

Rangasamy Gounder and Others Vs. Valliammal and Others

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Court : Chennai

Decided On : Oct-10-2012

Judge : G. Rajasuria

Appeal No. : S.A.No.1837 of 2000

Appellant : Rangasamy Gounder and Others

Respondent : Valliammal and Others

Advocate for Pet/Ap. : For the Appellants: N. Manokaran, Advocate. For the Respondents: R1 to R6, M/s. M. Radhakrishnan, Advocate. R7 & R8, T. Jayaramraj, G.A.

Judgement :

(Second Appeal preferred against the judgment and decrees dated 9.3.2000 passed by the learned Principal District Judge, Erode, in A.S.No.233 of 1999 confirming the judgement and decree dated 9.8.1999 passed by the District Munsif, Perundurai, in O.S.No.155 of 1997.)

This appeal is focussed by the plaintiffs as against the judgment and decree dated 9.3.2000 passed by the learned Principal District Judge, Erode, in A.S.No.233 of 1999, confirming the judgment and decree dated 9.8.1999 passed by the District Munsif, Perundurai, in O.S.No.155 of 1997, which was filed for declaration and permanent injunction.

2. The parties, for convenience sake, are referred to here under according to their litigative status before the trial Court.

3. Heard the learned counsel appearing for the parties.

4. Niggard and bereft of unnecessary details, the germane facts necessary for the disposal of this appeal would run thus:

(i) The plaintiffs, who are the appellants in the second appeal filed the suit seeking the following reliefs:

"a. declaring that the proceedings in H.S.D.No.2,3,4,5,6 and 8/1407, dated 4.7.97 by Tahsildar, Peryundurai, granting patta are not valid under law and is not binding on the plaintiff.

b. granting permanent injunction restraining the defendants 1 to 6 their men, agents and assigns from interfering with plaintiffs peaceful possession and enjoyment of the suit property.

c. directing the defendants to pay the costs of the suit to the plaintiffs."

(extracted as such)

by setting out the following averments:

(i) The property described in the schedule of the plaint was purchased by their ancestors, vide, Ex.A1-the sale deed dated 16.10.1917 and the plaintiffs have been in possession and enjoyment of the same.

(ii) While so, the defendant No.8-the State of Tamil Nadu, through its official D7-The Tahsildar,Taluk Office, Perundurai, issued pattas to D1 to D6 allotting sites in the suit property for them illegally; Wherefore, defendants 1 to 6 were attempting to trespass into the suit property belonging to the plaintiffs and under their possession.

(iii) Whereas, D1 to D6 filed the written statement refuting and challenging, impugning and questioning the averments/allegations in the plaint. According to

them, the Government-being the owner of the suit property, conferred pattas as revealed by Exs.B1 to B6 on them, as they being poor landless people.

(iv) The plaintiffs were not in possession and enjoyment of the suit property as on the date of filing of the suit and the suit also was bad for want of a prayer for declaration of title and accordingly, the defendants prayed for the dismissal of the suit.

(v) The trial Court framed the relevant issues. Up went to the trial, wherein, on the plaintiffs' side, the first plaintiff examined himself as P.W.1 and marked Exs.A1 on their side. On the defendants' side the fourth defendant examined herself as D.W.1 and marked Exs.B1 to B6 on their side.

(vi) Ultimately, the trial Court dismissed the suit, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court, confirming the judgement and decree of the trial Court.

5. Challenging and impugning the judgements and decrees of both the Courts below, this second appeal has been filed on various grounds, suggesting substantial questions of law.

6. My learned predecessor formulated the following substantial questions of law.

"1. When admittedly the suit property is a natham whether the proceedings of the 7th respondent in HAD No.2,3,4,5,6 and 8/1407 dated 4.7.97 are correct in law?

2. Whether the respondents have any right to interfere with the right of the plaintiff when the suit property being gramamatham?"

7. The learned counsel for the plaintiffs in a bid to throw the issue into relief by pointing up and accentuating the following:

(i) Ex.A1-the sale deed dated 16.10.1917, is an ancient document in favour of the ancestors of the plaintiffs and they had been in possession and enjoyment of the property contemplated therein; While so, holus-bolus, without any prior intimation or notice, the Government highhandedly issued pattas as contained in Exs.B1 to B6 in favour of D1 to D6; Whereupon D1 to D6 are attempting to barge into the

suit property and disturb the peaceful possession and enjoyment of the suit property by the plaintiffs. The plaintiffs have been using the suit property not only for mere residential purpose but also for putting up their hayrick, for tying their cattle and for multifarious purposes.

(ii) This is not a bare suit challenging the proceedings of the Government, but it is by way of asserting the plaintiffs' legal right over the suit property. Inasmuch as the plaintiffs' title is based on Ex.A1-an ancient document, there was no necessity for them to seek for declaration of title and accordingly, the plaintiffs framed the suit as aforesaid and sought the reliefs. But the lower Court, without considering all these facts simply held as though the plaintiffs did not prove their possession over the suit property.

(iii) The first appellate Court also misinterpreted the deposition of D.W.1 as though while cross-examining D.W.1, the plaintiffs suggested to D.W.1 as though the plaintiffs were not in possession of the suit property. Simply because it was suggested to D.W.1 during cross by the plaintiffs that they started occupying the backyard portion of their house, because their house became dilapidated, that would in no way enure to the benefit of the defendants to lay claim over the suit property. Unless the property is measured and identified with reference to Ex.A1-the sale deed dated 16.10.1917 as well as the Revenue records, the dispute would persist. Accordingly, the learned counsel for the plaintiffs, *alternis visibis* would pray for remitting the matter back to the first appellate Court with suitable direction for appointment of Advocate Commissioner to carry out the mission as aforesaid.

8. In a bid to torpedo and pulverise the aforesaid arguments, the learned Government Advocate appearing for R7 and R8, would pyramid his arguments, the long and short of the same would run thus:

(i) Relating to natham porambokke belonging to the Government is concerned, the plaintiffs cannot lay any claim over it. The Government, taking into consideration the poor status of the defendants 1 to 6 and also the fact that they are landless people, issued such pattas, as contained in Exs.B1 to B6, which cannot be challenged by the plaintiffs.

(ii) The suit itself was bad for want of a prayer for declaration of title.

(iii) The proper course open for the plaintiffs was to approach the authorities for cancellation of pattas and it was not open for them to file a suit as they did in this case.

(iv) Absolutely there is nothing to show that the plaintiffs were entitled to 20 cents of the suit property as per Ex.A1-the sale deed, which contemplates only three 'anganam', as correctly highlighted by the lower Court.

(v) The boundaries, as found set out in Ex.A1-the sale deed dated 16.10.1917, would refer to the Government porambokke as the Northern boundary for the suit property. When such is the position, the plaintiffs were not justified in laying claim over the 20 cents of the suit property, which exclusively belonged to the Government.

Accordingly, the learned Government Advocate would pray for confirming the judgements and decrees of both the Courts below and for dismissing the second appeal.

9. Written statement was not filed by D7 and D8 for reasons best known to themselves and they remained ex-parte before the trial Court.

10. Despite printing the name of the counsel for D1 to D6, no one appeared on behalf of them and there is no representation also.

11. On hearing both sides, I would like to formulate the following substantial questions of law:

(i) Whether the suit property is found envisaged in Ex.A1-the sale deed dated 16.10.1917? and whether there is anything to demonstrate and point up on record that the Government happened to be the owner of the suit property, which was allotted in favour of D1 to D6 as per Exs.B1 to B6?

(ii) Whether the areas contemplated under Exs.B1 to B6 and in Ex.A1 are referring to one and the same property and in the absence of appointment of an Advocate Commissioner and locating the suit property, whether the Courts below were

justified in simply dismissing the claim of the plaintiffs?

(iii) Whether there is any perversity or illegality in the judgements and decrees of both the Courts below?

12. All these points are taken together for discussion, as they are interwoven and interlinked, interconnected and entwined with one another.

13. At the outset itself I would like to express my deep concern that the Government official and the Government were not justified in simply remaining ex-parte in matters of this nature. In fact, D7 and D8 are squarely responsible for this eruption of trouble. Before issuing pattas to landless and hapless poor people, the Government should see that the areas which are going to be allotted in favour of such people are free from trouble. By conferring pattas, as contained in Exs.B1 to B6, instead of giving happiness, peace and comfort to poor people, the Government had put up them in trouble and they have been made to face a litigation initiated by the plaintiffs. Such sort of conduct on the part of the Government and the Government officials should be discouraged in unmistakable terms.

14. Adding fuel to the fire, the Government official and the Government remained ex-parte before the trial Court and no written statement also was filed before the trial Court. In this matter, had D7 and D8 filed the written statement and also produced necessary records before the Court contradicting the claim of the plaintiffs then the trial Court might have been in a better position to appreciate the factual circumstances and decide the lis satisfactorily.

15. Deciding the case with patchy and sketchy evidence is deprecated and such an attitude would not augment peace in the society.

16. In this case, the trial Court itself felt that in the absence of an Advocate Commissioner having been got appointed and the suit property located, the murky situation was not clarified. In such a case, the trial Court itself had ample power to appoint an advocate commissioner to visit the suit property and measure the same with the assistant of Government surveyor and with reference to the documents of

both sides and such an endeavour was not made.

17. But both the Courts below went on delving deep into the oral evidence on both sides and also the available documents, which in my opinion, was not the proper approach and it is antithetical to a posteriori approach.

18. Now I would like to refer to Ex.A1-the sale deed dated 16.10.1917 and the schedule of property found therein, is extracted hereunder for ready reference.

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19. From the boundaries found set out therein what the Court could readily understand is that the plaintiffs' predecessor themselves recognised and realised that their property was situated to the East of the Government poramboke land and there is no question of the plaintiffs simply veering round and taking a 'U' turn and about turn by having a volte face as though the Government land was not at all in that vicinity.

20. In fact, the trial Court was made to believe as though in respect of grama natham poramboke, the Government is having no right over it. Such an extreme view is neither here nor there. The Government is also having its own Government natham poramboke and it cannot be stated that the Government cannot have any such land.

21. In this connection, I would like to refer to the following provisions from the Standing Orders of the Board of Revenue:

"SECTION I IN VILLAGES

1. General - (i) Scale of grant - Portions of gramnattam or village site at the disposal of Government, not being land required for the common use of the villagers, may be granted for building purposes to bonafide applicants. The maximum extent that could be assigned to any applicant for building houses is 1.25 acres. But the Tahsildars have discretion to grant a smaller extent in special circumstances, if, for instance the grant of an extent of 1.25 acres would encroach too much upon the area available for future assignments or the extent encroached

upon already is less than 1.25 acres. "

APPENDIX XIX

(STANDING ORDER NO.21 PARAGRAPH 7, CLAUSE (II))

FORM OF ORDER OF ASSIGNMENT OF HOUSE SITES IN VILLAGE

Conditions

(7) (a) That the assignment is liable for cancellation if it is found that it was grossly inequitable or was made under a mistake of fact or owing to misrepresentation or fraud or in excess of authority delegated to the officer making the grant or that there was any material irregularity in the procedure, and

(8) That in the event of the cancellation of the assignment either on appeal or in the event of re-entry by the Government in accordance with the conditions attached to the grant, the assignee shall not be entitled to compensation for any buildings he may have constructed on or other improvements he may have made to the land."

22. It is the contention of the learned Counsel for the plaintiff that the Government cannot be deemed to be the owner in respect of gramamatham. A plain perusal of the said provisions itself would convey and connote, that the portions of Gramanatham or village site at the disposal of Government which is not required for common use of the villagers, could be granted by the Government authorities concerned subject to rules in favour of the bona fide applicants. That itself presupposes that among Gramanatham lands, there could be (i) gramamatham lands which got vested with the Government and (ii) gramamatham lands which did not get vested with the Government. To put it in single syllable words, what I could see is, that an individual could also acquire prescriptive title over gramamatham land by virtue of the principle *nec vi nec clam nec precario*, provided it is not a poramboke land or land which got vested with the Government. As such a sweeping statement that the Government itself is having no right over gramamatham land is a far fetched one, which cannot be countenanced. Over and above that the provisions referred to above and the capacity of the Government to have control over such

gramanatham lands, were not challenged at any point of time in the way known to law.

23. The trial Court correctly adverted to the extent found mentioned in Ex.A1-the sale deed dated 16.10.1917 as three 'anganam'. Readily the extent relating to 'one anganam' is not available and no evidence also was entertained. It appears, the word 'anganam' is having local connotation of its own. However, at the bar, it is stated without authenticity that one 'Anganam' constitutes 72 sq.feet. As such specially evidence should have been entertained as to what is 'anganam', what is its correlation to the metric system.

24. The plaintiffs, no doubt simply claimed 20 cents in the suit property as their property, for which, there is no back up of recitals in Ex.A1-the sale deed dated 16.10.1917. It might be so that the plaintiffs might be owning, adjacent to the Government allotted lands to D1 to D6. In such a case, if the properties of the plaintiffs, and D1 to D6 are identified with reference to Ex.A1-the sale deed dated 16.10.1917, as well as the Revenue Records, then the dispute would come to an end. But such an exercise was not undertaken.

25. One should not lose sight of the fact that if really the plaintiffs had no right over any extent of land in that vicinity then in the year 1917 such a document might not have emerged at all. However, the onus of proof was on the plaintiffs to prove that the suit property and the property described in the schedule appended to Ex.A1-the sale deed dated 16.10.1917 are one and the same, and they do tally with each other, but that was not done by the plaintiffs and albeit such a pitfall in the case of the plaintiffs was noticed by the Courts below; they did not help the parties to arrive at a proper conclusion by appointing an advocate commissioner.

26. The appellate Court simply confirmed the judgement of the trial Court, without trying to resolve the dispute.

27. I recollect the following maxims:

"(i) Boni iudicis est ampliare jurisdictionem' It is the role of a good judge to enlarge his jurisdiction.

(ii) *Boni judicis est ampliare justitiam* It is the role of a good judge to enlarge or extent justice.

(iii) *Boni judicis est judicium sine dilatione mandare executioni* It is the role of a good judge to render judgment for execution without delay. (iv) *Judicis est jus dicere, non dare* It is the proper role of a judge to state the right, not to endow it.

28. Not to put too fine a point on it, I would like to observe that sticking on to the punctilious of Court procedures cases should not be thrown away, but it is the duty of the Court to see that the actual dispute is resolved, if a dispute is resolvable. In my considered opinion, the dispute involved in this case is resolvable. Owing to misconception alone the parties are fighting at arms length all along. Hence, I am of the considered view that the matter should necessarily be remitted back to the first appellate Court with the following direction.

29. On balance, the judgement and decree of the first appellate Court is set aside and the matter is remitted back to the first appellate Court, with the direction to appoint an advocate commissioner, at the cost of the plaintiffs, to visit the suit property and measure the same with the assistance of a Government surveyor and with reference to Ex.A1-the sale deed dated 16.10.1917 as well as the Revenue records and other documents and locate the same precisely and submit his report detailing the physical features also. Whereupon, after giving due opportunity to both sides, the first appellate Court shall render its reasoned judgement.

30. I would also permit the Government to adduce additional evidence for the purpose of enlightening the Court with regard to their plea that the property belongs to the Government; Whereupon the plaintiffs also could adduce rebuttal evidence. Both sides shall appear before the trial Court on 19.11.2012.

31. The first appellate Court shall do well to see that the matter is disposed of within four months from the date of receipt of a copy of this judgement.

32. The second appeal is disposed of accordingly. However, there is no order as to costs.

