
(2012) 03 MAD CK 0048
In the Madras High Court
Case No : S.A. No. 1865 of 2004

Block Development Officer, Thiruporur, Block Development
Office, Thiruporur

APPELLANT

Vs

M. Mani and Others

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A, 80
Penal Code, 1860 (IPC) — Section 420

Citation : (2012) 5 MLJ 395

Hon'ble Judges : V. Periya Karupiah, J

Bench : Single Bench

Advocate : S. Parthasarathy, for the Appellant; T. Murugamanickam for M. Kempuraj and M. Venugopal, Additional Government Pleader (C.S), for the Respondent

Final Decision : Dismissed

Judgement

V. Periya Karupiah, J.—This appeal is directed against the judgment and decree dated 23.12.2003 passed by the first appellate Court in

A.S. No. 41 of 2003 in reversing the judgment and decree dated 31.3.2003 passed by the trial Court made in O.S. No. 375 of 1998 in dismissing

the suit. The appellant herein was the second defendant; the first respondent was the plaintiff and the respondents 2 and 3 were the defendants 1

and 3 before the trial Court. The second defendant/appellant remained ex parte before the trial Court.

2. The case of the plaintiff as stated in the plaint are as follows:

The plaintiff had occupied the suit property 20 years back and had been living there, after putting up a hut. He is paying kist and "B" memo

charges and tax for the hut. He had obtained tap connection as early as 1987.

Patta had been granted in favour of the plaintiff for the suit property and the Patta Number is 657. All of a sudden, the first defendant had sent a notice dated 29.9.1998, which was received by the plaintiff on 2.12.1998, cancelling the patta granted to him without assigning any reasons for the same. Revoking the patta amounts to and affected by Promissory Estoppel"" and also ""Estoppel by conduct"". Such an unilateral act of cancelling the patta cannot be done by the defendants, without an enquiry, independently. One Mahalakshmi. W/o. Mohan is doing her business in the same survey number, which is also gramamatham. No action was taken against her and she continues to be there doing her business and this attitude of the defendants is partisan and has bad motives. The cause of action for the suit arose. The plaintiff, therefore, filed suit for declaration that the notice dated 29.9.1998 cancelling the patta granted in favour of the plaintiff for the suit property is void and illegal and not binding on her and for consequential injunction.

3. The case of the first defendant as stated in the written statement are as follows:

The suit is not maintainable. The obtaining of electricity service connection will not clothe the plaintiff with any title to the suit property. The issue of

"B" memo receipts would only prove that penalty has been imposed for wrongful possession. In law, the serving of notice under the Tamil Nadu

Land Encroachment Act tantamount to eviction as per the decision of the Hon""ble High Court. Hence, the suit for injunction does not lie.

Therefore, the plaintiffs possession, even if true, is that of a trespasser only. Under such circumstances, the suit for injunction as against the State,

who is the real owner of the suit property, is not maintainable. The suit land is classified as "Village Site". In 1995, the plaintiff has obtained house

site patta from the Special Tahsildar (Natham Survey) Thiruporur, which is against rules. Hence, the patta was duly cancelled, by order dated

29.8.1998, after observing all formalities. The Civil Court has no jurisdiction to entertain the suit. The suit does not satisfy the requirements of

Section 80 CPC. The suit without statutory notice is bad in law. The suit is bad for non-joinder of necessary parties. The plaintiff without filing an

appeal against the order of cancellation of patta to the appropriate authority and without exhausting her remedies, has no locus standi to file the suit

before this Court. There is no question of estoppel by conduct or otherwise. Notice dated 1.12.1998 is valid. No permission was obtained by the plaintiff from the State before putting up any construction. The plaintiff cannot try to take advantage of her wrongs. The plaintiff has no cause of action to sue. Hence, the suit may be dismissed with exemplary costs u/s 35A CPC.

4. The trial Court after framing necessary issues entered trial. After appraising the evidence adduced on either side, the trial Court had come to the conclusion of dismissing the suit without costs. The aggrieved plaintiff had filed an appeal before the first appellate Court in A.S. No. 41 of 2003 against the judgment and decree passed by the trial Court. The first appellate Court had heard the arguments advanced on either side and had come to the conclusion of reversing the judgment and decree of the trial Court and thus, decreed the suit.

5. Aggrieved second defendant has preferred the second appeal against the judgment and decree passed by the first appellate Court.

6. On admission, this Court had formulated the following substantial questions of law for consideration in the second appeal:

1. Whether the lower appellate Court is correct in coming to the conclusion that the non-issuance of Section 80 notice will not vitiate the suit?

2. Whether the lower appellate Court is correct in coming to the conclusion that the issuance of B-Memo receipt and the non-production of the

same will prove the possession of the suit property by the first respondent?

7. Heard Mr. S. Parthasarathy, learned counsel for the appellant/second defendant and Mr. T. Murugamanickam, learned counsel for the first

respondent/plaintiff and Mr. M. Venugopal, learned Additional Government Pleader (C.S) for the respondents 2 and 3/defendants 1 and 3.

8. The learned counsel for the appellant would submit in his argument that the first appellate Court failed to appreciate the oral and documentary

evidence without any proper perception. He would further submit that mere issuance of "B" memo was considered by the first appellate Court for

the plaintiff found in possession of the suit property for a long period. He would further submit that the plaintiff did not produce any acceptable

evidence to prove her long possession over the property and yet, the first appellate Court had found that the plaintiff was in possession and

enjoyment of the suit property. He would further submit in his arguments that the suit was filed against the Government seeking relief and the non-

issuance of notice to be issued u/s 80 CPC was material and in the absence of such issuance of notice u/s 80 CPC would disentitle the plaintiff to

get reliefs. He would further submit that the first appellate Court did not consider that the plaintiff did not approach the appellate forum and exhaust

the remedy, but directly approached the Civil Court. He would also submit that the alleged "B" memo receipts issued to the plaintiff were not

produced before the trial Court and yet, the plaintiff was found in possession of the suit property by the first appellate Court. He would further

submit that the first appellate Court ought to have dismissed the suit and confirmed the judgment and decree passed by the trial Court, since no

notice was issued u/s 80 CPC. He would further submit that the plaintiff did not plead that the suit property was gramamatham. He would also

submit that the patta granted to the plaintiff was cancelled by the Sub-Collector and therefore, the plaintiff did not prove her lawful possession and

the possession of her predecessor in title in respect of the suit property. He would further submit that the reference as to the judgment in

Thillaivanam, A.K. and Another v. District Collector, Chengai Anna District and 3 Others 1998-3-LW603 : LNIND 1997 Mad 1559 and the

reliance placed over it are not applicable to the present facts of the case. He would also submit that the case that the notice issued u/s 231 of the

Panchayats Act was not valid, is not also sustainable. He would further submit that the suit being filed against the Government, the foremost

requirement is issuance of Section 80 CPC notice and since no such notice has been issued, it ought to have been dismissed. He would, therefore,

request the Court to interfere and set aside the judgment passed by the first appellate Court and thereby, restore the findings reached by the trial

Court.

9. The learned counsel for the first respondent/plaintiff would submit in his arguments that the appellant/first defendant remained absent before the

trial Court and did not file any objections to the pleadings submitted by the plaintiff He would further submit in his arguments that when the second

defendant did not file any written statement, the averments made in the plaint filed by the first respondent/plaintiff are deemed to have been

admitted. He would further submit that the suit was erroneously dismissed by the trial Court, but it was correctly interfered and set aside by the first appellate Court. He would further submit that the second defendant, even though not represented before the trial Court entered appearance in the first appellate Court through counsel and put forth its contentions. He would further submit that the second defendant did not opt for filing written statement with the permission of the Court even at the appellate stage nor disputed the pleadings filed by the plaintiff in the appeal. He would further submit that the evidence produced before the trial Court and the pleadings of both parties were alone considered in the first appeal and the first appellate Court had come to the conclusion of decreeing the suit in favour of the plaintiff. The defendants 1 and 3, who were the main contestants of the suit as well as in the first appeal, did not prefer any appeal, but the second defendant, who did not file any pleadings nor adduced any evidence, had come forward with this present appeal. He would further submit that the appeal filed by the second defendant is not sustainable. He would further submit that the first appellate Court had detailed discussed the evidence and had come to the conclusion that the plaintiff was in possession and enjoyment of the suit property by virtue of the grant of patta, which was subsequently cancelled by the Sub-Collector, without giving notice to the plaintiff. He would also submit that the issuance of "B" memo has been rightly admitted by the Government and therefore, there is no necessity to produce those "B" memos to prove the admitted facts. He would also submit that the classification of land was admittedly "gramanatham land" and therefore. there cannot be any ownership for the Government so as to exercise its proprietary right over the occupants of such property. He would further submit in his arguments that there are number of judgments of this Court in S. Rengaraja Iyengar and Another Vs. Achikannu Ammal and Another, Krishnamurthy Gounder v. Government of Tamil Nadu 2002 (3) CTC 221 : LNI 2002 Mad 450; and The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer, for the principle that the gramanatham lands never vested with the Government nor with Town Panchayat; and the Panchayat or Government had no jurisdiction to pass resolution cancelling the pattas or evicting the persons, who are in the occupation of

gramanatham land. He would further submit in his arguments that the land in question is being a gramanatham land, to which the Government or the appellant/second defendant are not the owners, the plaintiff has no obligation to issue notice u/s 80 CPC. He would also submit that the suit was revolving upon the quasi-judicial proceedings and there is no necessity to issue 80 CPC notice for questioning those proceedings incidentally towards the relief sought for by the plaintiff. He would cite a judgment of this Court in Tholappa Iyengar v. Executive Officer, Sri Kallalagar Devasthanam etc., and 7 Others 1993 (2) LW 537 : LNI 1993 Mad 746 in support of his argument. He would rely upon the aforesaid judgment of this Court and further argued that the defendants 1 and 3 ought to have raised the plea, but they remained silent without filing any separate appeal or cross appeal in this appeal and the first defendant, who is not a Government Department, cannot raise such a question in this regard. He would also submit that the stand taken by the first appellate Court that Section 80 CPC notice is not necessary and the said finding need not be interfered and therefore, the appeal preferred by the second defendant may be dismissed and the judgment and decree passed by the first appellate Court may be confirmed.

10. The learned Additional Government Pleader (C.S) would submit in his argument that he did not prefer any appeal against the judgment and decree passed by the first appellate Court, however he is entitled to agitate his case in this appeal. He would further submit that the arguments advanced by the learned counsel for the appellant/second defendant is adopted by the respondents 2 and 3 defendants 1 and 3 and he has no serious objection in allowing the appeal.

11. I have given anxious thoughts to the arguments advanced on either side.

12. The suit was originally filed by the plaintiff for permanent injunction against the defendants in any way interfering with the possession and enjoyment of the suit property. The claim of the plaintiff was that he had occupied the suit property 20 years back and had been living there, after putting up a hut. He is paying kist and "B" memo charges and tax for the hut. He had obtained tap connection as early as 1987. Patta had been granted in favour of the plaintiff for the suit property and the Patta Number is 657. All of a sudden, the first defendant had sent a notice dated

29.9.1998, which was received by the plaintiff on 2.12.1998, cancelling the patta granted to him without assigning any reasons for the same.

Revoking the patta amounts to and affected by ""Promissory Estoppel"" and also ""Estoppel by conduct"". Such an unilateral act of cancelling the patta

cannot be done by the defendants, without an enquiry, independently. One Mahalakshmi, W/o. Mohan is doing her business in the same survey

number, which is also gramamatham. No action was taken against her and she continues to be there doing her business and this attitude of the

defendants is partisan and has bad motives. The cause of action for the suit arose. The plaintiff was in possession of the suit property and she

cannot be evicted from the suit property. Hence, he filed the suit for declaration and for consequential injunction.

13. However, the defendants 1 and 3 filed written statement objecting the possession and enjoyment of the plaintiff in the suit property and it was

also submitted that the patta issued to the plaintiff was cancelled on 29.9.1998. It is also categorically stated in the written statement that the

property was classified as gramamatham and the patta granted to the plaintiff in the year 1995 was cancelled in the year 1998 as aforesaid. The

evidence adduced by the defendants 2 and 3 through D.W. 1 would go to show that the suit property was comprised in S. No. 110/C1 and it was

classified as gramamatham. Even D.W. 1 had admitted in his cross examination that it was still classified as gramamatham as on the date of his cross

examination. Exhibits B-1 and B-2 would also go to show that the suit property was classified as gramamatham. Therefore, the principles laid down

by this Court in various judgments right from 1959 onwards would be binding upon the trial Court as well as the first appellate Court.

14. In the judgment in S. Rangaraja Iyengar v. Achi Kannu Ammal (supra), it has been categorically laid down as follows:

It is contended that in relation to buildings, specific provision is made u/s 18 of Act 26 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 u/s 3(b).

Section 18 deals, in my opinion, with buildings wherever they may be situate, whether in the gramamatham or in ryoti lands or pannai lands or waste

lands. Section 18 has no particular application to buildings or house-sites in a gramamatham. A building in a gramamatham (or village habitation) is

protected from transfer of title to the Government both u/s 18(1) of Madras Act 26 of 1948 and under the Madras Land Encroachment Act (3 of

1905). The title to a house site in a gramamatham is protected from transfer to Government by the operation of Madras Act 3 of 1905.

It is not necessary that in order that the policy underlying Madras Act 26 of 1948 be completely given effect to. house-sites belonging to private

individuals (that is persons other than the land holder) in a gramamatham, should be transferred to the Government. It is not part of the policy of the

Act to transfer to the Government, land in which the proprietor had no interest at any time. Further, transfer of title of such house-sites to the

Government would be virtually without payment of compensation, because there would be no means of determining the part of the total

compensation payable for the estate as a whole, which should be regarded as compensation paid for a few cents of house-sites in a hamlet of the

village. Therefore, if there is any ambiguity in the Act, in relation to transfer of title as to a house site, such ambiguity should be resolved in favour of

the owner, because no legislation should be held to be expropriatory in character, if such an inference could possibly be avoided. I hold that

Section 3(b) of Madras Act 26 of 1948 does not have the effect of transferring to the Government title to a house site within a gramamatham

belonging to a person other than the land holder when the estate in which the house site is situate is taken over under a notification issued under the

Act.

15. Subsequently, in the judgment in Thillaivanan A.K. v. District Collector Chengai Anna District (supra), it has been held as follows:

27. Thus it is obvious, the admitted classification of the land being a gramamatham. the land was never vested with the respondents nor they could

take action under the Land Encroachment Act or any other enactment. The petitioners state they have exclusive right, title, possession, since 1954

onwards. The respondents have no right to interfere with the peaceful possession and enjoyment of the land and their action in giving a complaint

for alleged offence u/s 420 of the IPC is total misconception.

16. In yet another judgment Krishnamurthy Gounder v. Government of Tamil Nadu (supra), it has been held as follows:

11.....When the appellant has been in exclusive possession of the property and

their predecessors in title were also in enjoyment of the land

without interference by any person, the appellant has acquired a valid right to the land by their exclusive possession. The village natham is a land

which never vested with the respondents and they have no right over it. Admittedly when the land has been classified as village natham, it is

obvious that no portion of the land vests with the respondents u/s 2 of the Land Encroachment Act, 1905.

17. In the judgment in *Executive Officer, Kadathur Town Panchayat v. V. Swaminathan* (supra), the first Bench of this Court had categorically

explained about the nature of gramanatham lands and what is the proprietary right of the Government over the said land. The relevant passage

would run as follows:

12. Further, "Grama Natham" 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.

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 cancelling 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 summary eviction is not permissible in law when the

disputed question of title is involved for adjudication as laid down by the Apex Court in number of decisions.

18. When one of the judgments in *Thillaivanam, A.K. and Another v. District Collector, Chengai Anna District and 3 Others* (supra) was cited

before the trial Court, it had referred to the principles laid down in the said judgment, but it has simply stated that it does not add strength to the

case of the plaintiff. The trial Court did not say in what way the said principle laid down by this Court does not add strength to the plaintiff is not

explained in the said judgment. However, it has been referred that the plaintiff

did not plead that the Government has no right to cancel the patta and therefore, the right claimed by the plaintiff was not valid and thus, the plaintiff was not entitled to the suit property. The trial Court did not see the evidence properly. The patta was cancelled on 29.9.1998 and then only the suit was filed on 9.12.1998. Therefore, the finding reached by the trial Court was without application of mind and without any proper perspective of the evidence adduced by the parties. The first appellate Court has rightly come to the conclusion that the finding of the trial Court was sheerly not in accordance with the evidence.

19. However, it has been argued by the learned counsel for the appellant/second defendant that the plaintiff did not comply with the provisions of

Section 80 CPC. The said question was not raised by the defendants 1 and 3/ respondents 2 and 3, who are the Government Departments, by

filing any separate appeal or cross appeal in this appeal. The respondents 2 and 3 had simply supported the case of the appellant. By virtue of the

aforesaid pearls rolling judgments detailed above, it is very clear that the Government has no proprietary right over the suit property, since it being

a gramanatham land. When the Government as well as the appellant/second defendant are expected to act in accordance with law had come

forward to interfere with the plaintiffs right in the property without resorting to legal process. The ultimate process taken by the Government was to

cancel the patta. In the said circumstances, there is no necessity for issuing any notice u/s 80 CPC, which do not warrant any circumstance as

contemplated in Section 80 CPC. The first appellate Court was right in coming to the conclusion that the plaintiff established her right to the suit

property and the defendants had no right in the property, and therefore, the interference caused by the defendants was not purported to be done

by such public officer in his official capacity. Therefore, the requirement of issuance of Section 80 CPC notice is not necessary in this case. The

first appellate Court had rightly come to the conclusion that the issuance of Section 80 CPC notice was not necessary, which is quite acceptable.

20. Therefore, I find no reasons to interfere with the judgment and decree passed by the first appellate Court. The questions of law framed by this

Court in this appeal are also not decided in favour of the appellant, but in favour of the first respondent/plaintiff. For the foregoing discussions, I am

of the considered view that the judgment and decree passed by the first appellate Court are not liable to be disturbed and accordingly, they are confirmed. The Second Appeal is accordingly dismissed and thereby, the judgment and decree passed by the first appellate Court are confirmed.

No order as to costs.