
(2012) 10 MAD CK 0228

In the Madras High Court

Case No : S.A. No's. 1881 and 1884 of 2000

Bakiyam and Another

APPELLANT

Vs

Veerappan Chatram Panchayat Board and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2013) 1 MLJ 38

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; T. Kokilavani and T. Jayaramaraj, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—These appeals are focussed animadverting upon the judgments and decrees passed in (i) A.S. No. 8 of 2000 dated 26.4.2000 on the file of the learned II Additional District Court, Erode reversing the judgment and decree passed in O.S. No. 23 of 1999 dated 27.9.1999 on the file of the learned Principal District Munsif Court, (Civil Judge, Junior) Erode; and (ii) A.S. No. 7 of 2000 dated 27.4.2000 on the file of the learned II Additional District Court, Erode confirming the judgment and decree passed in O.S. No. 24 of 1999 dated 1.10.1999 on the file of the learned I Additional District Munsif, Erode. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. The epitome and the long and short of the germane facts absolutely necessary for the disposal of these two Second Appeals would run thus:

(a) The suit O.S. No. 23 of 1999 was filed by the plaintiff-Bakiyam, seeking injunction as against the defendants so as to prevent them from interfering with the peaceful possession and enjoyment of the suit property.

(b) Similarly one Vijayan filed O.S. No. 24 of 1999 suit as against the same

defendants seeking injunction.

(c) The gist and kernel of the averments/allegations in both the plaints are more or less one and the same. According to them, the defendants being Panchayat Board, the Government and the Engineer respectively were attempting to dispossess them from the suit property without resorting to the provisions of law and that too, even though the defendants have acquired prescriptive title by adverse possession by their long and continuous enjoyment for over four decades.

(d) Whereas, the defendants 1 and 3 filed separate written statements contending that the suit properties in both the suits are part and parcel of Mandaveli Road poromboke and in fact, the defendants are occupying the suit properties adjacent to the west of the road having heavy traffic; the plaintiffs had no right to lay claim over the property or seek injunction.

Accordingly, they would pray for the dismissal of the suit.

(e) Up went the trial, separately in both the suits, during which in (i) O.S. No. 23 of 1999, the plaintiff-Bakiyam examined herself as P.W.1 and Exhibits A-1 to A-4 were marked; and on the side of the defendants, one Marimuthu was examined as D.W.1 and no documents were marked; and in O.S. No. 24 of 1999, the plaintiff-Vijayan examined himself as P.W.1 and Exhibits A-1 to A-7 were marked; and on the side of the defendants, one Saminathan was examined as D.W.1, and no documents were marked.

(f) By separate judgments, both the suits were dismissed. Being aggrieved by and dissatisfied with the judgments and decrees of the trial Court in O.S. No. 23 of 1999, the appeal in A.S. No. 8 of 2000 was focussed and as against the judgment and decree passed in O. S. No. 24 of 1999, the appeal in A.S. No. 7 of 2007 was focussed.

3. Being aggrieved by and dissatisfied with the judgments and decrees passed by the appellate Court, these two appeals are focussed on various grounds.

4. The learned counsel for the appellants/plaintiffs would pyramid his argument relying on the grounds of appeal, which could pithily and precisely be set out thus:

(a) The lower Court failed to take into consideration the fact that the plaintiffs have been in possession and enjoyment of the suit property for several decades together.

(b) Whatever might be the right of the defendants, they were not justified in attempting to dispossess the plaintiffs without resorting to the provisions of law.

(c) No evidence has been placed before the lower Court to get itself convinced that the case of the defendants was perfectly in order. On the other hand, the Court was enjoined to protect the person in possession which they failed to do so, warranting interference in the appeals.

5. Per contra, in a bid to extirpate and torpedo, pulverise and challenge the arguments as put forth and set forth on the side of the plaintiffs, the learned Government advocate has put forth his arguments, the pith and marrow of the same would run thus:

(a) The deposition of D.W.1's in both the suits would unambiguously and unequivocally, pellucidly and palpably show up and point up the fact that the property under the occupation of the defendants are situated adjacent to the road and they are in Mandai poromboke. Owing to misconception, the plaintiffs filed the suits, because relating to those properties, the plaintiffs cannot plead prescription and those are all coming within the public domain relating to which simply prescriptive title cannot be claimed.

(b) There are catena of decisions of this Court that road margins and poromboke lands should not be allowed to be encroached or usurped by the individuals. The suits of this nature also should not have been entertained by the Courts. But the plaintiffs by putting forth and detailing and delineating certain false facts, simply got them numbered.

(c) The depositions of D.W. 1 in both the suits, would expose that the case of the plaintiffs, is nothing but a load of baloney fraught with falsity and mendacity.

Accordingly, the learned Government advocate prayed for the dismissal of both the appeals.

6. My learned Predecessor formulated the following substantial questions of law in both the appeals:

(1) Having upheld the appellant's possession to the suit property, whether the lower appellate Court mis-directed itself in law in concluding that the appellant has not prescribed title by adverse possession since 1960?

(2) Was not the lower appellate Court erred in holding that in view of Land Encroachment Act, the Court is barred from entertaining the suit.

(extracted as such)

7. Both the substantial questions of law are taken together for discussion as they are inter linked and inter woven with each other.

8. At the outset, I would like to fumigate my mind with the following decisions of the Hon''ble Apex Court:

(i) Hero Vinoth (minor) Vs. Seshammal,

(ii) Kashmir Singh Vs. Harnam Singh and Another,

(iii) State Bank of India and Others Vs. S.N. Goyal,

(iv) Vijay Kumar Talwar Vs. Commissioner of Income Tax, Delhi,

9. A mere poring over and perusal of those judgments would convey and portray,

that the High Court while exercising power u/s 100 of CPC should see as to whether there is any substantial question of law is involved in the matter. It is the paramount duty of the Court to find out as to whether there is any perversity or illegality on the part of the Courts below in deciding the issues involved in the matter.

10. Keeping the dicta as found embedded in those precedents, I would like to proceed to discuss the evidence in both the suits with respect to the substantial questions of law framed.

11. Albeit the defendant raised the plea that they acquired prescriptive title, they miserably failed to highlight and point up as to what was the nature of the land over which their occupation continues. On the one hand, the public officials figured as D.Ws. and clearly pointed out that the suit properties concerned form part of Mandai poromboke. Whereas, the plaintiffs who are expected to prove their case have not chosen to atleast adduce any itsy-bitsy evidence about the nature of the land. On their side, they only got marked some postal letters and tax receipts paid for the superstructure to show their possession.

12. My mind is redolent and reminiscent of the following maxims:

(1) Affirmantis est probare: The person who affirms must prove.

(2) Affirmanti, non neganti, incumbit probatio: The proof is incumbent on the one who affirms, not on the one who denies.

13. In the absence of clear evidence, both the Courts below cannot be blamed for disbelieving the case of the plaintiffs about their alleged adverse possession. Relating to adverse possession is concerned, I would like to refer to the following decisions.

(1) P.T. Munichikkanna Reddy and Others Vs. Revamma and Others,

(2) A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., .

14. Keeping in mind the principles as found enshrined in those precedents, if the case of the plaintiffs is analysed, it is glaringly and pellucidly clear that they have not approached the Court with a clear case of their own. At the most, they could only be construed as encroachers or trespassers in the Government property. No doubt, on the Government side also, they have not produced records but the Government officials stated about the nature of the land and in order to contradict and falsify the depositions of D.Ws. 1 and 2, nothing was suggested to them atleast by the plaintiffs about the nature of the land. In fact, the learned Government Advocate inviting the attention to the evidence of Bakiyam, would submit that their main grievance is that without notice the Government officials attempted to dispossess them. It is quite obvious and axiomatic that the Government should necessarily adhere to the provisions of law and also the principles of audi alteram partem and accordingly, take action, but in this case, it

appears so far they have not taken such steps and D.W.1 examined in both the cases admitted the same. Hence, while dismissing the Second Appeals, I would like to observe that the Government officials would not be justified holus bolus in barging into the land under the occupation of the defendants and dispossess them, without resorting to the legal provisions and the principles of natural justice. Accordingly, the substantial questions of law are answered.

On balance,

(1) The first substantial question of law is decided to the effect that the suit property being Mandai poromboke land, the appellants' plea that they acquired prescriptive title over it, was not tenable.

(2) The second substantial question of law is decided to the effect that the lower appellate Court has not committed any error in holding that in view of the provisions of the Land Encroachment Act, the suit was barred.

In the result, the appeals are dismissed. However, there shall be no order as to costs.