



S.A(MD)No.177 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.177 of 2018

and

C.M.P(MD)No.4614 of 2018

The State of Tamil Nadu,
Represented by its District Collector,
Dindigul District.

... Appellant/Appellant/
Defendant

Vs.

The Special Officer,
Ramarajapuram Gramma Primary
Agriculture Co-operative Bank,
Mattapparai, Nilakottai Taluk,
Dindigul District.

... Respondent/Respondent/
Plaintiff

PRAYER : This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree in A.S.No.35 of 2014 on the file of the Principal Sub Court, Dindigul, dated 22.12.2014, confirming the judgment and decree made in O.S.No.74 of 2005 on the file of the District Munsif Court, Nilakottai, dated 26.02.2010 and allow the Second Appeal.

For Appellant : Mr.N.Muthu Vijayan
Special Government Pleader
For Respondent : Mr.H.Lakshmi Shankar



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JUDGMENT

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This Second Appeal is filed against the judgment and decree, dated 22.12.2014 passed in A.S.No.35 of 2014 on the file of the Principal Sub Court, Dindigul, confirming the judgment and decree, dated 26.02.2010 passed in O.S.No.74 of 2005 on the file of the District Munsif Court, Nilakottai.

2. The appellant is the defendant and the respondent is the plaintiff in O.S.No.74 of 2005 on the file of the District Munsif Court, Nilakottai. The respondent/plaintiff filed the suit for declaration that the suit property belonged to the plaintiff and consequential permanent injunction restraining the defendant from interfering with the possession and enjoyment of the plaintiff over the suit property.

3. For the sake of convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.74 of 2005 on the file of the District Munsif Court, Nilakottai.

4. **Case of the plaintiff:**

The suit property is measuring 56 cents in S.No.159/2012 Mattaparai Village of Nilakottai Taluk. Originally, the suit property belonged to one



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Ramalingam Pillai. After his demise, his son Ramasamy Pillai was enjoying the suit property. The plaintiff purchased the suit property by virtue of the registered sale deed, dated 27.01.1960 for valuable sale consideration from the said Ramasamy Pillai. The plaintiff constructed a tile building and has been running its bank. The plaintiff obtained an electricity service connection. The plaintiff has been paying property tax and electricity consumption charges. Moreover, the plaintiff obtained a government loan of Rs.1,10,000/- and out of the said loan, another building was constructed. The government loan was also discharged by paying installments. The defendant issued a notice demanding Rs.22,869/- from the plaintiff as if the suit property is in Poramboke land. The plaintiff issued a proper reply that the suit property was purchased through a sale deed in 1960 and also stated about the sanction of government loan and discharge of the same by the plaintiff. Despite the reply the defendant issued a notice and so, the plaintiff filed a Writ Petition in W.P.No.19027 of 1999 before the Hon'ble High Court, in which, direction was given to seek remedy before the Civil Court. Thereafter, the defendant issued another notice, dated 08.01.2003 to the plaintiff requiring him to enter into lease otherwise the plaintiff would be evicted from the suit property. The defendant already admitted the possession and enjoyment of the plaintiff over the suit property. Now the defendant cannot refuse the same. Hence, the suit is filed for



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declaration and permanent injunction.

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5. Case of the Defendant:

The plaintiff averred in the plaint that it had purchased the property from one Ramasamy Pillai through a sale deed, dated 27.01.1960 and after that, it availed government loan for construction of building and the loan was discharged. However, in the Writ Petition in W.P.No.19027 of 1999, the plaintiff stated in the affidavit that the suit property originally belonged to Rengasamy Naicker from whom the property was purchased on 21.07.1960. From this, it is clear that the suit property is not situated in S.No.159/12 of Mattaparai village. The suit property in S.No.159/12 is classified as 'அனாதீனம்'. The plaintiff encroached the suit property, for which, the 'B' Memo under the Tamilnadu Land Encroachment Act, 1905 was issued to the plaintiff. As per revenue records, the plaintiff encroached the suit property and used it for running a bank. The defendant fixed the lease amount at Rs.7,623/- from 1405 fasli as per audit and demanded Rs.22,869/- for the fasli from 1405 to 1407. The defendant sent a letter in Na.Ka.No.6576/1999 A1, dated 29.06.1999 to the plaintiff demanding the said amount. Another letter was sent on 24.08.1999. The plaintiff though sought time for payment of lease amount, preferred the Writ Petition in W.P.No.19027 of 1999 before the High Court,



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in which, the plaintiff was directed to approach the proper Civil Court and to file an appeal before the District Collector, Dindigul. The plaintiff filed the appeal before the District Collector, Dindigul on 30.09.2002 and as per enquiry conducted in S.S.R.No.46/1999 D5, dated 08.01.2003, wherein it is clearly found that the suit property is “அனாதீனம்” (தீர்வை ஏற்பட்ட சர்க்கார் தரிக்). Suppressing these facts, the plaintiff filed the suit with false averments. Even in the alleged sale deed, dated 27.01.1960, no survey number was mentioned in it and it was originally held in Patta No.8 issued to Paramasivam Pandaram and thereafter, the UDR scheme Patta No.8 stood in the name of one Appaji comprising S.No.3/7A. So, the plaintiff is not entitled to the suit property. S.No.159/12 of Mattaparai village is a Government poramboke land. Hence, the suit is liable to be dismissed.

6. The trial Court has framed the following issues:-

"(1) Whether the plaintiff is entitled to declaration as prayed for?

(2) Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant from interfering with the possession of the plaintiff over the suit property?

(3) Whether it is true that the plaintiff purchased suit property by virtue of sale deed dated



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27.01.1960?

(4) To what other reliefs the plaintiff is entitled to?"

7. During trial, on the plaintiff's side, two witnesses were examined as P.W.1 and P.W.2 and Ex.A.1 to Ex.A.8 were marked. On the defendant's side, two witnesses were examined as D.W.1 and D.W.2 and Ex.B.1 to Ex.B.12 were marked.

8. After hearing both sides, the learned District Munsif, Nilakottai, concluded that the plaintiff is entitled to the suit property and decreed the suit granting the reliefs as sought in the plaint by passing judgment and decree, dated 26.02.2010.

9. Aggrieved by the judgment and decree in O.S.No.74 of 2005, the defendant preferred the Civil Appeal in A.S.No.35 of 2014 before the Principal Subordinate Court, Dindigul. The first Appellate Court after hearing both sides and after perusing material records of the case dismissed the appeal in A.S.No.35 of 2014 by passing judgment, dated 22.12.2014 and confirmed the judgment and decree passed in O.S.No.74 of 2005.



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10. Challenging the judgment and decree of the First Appellate Court, the defendant has preferred this Second Appeal and the same has been admitted on 06.06.2018 by framing the following substantial questions of law:-

"1. Whether the Courts below are right in granting decree based on Ex.A.1 & Ex.A.4 when the respondent failed to establish that property covered under Ex.A.1, A4 is one and the same of the suit property?

2. Whether the Courts below are right in not appreciating Ex.B.13 (Ex.B.12) which would establish that entire Mattaparai village was taken by the Government under Tamil Nadu Inam Abolishment Act 1948 and therefore no patta was granted in respect of suit property? "

11. The learned counsel for the appellant/defendant has submitted that the suit property measuring 56 cents classified as poramboke land. So, 'B' Memo was issued to the plaintiff in 1993 and the plaintiff paid 'penalty' till 2007. The plaintiff itself pleaded in paragraph No.4 of the plaint that the suit property was purchased through a registered sale deed, dated 27.01.1960 and also averred that the plaintiff is enjoying the property to the knowledge of the defendant for more than 40 years and claimed adverse possession.



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From which, the plaintiff impliedly admitted the government as the owner of the suit property. The plaintiff has not filed the original sale deed, dated 27.01.1960, Ex.A.1 is only certified copy of the sale deed. Further, the plaintiff has not produced the original Patta No.8, but only filed a kist receipt. No one purchases a property without predecessor's title. In the plaintiff's document, no survey number was mentioned. The plaintiff filed Ex.A.8 - FMB Sketch, which also did not correlate the boundary for the suit property. Though the plaintiff claimed Jameen Patta from 1951, it has not produced any bimash and adangal number for the suit property to corollate the said Jameen Patta. The trial Court concluded that even though the government is the owner of the suit property the plaintiffs prescribed title by adverse possession. This finding was not objected by the plaintiff in the Appeal Court, so, the plaintiff had no title through any document. The plaintiff side Ex.A1 is a fraudulent deed, which bears no survey number. Further, Mattaparai Jamin Estate was abolished as per G.O.No.3157, dated 09.12.1950 and possession was taken by the government on 03.01.1951 and so the landholder lost his right after receipt of compensation by Jamin. The landholder has to get ryotwari patta, failing to obtain ryotwari patta the landholder cannot encumber the same. The person who sold without title conveyed nothing to the purchaser. As per the revenue record, the suit property is classified as 'Anathinam' which means unoccupied land. Collection



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of rents is permitted as per paragraph No.5 of the Revenue Standing Order.

Therefore, even as per the trial Court judgment, declaration is on the basis of adverse possession, the right of recovery of rent amount of Rs.7,623/- as per memo from 1405 fasli may be confirmed by allowing this Second Appeal.

12. In support of his argument, the appellant/defendant's counsel relied on the following judgments of this Court.

"(1) CDJ 2022 MHC 3647 (Govt. of Tamil Nadu rep. by the District Collector, Thiruchirappalli & Anr. /v/ Arohiamerry)

(2) CDJ 2002 MHC 396 (Philips & Ors. /v/ K.R.Muthuvel Nainar (died) and Ors.)

(3) CDJ 2014 MHC 2768 (Thilagavathi @ Thilagam /v/ V.Samiappan)

(4) 2009 (5) CTC 558 (S.Ganesan /v/ Barathirajan)"

13. Per contra, the learned counsel for the respondent/plaintiff submitted that the suit property was purchased by the plaintiff through Ex.A.1 - Sale Deed, dated 27.01.1960 and Ex.A.2 - supplementary document was filed mentioning the sale consideration particulars. Ex.A.1 is the certified copy of the registered sale deed, which is a public document and the same is admissible in evidence as held by the Hon'ble Supreme Court in the case of



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Appaiya /v/ Andimuthu @ Thangapani reported in 2023 SCC Online SC

1183. Ex.A.1 and Ex.A2 set out the actual extent of the property with four boundaries and the Zamin Patta number. The plaintiff obtained a government loan for constructing a building to run a bank and the same was sanctioned and was discharged fully. The plaintiff got an electricity service connection for the suit property and the plaintiff has been paying kist to the revenue authorities. The plaintiff produced the electricity bills and kist receipts from the year 1987 and also filed Zamin kist receipts under Ex.A.4. The suit property was comprised in Ammainayakanur Zamin Estate. The defendant has no dispute regarding the identity of the property as Zamin Patta land. Ex.A1 - Sale Deed and Ex.A.4 - Kist Receipts were not denied by the defendant. The Zonal Deputy Tahsildar was examined as D.W.1, who categorically admitted that the plaintiff constructed the buildings and the plaintiff is in possession of the suit property from 1960 and they have not issued any 'B' Memo or imposed any penalty from 1960 to 1961. Though the defendant stated that Ex.A.1 and Ex.A.4 are related to some other property, the defendant side has not put any suggestion to PW1 that Ex.A.1, and Ex.A.4 are not related to the suit property. The plaintiff proved its title and continuous possession even before the Zamin/Estate abolition period which was further proved by the admissions of D.W.1 and D.W.2. As per Section 110 of the Evidence Act, the plaintiff has



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clearly proved its title over the suit property. The defendant mainly contended that the suit property is classified as 'Anadheenam' in the revenue records and the plaintiff is an encroacher. On 08.01.2003, the District Collector held that the suit property survey number is 'Government Poramboke', but no record has been produced by the defendant to establish the same. D.W.1 and D.W.2 clearly admitted in their cross examinations that correlation Zamin Patta No.8 is now S.No.159/12. But they failed to substantiate under which proceedings the land came to be classified as "Anadheenam". The defendant is the custodian of revenue records but failed to produce any documents to show that the land is classified as Anadheenam or poramboke. The Courts below correctly have drawn adverse inferences against the defendant for non-production of documents despite being the custodian of all revenue records. The adverse inference of the Courts below is a correct justification as per the settled proposition laid down in **AIR 1968 SC 1413 (Gopal Krishnaji Ketkar /v/ Mohamed Haji Latif & Ors.)** and **AIR 1987 MP 156 (State of Madhya Pradesh /v/ Sardarmal)**.

14. The learned counsel further contended that Patta No.8 was given before UDR. It is well known that after UDR, the new survey number would be changed. A government poramboke land would have been classified even in



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Zamin records or in the old settlement registers, but the defendant has not produced those records. The findings of the Courts below are based on Ex.A.1 and Ex.A.4 and the plaintiff's settled possession was proved and so the first question of law is to be negatived against the appellant/defendant. The defendant has taken out inconsistent stand that by saying the suit property is classified as Anadheenam as well as poramboke. Anadheenam and Poramboke are not the same. Anadheenam and Poramboke classifications have their own difference. After the Estate Abolition Act, if a land owner failed to produce the patta, that land is usually classified as Anadheenam, which means, unoccupied land or abandoned land. It is not a Government land. The propositions laid down in the citations **(i) MANU/TN/4970/2021 (The State of Tamil Nadu /v/ L.Narasinga Rao & Ors.) (ii) MANU/KE/0278/1982 (State of Kerala /v/ Mundoi Hydru)**. The land owner who failed to obtain patta in the settlement proceedings can establish his title based on the pre-existing rights, before the Civil Court and the classification of 'Anadheenam' will have no relevance as per the settled proposition in **1985 (4) SCC 10 (State of Tamil Nadu /v/ Ramalinga Swamigal Madam) and 1998 (1) CTC 630 (Srinivasan and 6 Ors. /v/ Madiyarujenwaraswami Pattaviathalai)**.



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15. The learned counsel for the respondent/plaintiff further contended that Ex.B.11 and Ex.B.12 are village extracts after 1984 and after UDR, and they are not settlement records. Further, Ex.B.1 is issued after the suit. The plaintiff has been in possession from 1960 and so it cannot be classified as an unoccupied land or Anadheenam. The alleged issuance of 'B' Memos under Ex.B.6 to Ex.B.9 does not bear any signature of the plaintiff's officials and served copy of 'B' Memo was not exhibited by the defendant. Further, for Anadheenam land 'B' Memo could not be issued. Therefore, the findings of the Courts below have no perversity and illegality and concurrent findings do not warrant any interference U/s.100 of the Civil Procedure Code by way of the Second Appeal as laid down by the **Hon'ble Supreme Court in 2005 (6) SCC 441 (G.Mahalingappa /v/ G.M.Savitha)**. Concurrent findings could not be set aside unless the question of law decided favouring the appellant in the Second Appeal. The questions of law could not be decided in favour of the appellant as the suit was factually decided by the Courts below. Therefore, this Second Appeal may be dismissed.

16. Heard the arguments of both sides and perused the material records in this Second Appeal.



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17. It is admitted by both the plaintiff and the defendant that the suit property was purchased by the plaintiff by virtue of Ex.A.1 - Sale Deed, dated 27.01.1960 and is in continuous possession. It is also admitted fact that the plaintiff obtained a government loan and constructed another building and that loan was fully discharged by the plaintiff. The plaintiff got an electricity service connection for the building in the suit property. The plaintiff produced Ex.A.1 - Sale Deed and Ex.A.5 - House Tax Receipts and Ex.A.6 Electricity Consumption Charges.

18. It is the main case of the appellant/defendant that there is no survey number mentioned in Ex.A.1 - Sale Deed. Ex.A1 though the certified copy of the registered sale deed, is admissible in evidence as laid down in **2023 SCC Online SC 1183 (supra)** relied on by the plaintiff's side. On perusal of the records, the plaintiff produced Ex.A4 to show Zamin Patta No.8 and payment of Zamin Kist. It is evident from D.W.1 that for Zamin land no survey number was given and only boundary and extent were given. As per Ex.A.1 and Ex.A.2 - Zamin Patta and boundaries were described for the suit property and it was not disputed by the defendant. Ex.A.8 - FMB Sketch has also established the same. The plaintiff in the affidavit filed before the Writ Court stated that the



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suit property belonged to one Rengasamy Naicker, whereas in the suit it was mentioned as Ramasamy Pillai. It appears that the learned counsel for the plaintiff mentioned inadvertently, but the fact remains that Ex.A.1 is not at all disputed. So, there is no dispute that the plaintiff purchased the suit property by virtue of Ex.A.1 - Sale Deed. The plaintiff proved his title and predecessor in title by producing acceptable and unchallenged exhibits. The plaintiff's possession from 1960 is proved as correctly observed by the Courts below. D.W.1 and D.W.2 have categorically admitted the stand of the plaintiff and also rightly appreciated by the Courts below and there is no perversity in the findings of the Courts below.

19. Moreover, it is pertinent to note here that the plaintiff is running a bank in the suit property and so, the defendant know the public ingress and egress of the suit property from all these years. If the defendant really felt that the suit property as a government poramboke, it would have taken appropriate steps to evict much earlier. After keeping mum for quite long years and awake up one fine morning by alleging Poramboke land and issuance of 'B' Memo by the defendant's side is not acceptable. It is a settled proposition that the law will help the litigants, who are vigilant. Moreover, the defendant has not established that the suit property is a Government poramboke land, but the plaintiff



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established that they were in possession and enjoyment from 1960 by virtue of registered Ex.A.1 - Sale Deed.

20. The next contention is regarding Anadheenam. The defendant stated that the suit property is Anadheenam in the year 2003 and subsequently stated that the suit property is a Government poramboke land and issued 'B' Memo, dated 26.09.1999 demanding penalty from 1405 fasli as if the plaintiff is an encroacher of Government poramboke land. On perusal of records and materials and arguments of the plaintiff side, it is clearly explained what is Anadhneeam and what is Government poramboke land and both are not one and same. The defendant has not disputed the explanation of the plaintiff and also has not produced any contra material records. The defendants' side exhibits are issued after the suit. The plaintiff's possession was admitted by the defendant as seen from the records.

21. The plaintiff also pleaded and let in evidence that he is in possession of the suit property for more than 40 years with the full knowledge of the defendant by obtaining a Government loan and getting an electricity service connection and paying kist receipts. There is no explanation from the defendant's side as to why the 'B' Memo was not issued from 1960 to 1999,



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while the defendant claims that the suit property is Anadheenam land or Poramboke land. Ex.B.12 was prepared by the defendant revenue officials, there is no proper evidence as to whether Ex.B.12 was prepared after the proper enquiry and after getting a statement from the public. Ex.B.12 is of the year 2009. On perusal of the judgments, the Courts below correctly held that Ex.A.1 and Ex.A.4 are sufficient to establish the title of the plaintiff over the suit property and also Ex.B.12 is issued only after the suit. Even in this appeal, the appellant/defendant side admitted that even as per the trial Court judgment, the declaration was ordered on the basis of adverse possession, which confirms government land, and so the right of recovery of rent amount of Rs.7,623/- sought to be confirmed. But, the plaintiff strongly objected the issuance of 'B' Memo from the very beginning of the year 1999 and the alleged payment under 'B' Memo was not that of plaintiff side as it does not bear any signature of plaintiff side official. This was not rebutted by the defendant's side. So, the claim of rental amount under 'B' Memo is also not acceptable.

22. From the above facts, the Courts below recorded concurrent findings based on evidences adduced in the case. The citations relied on by the appellant/defendant are not applicable to the facts of this case and the citations relied on by the respondent/plaintiff are squarely applicable to the facts of the



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case. The said findings need not be interfered by this Court by way of the Second Appeal. Hence, the questions of law framed in this appeal are answered against the appellant/defendant. Thus, this Second Appeal fails.

23. In the result, the Second Appeal is dismissed. The judgment and decree, dated 22.12.2014 passed in A.S.No.35 of 2014 on the file of the Principal Sub Court, Dindigul, confirming the judgment and decree, dated 26.02.2010 passed in O.S.No.74 of 2005 on the file of the District Munsif Court, Nilakottai, is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Principal Sub Court,
Dindigul.
- 2.The District Munsif Court,
Nilakottai,
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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VSD

Pre-Delivery Judgment made in
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