mr.R.Rajesh

JUDGMENT

This Second Appeal is filed against the Judgment and Decree in A.S.No.43 of 2017, on the file of the Subordinate Judge, Tittagudi dated 30.08.2019 in reversing



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the well considered judgment and decree in O.S.No. 64 of 2013 on the file of the

District Munsif Court, Tittagudi dated 10.07.2017.

2.The parties will be referred to as per their ranking before the trial court.

3.The brief facts of the case leading to the filing of the Second Appeal are as follows:

The plaintiff filed the suit for declaration of title and for permanent injunction restraining the defendant or his men, agents from interfering with the plaintiffs peaceful possession and enjoyment of the suit property which is described in the plaint as follows:

விருத்தாசலம் ரி.டி. திட்டக்குடி சப்.டி திட்டக்குடி
தாலுக்கா கஸ்பா திட்டக்குடியில் பெரியார் வீதியில் மேற்படி
வீதிக்கு கிழக்கு புதிய நத்தம் புல எண்.146/14-க்கு (தெற்கு)
147-ல் அமைந்துள்ள அனுமார் கோவிலுக்கு (வடக்கு) இந்த
சக்குபந்திக்குள் தென்வடல் அளவு 4 மீட்டர் கீழ்மேல் அளவு
6.2 மீட்டர் அளவுள்ள 25 சதுர மீட்டர் மனையும் அதில்



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கட்டப்பட்டுள்ள மெத்தை வீடும் ஆகும்.

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4. According to the plaintiff the suit property is a Government Natham Poramboke land. Though the suit property belonged to the Government, the plaintiff perfected title to the same by adverse possession. According to the plaintiff, he is the owner of the property in S.No.146/14 which is to the north of the suit property. To the south of S.No.146/15 there is Hanumaar Kovil. According to the plaintiff the property north of Hanumaar Kovil and to the south of the plaintiffs house in S.No.146/14 is the suit property. The plaintiff spent substantial amounts for development of the suit property and constructed a house thereon. The plaintiff was in enjoyment of the suit property for more than 40 years and perfected his title against the Government by adverse possession. Whiles, the defendant tried to disturb the plaintiff's peaceful possession and enjoyment of the suit property and therefore the plaintiff was constrained to file the above suit for the aforesaid reliefs.

5. The defendant filed written statement denying the plaintiffs right, title, interest and possession of the suit properties. According to the defendant, the suit



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property was a Natham Poromboke land and therefore the plaintiff without impleading the Government could not seek declaration of his title by adverse possession. According to the defendant the plaintiff was the defendants father-in-law and he agreed to sell the suit property to the defendant vide sale Agreement dated 28.01.2002 for a sale consideration of Rs.3,25,000/-. On the date of agreement, the defendant was put in possession of the suit properties and the plaintiff agreed to register the sale deed in favour of the defendant as and when he was called to execute the same. The defendant therefore claimed possession of the suit property on the basis of the aforesaid sale Agreement. The defendant claimed that he was in possession of the property right from 2002 and that the plaintiff had no right, title, interest or possession of the suit property. The defendant stated that the suit was bad for non-joinder of necessary party (i.e.) the Government. The defendant therefore stated that the suit was liable to be rejected.

6.Before the trial court the plaintiff examined three witnesses and marked

documents Ex.A1 to Ex.A15. On the side of the defendant, the defendant examined

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himself and marked Ex.B1 to Ex.B3.

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7.The trial court found that the suit property as per Ex.B1 was classified as a 'Street' and hence title to the same vested with the Government. The trial Court found that the suit was bad for non-joinder of necessary party (i.e.) the Government and also that the suit property was not properly described and hence the trial Court dismissed the suit. Aggrieved by the judgment and decree of the trial court the plaintiff filed appeal before the lower appellate court.

8.The lower appellate Court also found that the suit property belonged to the Government as it was recorded as a “Street” in the revenue records. The lower appellate Court further found that it was not necessary for the plaintiff to implead the Government, as the Government Official examined by the plaintiff, admitted the possession of the plaintiff. The lower appellate Court found that the defendant had no manner of right or title to the suit property and so he could not interfere with the plaintiffs possession of the suit property. The lower appellate Court therefore decreed

the suit for permanent injunction by reversing the judgment and decree of the trial

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court. Aggrieved by the reversing judgment and decree of the lower appellate court, the defendant has filed the above Second Appeal.

9. At the time of admission of the Second Appeal this Court framed the following substantial questions of law:

“i) Whether the lower appellate court is right in holding that the Government is not a necessary party, when the subject matter of the property is the Government property?

ii) Whether the lower appellate court is right in granting a decree for declaration of the Government Poramboke land which is assigned as street in the Government records?

iii) Whether the individual person is entitled to seek the relief of declaration against the Government Poramboke on the ground of adverse possession?”

10. The learned counsel for the appellant submitted that plaintiff having admitted the title of the Government to the suit property ought to have impleaded the Government as a party and in the absence of the Government, the lower appellate court ought not to have granted the decree for declaration of title in favour of the



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plaintiff. The learned counsel further submitted that in the absence of the Government, the plea of adverse possession ought not to have been entertained. The learned counsel further submitted that the lower appellate court erred in declaring the title of the plaintiff to the Government Poromboke land, more so, when it was classified as a 'Street' in the Revenue records. The learned counsel for the appellant relied on the judgments reported in *(2019) 8 CC 729* and the case in *S.A(MD).No. 509 of 2006 in support of his case.*

11.The learned counsel for the respondent on the other hand submitted that the lower appellate court rightly set aside the judgment and decree of the trial court by giving cogent reasons for its findings. The learned counsel further submitted that in the absence of any perversity in the findings of fact arrived at by the lower appellate court, the Second Appeal should not be entertained. The learned counsel therefore submitted that there were no merits in the Second Appeal and same deserved to be dismissed.

12.I have heard both the learned counsels and I have perused the materials

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placed on record.

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13.The substantial questions of law are taken up together as the same are interlinked.

14.The plaintiff filed the suit for declaration of title and for grant of permanent injunction against the defendant. The plaintiff's case was that though the suit property was Government poromboke land, the plaintiff by virtue of his long and continuous possession for over a period of 40 years perfected title by adverse possession. The plaintiff further stated that defendant without any manner of right, title or interest in the suit property tried to interfere with the plaintiffs possession and enjoyment of the property and therefore the plaintiff was constrained to file the suit for the aforesaid reliefs.

15.It is admitted by the plaintiff himself that the suit property belonged to the Government and is classified as Natham poromboke. The plaintiff states that he has been in possession of the suit property for the past 40 years by constructing a house and paying the taxes to the Government apart from paying the electricity bills etc.



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While the plaintiff claims the property to be a natham poromboke, the defendant on the basis of Ex.B1 claims that the property is classified as a street. There is no evidence to show that the suit property is situate in S.No.147 which as per Ex.B1 is classified as a 'Street'. In the description of the property in the plaint schedule the plaintiff states that the suit property is situated to the north of S.No.147 in which a Hanuman Temple is situate. The defendant was not able to substantiate his plea by evidence that the suit property was situate in S.No.147, which is a 'Street', though he has produced Ex.B1, that S.No.147 is a 'Street'. Be that as it may, the defendant claims to have been put in possession of the suit property under an agreement of sale on 28.01.2002 executed by the plaintiff in his favour for sale of the suit property. The defendant though claims possession on the basis of the aforesaid sale agreement he did not even produce the document before the Court. Therefore, there is absolutely no evidence on the side of the defendant to show that he was in the possession of the suit property.

16.All the substantial questions of law raised by the defendant in my view do

not arise for consideration in the second appeal, as the plaintiff did not claim any



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declaratory relief, the plaintiff only sought for the relief of permanent injunction.

Therefore in my view, the lower appellate Court was right in thinking that the Government was not a necessary party to the suit, which was filed for permanent injunction.

17.The further question would be whether the plaintiff is entitled to the relief of injunction in the absence of the Government. As rightly pointed out by the lower appellate Court the Government has not chosen to evict the plaintiff from its property and the interference is only by the defendant. This is not to say that the Government is not entitled to evict the plaintiff from its property. The question is whether the plaintiff is entitled to the relief of injunction against the defendants. It is trite in law that a person in prior possession is entitled for protection of his possession by a tress passer. It is also trite that the tress-passer who seeks to dispossess the person in prior possession cannot plead just tertii i.e. the right of possession out standing in third person as against the fact of possession in the plaintiff. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court reported in AIR

1968 SC 1165, I am therefore of the view that the lower appellate Court was justified

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in granting relief of permanent injunction in favour of the plaintiff. I therefore find that the substantial questions of law raised by the defendant cannot be sustained.

18.Before parting with the Judgment, I would like to point out that though the plaintiff did not seek for the relief of declaration of title on the basis of adverse possession, nevertheless pleaded to have perfected title by adverse possession against the Government on the basis of his uninterrupted possession for over 40 years. In my view, it is therefore necessary to clarify that the injunction granted in favour of the plaintiff on the basis of his possession is only against the defendant who tried to disturb the plaintiff's possession and the same will not stand in the way of the Government in evicting the plaintiff from the suit property which admittedly a Government Natham Poromboke land.

19.I therefore find no merits in the second appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently connected MP is closed.

02.09.2024



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

dsn/ah

To

1.The Subordinate Judge,
Tittagudi.

2.The District Munsif,
Tittagudi.

3.The Section Officer,
VR Section,
High Court,
Madras.

N.MALA, J.

ah



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PRE=DELIVERY JUDGMENT IN

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