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Court : Chennai Madurai

Decided On : Feb-24-2017

Judge : M. Duraiswamy

Appeal No. : S.A. (MD) Nos. 24 of 2011 & 352 of 2012 & M.P. (MD) No. 1 of 2011

Appellant : Manickam

Respondent : Chinnammal and Another

Judgement :

(Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.4 of 2009, dated 29.04.2010, on the file of the Principal District Court, Pudukkottai, concurrent the judgment passed in O.S.No.106 of 2006, dated 05.11.2007, on the file of the Subordinate Court, Pudukkottai.

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.3 of 2009, dated 29.04.2010, on the file of the Principal District Court, Pudukkottai, concurrent the judgment passed in O.S.No.106 of 2006, dated 05.11.2007, on the file of the Subordinate Court, Pudukkottai.)

Common Judgment:

1. The Second Appeal in S.A.(MD)No.24 of 2011 arises against the judgment and decree passed in A.S.No.4 of 2009, on the file of the Principal Subordinate Court, Pudukkottai reversing the judgment and decree passed in the counter claim in O.S.No.106 of 2006, on the file of the Subordinate Court, Pudukkottai. The Second Appeal in S.A.(MD)No.352 of 2012 arises against the judgment and decree passed in A.S.No.3 of 2009, on the file of the Principal Subordinate Court, Pudukkottai reversing the judgment and decree passed in O.S.No.106 of 2006, on the file of the Subordinate Court, Pudukkottai. The defendant in the suit has filed the above Second Appeals.

2. The plaintiffs filed the suit in O.S.106 of 2006 for permanent injunction. The defendant fled the counter claim in O.S.No.106 of 2006 for declaration, permanent injunction and recovery of possession. Since both the Second Appeals arise against one suit, both the Second Appeals are disposed of by this common judgment.

3. The brief case of the plaintiffs is as follows:

The suit property measuring an extent of 8 cents out of total extent of 16 cents originally belonged to one S.K.R.Karuppan Chettiar ancestrally. By a deed of sale dated 05.07.1973, the minors Alagu and Manoharan represented by their father Saravanan, purchased the said 8 cents of land. Thereafter by a deed of sale dated 24.01.1994, the said Alagu and Manoharan sold an extent 4 cents on the northern side to the second plaintiff. The possession was handed over to the plaintiffs on the date of sale itself. The plaintiffs have been in possession and enjoyment of the property since the date of purchase. They also obtained electricity connection and put up a thatched house and Door number was assigned as 59/1. The plaintiffs are in possession and enjoyment of the property for well over the statutory period and they have prescribed title by adverse possession. Since the defendant tried to dispossess the plaintiffs, the plaintiffs filed the suit.

4. The brief case of the defendant is as follows:

According to the defendant, the sale deeds mentioned in the plaint are not pertaining to the suit property. The suit property and the entire extent of 16 cents

belonged to the defendant and his ancestors. Patta was issued in favour of the defendant's father Chella Konar @ Adaikala Konar. He constructed a house on the northern side and using the land on southern side as cattle shed. After the death of his grand father, the defendant inherited the property. The plaintiff has no right in respect of the suit property. The plaintiffs' vendor also did not have any title over the suit property. The defendant is in possession and enjoyment of the suit property and the plaintiffs are not in possession and enjoyment of the property. The plaintiffs have no title over the suit property. The plaintiffs are trying to encroach the suit property. In these circumstances, the defendant prayed for dismissal of the suit and to decree the counter claim filed by him.

5. Before the trial Court, on the side of the plaintiffs four witnesses were examined and 15 documents viz., Exs.A.1 to A.15 were marked and on the side of the defendant, three witnesses were examined and 12 documents viz., Exs.B.1 to B.12 were marked and the Advocate Commissioner's report and plan were marked as Exs.C.1 and C.2. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, dismissed the suit and decreed the counter claim. Aggrieved over the dismissal of the suit in O.S.No.106 of 2006, the plaintiffs filed an appeal in A.S.No.3 of 2009 and also filed another appeal in A.S.No.4 of 2009 as against the decree passed in the counter claim. The lower Appellate Court set aside the judgment and decree passed by the trial Court and allowed both the appeals. Aggrieved over the judgment and decree of the lower Appellate Court, the defendant has filed the above Second Appeals.

6. Heard Mr.Isacc Mohanlal, learned Senior Counsel appearing for the appellant and Mr.K.Balasubramanian, learned Counsel appearing for the respondents.

7. At the time of admission of the above Second Appeals, the following Substantial Questions of Law arose for consideration:

1. Whether the lower Appellate Court has committed an error in reversing the judgment of the trial Court and granting the relief declaration and injunction in favour of the respondents/plaintiffs, rejecting the contentions of the appellant/defendant that the description of the suit property found in the plaint is not correct, especially in the absence of furnishing the sub-division number?

2. Whether the judgment of the lower Appellate Court cannot be construed as a judgment in accordance with law insofar as proper and necessary issues have not been framed by the lower Appellate Court?

3. Whether the lower Appellate Court has given a perverse finding that the appellant/defendant has not proved his counter claim in respect of the suit property?

4. Whether the first Appellate Court is right in law in decreeing the suit for bare injunction without their being any relief of declaration of title particularly when the counter claim was instituted by the defendant?

8. Mr.Isacc Mohanlal, learned Senior Counsel appearing for the appellant submitted that the suit filed by the plaintiffs is not maintainable for the reason that they have not prayed for declaration, when there is a dispute with regard to the title of the property. Further the learned Senior Counsel submitted that when the plaintiffs failed to establish his possession over the suit property, the lower Appellate Court should have dismissed the appeal. Further the learned Senior Counsel submitted that when the defendant had clearly established the title and also the possession of the suit property, the lower Appellate Court should have decreed the counter claim.

9. In support of his contentions, the learned Senior Counsel relied upon the following judgments:

(i) In the Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District Vs. V.Swaminathan and Others reported in 2004(3) CTC 270, the Division Bench of this Court held as follows:

9. A perusal of a combined reading of Section 3(b) and Section 18 of Madras Estates (Abolition and Conversion into Ryotwari) Act viz., Madras Act XXVI of 1948 and Section 2 of the Madras Land Encroachment Act, 1905 disclose that the title to a house site in a Grama Natham is protected from transfer to Government.

13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested

with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in canceling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summarily eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions.

(ii) In Janakiammal Vs. The State of Tamil Nadu represented by the District Collector of Ramanathapuram at Madurai reported in 1996(2) MLJ 110, this Court held as follows:

7. One of the main reasons for dismissal of the appeals was that regarding identity of the property, there was no proper evidence. Lower appellate court also assumed that once the classification is made and the properties are treated as 'Natham Poramboke', civil court's jurisdiction is ousted, and the plaintiff can get title only after getting patta from the Government. The findings of the authorities under the Madras Estates Abolition Act were held to be conclusive. It is against the concurrent findings, these second appeals have been filed on the following (common) substantial questions of law:

(1) Whether the courts below are right in negativing the plaintiffs claim on the ground that the plaintiff's predecessor- in-title, the Zamindar of Ettayapuram, did not get patta under Section 12 of Act 26 of 1948?

(2) Whether the courts below are right in ignoring the fact that 'Natham' does not vest with the Government under Act 26 of 1948? and (3) Whether the lower courts are right in accepting the extract of evidence tendered in an entirely different proceedings without examining the person who gave evidence?

8. The position of law is now settled, in view of the decisions reported in State of Tamil Nadu v. Ramalinga Swamigal Madam and Manicka Naicker v. E. Elumalai Naicker . In both these cases, it was declared by the Supreme Court that the jurisdiction of civil courts is not ousted, and the question whether the Settlement Officer's decision is correct or not, can be entertained by civil court. In the first

decision, it was held thus:

The civil court's jurisdiction to adjudicate on the real nature of the land is not ousted under Section 64-C by reason of the Settlement Officer's decision to grant or refuse to grant a patta under Section 11 read with the proviso to Section 3(d) of the Act. The finality given under Sub-section (1) of Section 64-C of the Act to the orders passed by the Government or other authorities in respect of the matters to be determined by them for the purpose of the Act and prohibition under Sub-section (2) thereof against calling in question such orders in any court of law by themselves are not decisive of the civil court's jurisdiction. Several other aspect like the scheme of the Act, adequacy and sufficiency of remedies provided by it, etc., will have to be considered to ascertain the precise intendment of the Legislature. Having regard to the vital difference between the provisions dealing with grant of ryotwari patta to a ryot (Section 11) and the grant thereof to a landholder (Sections 12 to 15), different considerations may arise while deciding the issue of the ouster of civil court's jurisdiction to adjudicate upon the true nature and character of the concerned land. The expression "for the purposes of this Act" has been designedly used in Section 64-C suggesting that any order passed by the settlement officer either granting or refusing to grant a ryotwari patta to a ryot under Section 11 of the Act must be regarded as having been passed to achieve the purposes of the Act, namely, revenue purposes, that is to say for fastening the liability on him to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government; and therefore any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose. When a statute creates a special right or liability and provides for its determination, it should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it. If there is a no such provision it will be difficult to infer ouster of the civil court's jurisdiction to adjudicate all other questions pertaining to such right or liability. Since under the Act from the notified date all the estate vests in the Government free from encumbrances it must be held that all the lands lying in such estate including private land of landholder and ryoti land cultivated by a ryot vest in the Government and the Act

could be said to be creating a new right in favour of a landholder (re: his private lands) and a ryot (re: ryoti land) by granting a ryotwari patta to them under Sections 12 to 15 and Section 11 respectively, and the Act provides for determination of such right by the Settlement Officer. In the case of an application for a ryotwari patta by a ryot under Section 11 there is no express provision for any inquiry into the nature or character of the land before granting or refusing to grant such patta to the applicant but impliedly a decision on this aspect of the matter must be arrived at by the settlement officer before he passes his order on either granting or refusing to grant such patta. Such a decision will be an incidental one and arrived at in the summary manner only for the purpose of granting or refusing to grant the patta. A summary decision of this type in an enquiry conducted for revenue purpose cannot be regarded as final or conclusive so as to constitute a bar to a civil court's jurisdiction adjudicating upon the same issue arising in a suit injunction filed by a ryot on the basis of title and/ or long and uninterrupted possession. Even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which civil court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of civil court's jurisdiction. Where an application is made under Section 11 for a ryotwari patta, the settlement officer has power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But the applicant even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely before granting such relief the civil court may have to adjudicate upon the real nature or character of the land if the same is put in issue. Thus the settlement officer having no power to do what civil court would normally do in a suit, ouster of civil court's jurisdiction cannot be implied simply because finality has been accorded to the Settlement Officer's order under Section 64-C of the Act.

The above position of law was followed in the subsequent decision as well viz., Manicka Naicker v. E. Elumalai , wherein it was held thus:

The jurisdiction of the City Civil Court, to entertain and decide the suit for recovery of land was not, in any manner, ousted by the coming into force of the Act. Nor did the decree passed in the suit become a nullity because of the grant of a joint patta by the Assistant Settlement Officer in the names of the appellant and the respondent in respect of the building and land respectively prior to the passing of the decree.

The purpose of the Madras Act is introduction of ryotwar settlement in the place of the rights of inamdars in minor inams with the exception of certain types of public lands set out in Section 10. Section 13 does not vest any property in a person in who that property did not vest prior to the appointed day. By virtue of Section 13(2) the site on which the building stands will vest in the person who owned it immediately before the appointed date. Unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of Sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant.

In view of these decisions rendered subsequent to the decisions of the courts below, the finding that the civil court has no jurisdiction cannot stand. The civil suit is maintainable.

(iii) In Muthammal (died) and others Vs. State of Tamil Nadu and another reported in (2006)3 M.L.J. 216, this Court held as follows:

7. According to the learned senior counsel, it is the admitted case of the parties that the entire suit properties falls under the category of grama natham. As far as natham is concerned, the first occupier of the land is the owner of the land. The plaintiff's possession is admitted by the defendants in their written statement. It is also submitted that since her vendor Palaniandi was the first occupier he had no parent deed in his favour and since the sale consideration is Rs. 25/= during 1945, the document was not registered. It is further submitted that P.W. 2, attestor to the document Ex.A. 1 spoken to the fact that he has attested the document. The evidence of D.W. 1 Village Administrative Officer and D.W. 2, Surveyor also

supports the plaintiff's case.

8. Learned Senior Counsel also clarified that in Natham, first occupier will be treated as the owner and no patta will be given to them. Patta is issued only for assessed lands and it is the settled law. That is why, Natham is called as Poramboke i.e., "natham poramboke" which means "poram (TAMIL) is outside; "poke (TAMIL)" is revenue record. Thus the word "poramboke lands" means the lands which is not assessed to revenue records and it is outside the revenue accounts. Likewise, "gramanatham" is defined in the Law Lexicon as "ground set apart on which the house of village may be built". Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the non brahmins; or land reserved as house sites; etc., Learned senior counsel also relied on very many decisions of this High Court as well as the Apex Court to the effect that Poramboke does not include natham and grama natham never vest with the Government, which will be referred to in the latter part of this judgment.

9. Per contra, learned Additional Government Pleader appearing for the respondents/defendants contended that both the courts below have concurrently disbelieved the version of the plaintiffs as regards title to the suit 1 and 2 properties. More over there are inconsistencies in the evidence of the witnesses as regards possession is concerned. Learned Additional Government Pleader also contended that when the findings of the courts below are concurrent, the interference by this Court under Section 100 CPC in this Second Appeal is very very limited unless the findings were erroneous being contrary to mandatory provisions of law applicable or contrary to settled position on the basis of pronouncements made by Supreme Court or was based upon inadmissible evidence or arrived at without evidence. Learned Additional Government Pleader also contended that the substantial question of law formulated in this Second Appeal also does not fit in with the parameters enunciated by the Apex Court. Learned Additional Government Pleader also brought to the notice of this court that the stamp paper used for Ex.A. 1 document has been forged in that the name of the plaintiff has not been mentioned in the said document and even the name

found in Ex.A. 1 is not her husband's name. It is ultimately submitted that no interference is called for with respect to the concurrent findings of the courts below.

10. Taking into consideration of the evidence of P.W. 1, who is the plaintiff, at the time of her examination she was aged 101 years and she has deposed that she had purchased suit items 1 and 2 as vacant lands and before that there was a building in the said lands. She had purchased the grama natham lands in the year 1945 from her vendor. P.W. 2, who is one of the attesting witness to Ex.A. 1 has deposed that he knows the possession of suit items 1 and 2 even by the vendor Palaniandi's father since he is doing onion business in the adjacent land. At the time of purchase, there was a hut where cattle were tied and haystack was also stored. P.W. 3 is the son of the first plaintiff. He deposed that it is not Government Poramboke, but it is grama natham and since 1945 they are in possession and enjoyment of the same by putting by hut which got destroyed during the recent rain.

(iv) In V.N.Krishnasamy and Others Vs. E.S.Vasudevan reported in 2015(2) MWN (Civil) 582, this Court held as follows:

20. Considering the facts of the present case in the light of the abovesaid decision, it is appropriate to consider Section 54 of the Transfer of Property Act, wherein the ingredients of oral sale has been stipulated. As per Section 54 of the Transfer of Property Act, transfer in the case of a tangible immovable property of the value of one hundred rupees and upwards must be necessarily registered. Below the value of hundred rupees can be orally sold and the necessary ingredient is the handing over of the properties to the purchaser. In the instant case, even though the first appellant had stated that he has purchased the property as early as in the year 1976, he has not filed any scrap of paper to show that he was put in possession, patta changed in his name and he paid the kist and that his name finds place in the Adangal. Even though the appellants herein had filed the Exs.B.5 and B.6, it relates to patta No.602 and it was filed only after the filing of the suit, viz., 12.05.2004. So, no reliance can be placed on Exs.B.5 and B.6.

(iv) In State of Tamil Nadu, represented by the Collector, Virudhunagar at Kamarajar District Vs. Madasami and Others reported in 2012(2) CTC 315, this Court held as follows:

13.On careful perusal of the judgments of both the Courts below, I could find that the was suit filed by the plaintiffs for declaration of their title to the suit property and for permanent injunction against the defendants from in any way disturbing the possession and enjoyment of the plaintiffs and the same was decreed by the trial Court and it was confirmed by the 1st appellate Court. Both the Courts below have discussed elaborately regarding the evidence produced on either side and had come to the conclusion that the suit property is a 'grama natham' land and the plaintiffs are in possession and enjoyment of the suit property by virtue of their purchase from Parasurama Pattar and Thangasamy Pattar and the vendors were also entitled to the suit property by virtue of a long possession and enjoyment by putting up buildings in the suit property, which fell down later and found that the 1st defendant/appellant herein is not entitled to the said property.

14. The factual aspects discussed and found by both the Courts below in respect of the nature of the property viz., gramanatham is not denied by the appellant. Supporting the same, the learned Government Pleader (CS) would submit in his argument that the property was classified as gramanatham in the settlement register of the year 1923 and the property, being a gramanatham, the Government alone be the owner of the property. If, the argument of the learned Additional Government Pleader (CS) is accepted, the suit filed by the plaintiffs would have no legs to stand and the appeal should have been consequently allowed. For deciding such crux, we must firstly consider the character and qualities of a land classified under 'gramanatham'. There is no dispute that wherever the lands classified as natham or natham poramboke or gramanatham are only meant a gramanatham. The gramanatham lands were classified and allotted for village people to use them as house sites or for any other purposes for storing his hay and manure or as a smithy or as a brick-kiln or as a place for weaving etc.

15. It is very much understood that once, the properties have been classified as gramanatham, the Government cannot claim right over the said property. The said

concept has been elaborately discussed in a judgment of this Court reported in 1959(II) MLJR 513 between S.Rengaraja Iyengar V. Achikannu Ammal and another. The relevant passage would be thus:

"In order that a land may property be described as housesite within the meaning of that expression in section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house- sites within the meaning of that expression in section 2 of the Madras Act III of 1905. Madras Act III of 1905 is made applicable to an estate when it is notified under Madras Act III of 1905 is made applicable to an estate when it is notified under Madras Act XXVI of 1948. The provision as to vesting under section 3(b) of Madras Act XXVI of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas which are expressly made applicable to estates notified under the Act.

It is contended that, in relation to buildings, specific provision is made under section 18 of Act XXVI, of 1948 and that, consequently, unless a house- site can be brought within the ambit of section 18, such house-site should be held to be property as to which title gets transferred to the Government under section 3(b). Section 18 deals, in my opinion, with building wherever they may be situate, whether in the gramanathams, or in ryoti lands or pannai lands or waste lands. Section 18 has no particular application to buildings or house- sites in a gramanatham. A building in a gramanatham (or village habitation) is protected from transfer of title to the Government both under section 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramanatham is protected from transfer to Government by the operation of Madras Act III of 1905."

"Emphasis supplied"

16. Following the afore said judgment, in yet another judgment of this Court reported in 1998-3 L.W. 603 between A.K.Thillaivanam and another V. District Collector, Chengai Anna District and 3 others), it has been reiterated the said principle. The relevant passage would be thus:

"That apart, it has been admitted in the counter affidavit that the land is a village Natham. The village Natham is a land which never vested with the respondents and they have no right to it. Admittedly, when the land has been classified as village Natham, it is obvious that no portion of the land vests with the respondents. The admitted classification is village Natham and merely because the petitioners have converted the same into agricultural lands, no right could accrue to the respondents even after conversion."

"Emphasis supplied"

17. In the aforesaid judgments, this Court has categorically come to the conclusion that it is not necessary that building must exist in the vacant site so as to claim right over the said vacant and once the buildings have been put up the character of gramanatham would become as house sites, such gramanatham house sites either with building or with building as house sites cannot be claimed by the Government as a property belonged to the government. The rights of other classification of lands like poramboke lands is different from the gramanatham properties, since it is meant for the occupation of the village people for putting up their houses as well as their use for agricultural or weaving or smithy purposes without any discrimination. The 1st appellate Court has come to the conclusion that the plaintiffs were entitled to the suit property, by virtue of the purchase of the house sites, in which place, there were buildings existed once and now it is lying as a vacant site though a valid transfer made by the descedents of Samanitha Pattar viz., Parasurama Pattar and Thangasamy Pattar in favour of the plaintiffs and the plaintiffs are thus entitled to the suit property and the Government has no locus-standi to initiate the proceedings for the issuance of patta to 3rd parties so as to interfere with the rights of the plaintiffs or their predecessors in title, who were already vested with the title.

18. When, once a person occupied a gramanatham land and put up construction, the said vacant site becomes a house site of that person and the character of the property changes and the person, who had been vested with the right of the said site or the property, is entitled to transfer the same to anybody as he likes. The government has no say in the said right accrued to the person, who occupied a gramanatham land. The extent so occupied by such person has to be considered towards his enjoyment of the said property. The 1st appellate court had found that the plaintiffs are in the possession and enjoyment of the land described in the Commissioner's sketch viz., 'NMLKAJIHO' property. The findings of the 1st appellate court confirming the judgment and decree passed by the trial Court to the effect that there were buildings put up by Saminatha Pattar in the said property and thereby, he was vested with the right in the property situated in gramanatham cannot be disturbed by this Court, which was decided on merits.

19. In the said circumstances, the only point raised before this Court as to whether a person, who claims to be the owner of gramanatham land, be declared as the owner of the said property, is made possible in view of the principle laid down by this Court already. As regards the claim of the plaintiffs over the suit property that it is a gramanatham property and the plaintiffs' vendors and ancestors had put up buildings in the suit property and thereby, the gramanatham property had become house sites of the ancestors of the vendors of the plaintiffs can not be disturbed. Furthermore, it cannot be divested by the Government from the persons with whom those right of gramanatham lands vested already.

10. Countering the submissions made by the learned Senior Counsel appearing for the appellant, Mr.K.Balasubramanian, learned Counsel appearing for the respondents submitted that since the plaintiffs are the owners of the suit property, the suit filed by the plaintiffs for bare injunction is maintainable. Further the learned Counsel submitted that since the defendant had failed to establish his right over the suit property, the lower Appellate Court has rightly decreed the suit filed by the plaintiffs and dismissed the counter claim filed by the defendant.

11. In support of his contentions, the learned Counsel for the respondent relied upon an unreported judgment in M.Vedamanickam Nadar Vs. M.Sudalaikannu

Thevar, dated 29.03.2007, wherein this Court held as follows:

15. Pointing out the issuance of notice, learned Counsel for the respondent contended that when defendant is disputing title of the plaintiff, it was submitted that the lower appellate Court has rightly held that the plaintiff ought to have filed the suit for declaration of his title. Contending that permanent injunction is not to be granted only on the ground of plaintiff's possession without adjudicating question of title, learned Counsel for respondent placed upon reliance in Srinivasa Pillai v. Ragunathan 1983 (I) M.L.J., 159. In the said decision, S.Nainar Sundaram,J. has held thus:

Nobody can dispute the general principle that a person in peaceful possession is entitled to be maintained in possession against all but the true owner and the suit by such a person for an injunction against any other person threatening to dispossess him is maintainable and there could be an investigation of his cause and relief granted if there is a warrant for it on facts. As pointed out by the Supreme Court in M. Kallappa Setty v. M.V. Lakshminarayana Rao , the plaintiff can on the strength of his possession resist interference from persons who have no better title than himself to the suit property. The propriety of protecting the possession of the plaintiff, who has failed to establish his title, when the defendant's plea of title has been rejected, came up for consideration before Gokulakrishnan,J. in Mohammed Sulaiman v. Mohideen Thambi 1971 (84) L.W. 252 and the learned Judge found, that in that case both the Courts below concurrently fond that the defendants have neither title to nor possession of the suit properties and in the said circumstances when the plaintiffs are in possession of the suit properties, they are entitled to have their possession protected by a decree, of injunction.

In the said case there was a dispute on the question of title to the suit property between plaintiff and defendants. Under those factual situation, the learned Judge has held that without adjudicating question of title one way or other, permanent injunction is not to be granted. In the present case, suit property is a Natham poramboke in which neither the plaintiff nor the defendant can claim any title. Under such circumstances, question of deciding title does not arise.

12. On a careful consideration of the materials available on record, the submissions made by the learned Counsel appearing on either side and also the judgments relied upon by the learned Counsel appearing on either side, it could be seen that the plaintiffs have filed the suit for bare injunction. The defendant filed the counter claim for declaration, permanent injunction and recovery of possession stating that he is entitled to the property.

13. The case of the plaintiffs is that out of the total extent of 16 cents, he is entitled to 8 cents of land in S.No.1078. P.W.1 in his evidence had admitted that the patta was not issued either in his name or in his vendor's name. P.Ws.2 to 4 also supported the case of the plaintiffs. On the contrary, D.W.1 in his evidence stated that except patta, he has not produced any other document to prove that he is the absolute owner of the suit property. D.W.3 in his evidence has stated that so far as the suit property is concerned, though patta stood in the name of the defendant, the actual enjoyment was only with the plaintiffs. Under Ex.A.1 sale deed dated 05.07.1973 executed by the minors Alagu and Manoharan represented by their father Saravanan, one Karuppan Chettiar purchased the property. Under Ex.A.2 sale deed dated 24.01.1994, the said Saravanan, Alagu and Manoharan sold the property measuring an extent of four cents to the first plaintiff. Similarly on the same day, under Ex.A.3 sale deed, the said Saravanan, Alagu and Manoharan sold the remaining extent of 4 cents to the second plaintiff. Ex.A.6 is the electricity consumption card issued in the name of the first plaintiff. Ex.A.8 is the planning permission issued in the name of the first plaintiff.

14. The lower Appellate Court, taking into consideration the evidences of P.W.3 and P.W.4, rightly came to the conclusion that the plaintiffs are in possession and enjoyment of the suit property. The lower Appellate Court also took into consideration the evidence of D.W.1 who had deposed that he had produced only the patta in respect of the suit property and that he had not produced any other document to establish his title over the same. The firca surveyor was examined as D.W.3 and he had also stated that though the patta stood in the name of the defendant, the actual possession was with the plaintiffs. Taking into consideration the oral and documentary evidences, the lower Appellate Court rightly found that the plaintiffs are in possession of the suit property. Since the defendant has not

produced any other document, except the patta to establish his title over the property, the lower Appellate Court rightly dismissed the counter claim and decreed the suit filed by the plaintiffs. That apart, though the suit was filed on 08.04.1999, all the documents produced by the defendant are subsequent to the filing of the suit. The ratio laid down by this Court in the unreported judgment made in M.Vedamanickam Nadar Vs. M.Sudalaikannu Thevar, dated 29.03.2007 squarely applies to the facts and circumstances of the present case. Since the suit property is a natham poromboke in which neither the plaintiffs nor the defendant can claim title. There is no necessity for the plaintiffs to file the suit for declaration. Since the facts and circumstances of the present case are different from the judgments relied upon by the learned Senior Counsel for the appellant, they are not applicable to the present case. The lower Appellate Court has rightly decreed the suit and dismissed the counter claim.

15. In these circumstances, I do not find any ground, much less any substantial question of law, to interfere with the judgment and decree of the lower Appellate Court. The Second Appeals are liable to be dismissed. Accordingly, both the Second Appeals are dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

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