
(2015) 04 MAD CK 0049

In the Madras High Court

Case No : S.A.(MD) No. 696 of 2013 and M.P.(MD) Nos. 1 and 2 of 2013

C. Das and Others

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100, 9
Contract Act, 1872 — Section 2, 3, 4, 8

Citation : (2015) 04 MAD CK 0049

Hon'ble Judges : C.S. Karnan, J.

Bench : Single Bench

Advocate : A. Hajamohideen, for the Appellant; M. Govindan, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The plaintiff viz., Dass has filed an original suit in O.S. No. 257 of 1994, on the file of Principal Sub Court, Nagercoil. As he expired during the pendency of the Second Appeal, his legal-heirs have been impleaded as necessary parties.

2. The brief facts of the plaint are as follows:--

"The plaint schedule mentioned property originally belonged to Travancore Maharaja, who had executed a registered deed bearing No. 1663, dated 03.05.1918 and handed over the possession to one Mathan Kani and 23 others without paying any tax. Accordingly, Mathan Kani and his associates have cultivated teakwood, lemon tree, mango trees, tamarind trees, jack fruit trees, neem trees etc., besides paddy, plantains and tapioca crops. The plaintiff had put up a fence around the land. Further he constructed a superstructure for the workers and pathways and roads were formed in the property. A tank was formed for rearing fish and a Sastha Temple was constructed for worship."

3. The plaintiff further stated the schedule mentioned properties have been

surrounded by 4 boundaries. After the death of Mathan Kani, his legal-heirs are enjoying the said property and pursuing the same agricultural operations. While so, an extent of 200 acres was given to one David Louis as lease under a registered deed bearing No. 2158, dated 02.06.1103 M.E. After the death of David Lewis, his only brother David Elias took over the property and was enjoying the same. After his life time, his son George succeeded the property and was enjoying the same. In the mean time, the lease period expired and as such, George became the owner of the property and enjoying the same. From him, the plaintiff took an extent of 200 acres under lease in the year 1972, wherein, the plaintiffs had cultivated rubber plantations, mango, tamarind, jack fruit, lemon, cashew nuts and they are yielding. He has cultivated seasonal crops like tapioca, paddy and pepper. Subsequently, the plaintiff purchased a land on 07.11.1985 after paying the full consideration and patta had also been granted in favour of the plaintiff. The Government had conducted land measurement and classified the land as Government poramboke land. The Travancore Government had given the property as Inam and as such, the classification of the land as poramboke by the Government is an erroneous one and not valid under law. However, the plaintiff's enjoyment rights will not be affected. The Government had not given any notification regarding the said modification. Under these circumstances, the defendants declared that the subject matter of the property had been assigned to the Forest Department. Hence, the defendants informed the plaintiff that they would interfere with the said property. The plaintiff also submitted an application before the Settlement Director, who had rejected the same without conducting an enquiry. Against the said rejection order, the plaintiff made an appeal. The defendants had made an attempt to take over the said property and hence, the plaintiff had levelled a writ petition in W.P. No. 13144 of 1986. In the said writ petition, the defendants had admitted the plaintiff's enjoyment. Thereafter the plaintiff had filed original suit in O.S. No. 198 of 1987 to establish the civil rights. Subsequently, the same had been withdrawn and he had filed the above suit for permanent injunction and declaration stating that the schedule mentioned property belongs to the plaintiff.

4. The defendants 1, 3 and 5 had filed a written statement and resisted the averments of the plaint. The defendants denied that the plaintiff and 23 others had cultivated the said land and also raised a superstructure over the said lands for residential purpose and for cattle. The defendants further denied that the plaintiff had enjoyed the said land as lessee and subsequently purchased the same. The schedule mentioned property is belonging to the Government as Government poramboke land. The said property comprised in the said survey number is belonging to the Government and to other owners. The defendants are not aware of the sale deed dated 07.11.1985 and as such, the plaintiff has no rights over the said property. The defendants further denied that the schedule mentioned property had been given by the Travancore Maharaja. Not even a bit of land covered by O.S. No. 3015 of Kaliyal Village having a total settled area of 328.53 acres has been included in the Reserve Forest as per the present

Resettlement as mentioned by the plaintiff. The plaintiff schedule property bounded by O.S. Nos. 3012, 3018, 2496 and part of 3010 on the South and East and O.S. No. 3016 has been classified as private holdings as well as poramboke lands and not as reserved forests as stated by the plaintiff. Hence, the defendants prayed to dismiss the suit.

5. The defendants 2 and 4 had filed a written statement and refuted the suit. The defendants denied that the schedule mentioned property had been cultivated by the plaintiff by way of raising trees, cattle shed and fencing around the land. Further, the defendants had constructed office quarters and also a temple for the tribal people. Actually, there were no boundary stones. A part of the schedule mentioned property was assigned to the Forest Department. Further, the plaintiff stated that he is the legal-heir of Mathan Kani, which is not true. The subject matter of the land had been measured by the Survey Settlement Officer. The plaintiff's contention that the said property was given by the Maharaja of Travancore is not correct. The plan annexed along with the plaint had not been approved. The plaintiff had not properly mentioned the survey numbers. The plaintiff has no enjoyment and rights over the said schedule mentioned property. The Village Administrative Officer had issued an enjoyment certificate which is not valid. The earlier suit in O.S. No. 198 of 1987, was misconceived and hence, the same was not proceeded with further. For filing the above suit, there is no jurisdiction. Actually, a part of the schedule mentioned property belongs to the Forest Department.

6. After considering the averments of the plaint and the written statement of the defendants, the trial Court had framed four issues, viz.,

"(i) Whether the plaintiff is entitled to receive permanent injunction and declaration?

(ii) Whether the suit has been properly valued and whether proper Court fee has been remitted?

(iii) Whether the plaintiff's suit is maintainable under law? and

(iv) What other reliefs the plaintiff is entitled to?"

7. On the side of the plaintiff, two witnesses were examined and 19 documents were marked, viz., (1) Othi and Kuzhikanam dated 26.06.1103 executed by Athichan Kani in favour of Louis, (2) A copy of deed dated 07.11.1985 executed by George in favour of Dass, (3) release deed dated 08.11.1985 executed by Abbi Cheruckan to and in favour of Dass, (4) release deed dated 12.11.1985 executed by Mallan Kani and Kochu Kochan in favour of Dass, (5) release deed executed dated 15.11.1985 executed by Pushpam in favour of Dass, (6) release deed dated 19.11.1985 executed by Paachan Kani and Kuttiappi Kani in favour of Dass, (7) release deed dated 20.12.1985 executed by Kochan in favour of Dass, (8) copy of release deed dated 28.12.1985 executed by Kochan, Chellan, Maathan and Abbicherukkan in favour of Dass, (9) copy of release deed dated

26.12.1985 executed by Maathan in favour of Dass, (10) copy of the order passed in W.P. No. 13144 of 1996, on the file of Madras High Court, dated 04.12.1986, (11) Lawyer's notice issued to the first defendant dated 13.12.1986, (12) A copy of the judgment passed in O.S. No. 198 of 1987, on the file of Additional District Munsif, Kulithurai dated 28.04.1992, (13) A copy of Royal Grant dated 28.02.1996, (14) encumbrance certificate dated 13.08.1985, (15) map of Kalial Village, (16) A copy of the plaint in O.S. No. 198 of 1987, on the file of the District Munsif Court, dated 02.04.1987, (17) A copy of written statement in O.S. No. 198 of 1987, on the file of the District Munsif Court, dated 02.04.1987, (18) letter sent by District Collector to the first defendant dated 19.12.1986 and (19) reply notice issued by the District Forest Officer, dated 18.07.1994.

8. On the side of the defendants, 4 witnesses were examined and 14 documents were marked, viz., electricity remittance bills, adangal register, village manual settlement, field measurement register, copy of the judgment, village map, inland letter, acknowledgment card, electricity bill particulars, kanniyakumari Forest Division working plan for the year 1988-1989 to 1997-1998, besides Commissioner's Report along with map filed by Advocate Commissioner.

9. P.W.1 had adduced evidence that the suit schedule mentioned property was originally belonging to Maharaja Marthandam, who had given the same to one Marthan Adithan Kani. After his death, his son David Lewis secured the property. Adithan Kani had executed a lease to and in favour of David Lewis. David Lewis had not married and after his expiry, his brother David Elias had succeeded the property. After his death, his son George secured the property and had been enjoying the said property from the year 1972. He sold the said property to him in the month of November 1985. After purchasing the said property, the plaintiff has been cultivating coconut trees, jack fruit, mango, tamarind trees, pepper and rubber. P.W.1 further stated that he has constructed a Sastha Temple. He had obtained a release deed from Mathan Kani in the year 1985, for the rest of the lands. Over the said lands, he has constructed a cattle shed and also a superstructure for the occupation of the watchman. Under these circumstances, the Forest officials/defendants herein had attempted to interfere with the property. Hence, he had filed a written statement before the High Court of Madras. Without notice, the property was resurveyed and reclassified as Forest lands. Hence, a case has been filed, before the Settlement Officer.

10. P.W.2 had adduced evidence that he knows the suit schedule property which is situated at Kaliyal Village. He adduced evidence that he had worked with the plaintiff for the past 26 years as an employee on the suit property. Previously, the property was owned by Lewis George. Over the said suit property, rubber, plantain, paddy, coconut and pepper were grown. The Advocate Commissioner had inspected the property comprised in Old Survey No. 3015 and I was working as watchman guarding the said property. He adduced evidence that the Forest Department does not have any right over the property.

11. D.W.1, the District Forest Officer had adduced evidence that he is serving as District Forest Officer, for the past 1 1/2 years. Over the suit land, there is cultivable coconut and naturally growing plants viz., jack fruit, bamboo and medicinal plants. On the southern side of the schedule mentioned property, lands belonging to private parties exists. The suit schedule mentioned property is bounded on the south by the property comprised in Survey Nos. 199 and 200. North of the property comprised in Survey Nos. 199 and 200, belongs to Reserve Forest. Therefore, a case was conducted between the owners of land in Survey Nos. 199 and 200 and the Forest Department regarding dispute over pathway and the said case is pending. The suit schedule mentioned property has not been covered under the Old Survey No. 3015. The plaintiff's documents are not pertaining to the suit schedule mentioned property. Now, the said property is under the occupation and being maintained by the Forest Department. As such, the Forest Tribals cannot alienate the property. However, the Tribal can carry out cultivation for certain lands in the forest area, but they do not possess any right to sell the said property. The plaintiff did not possess patta, but he made an application for obtaining patta before the Settlement Officer, which was dismissed. Subsequently, the appeal filed by the plaintiff before the Appellate Authority of the Department was also rejected.

12. D.W.1 further stated that in the year 1908, the property had been declared as Forest Reserve Land by the Government of Travancore. The plaintiff had filed a suit in order to usurp the Government property. Residential houses had been constructed for the Forest Department Officials and electricity service connections for their quarters had been obtained in the name of the Forest Department Officials. Some of the Tribals are living here and there and they have dug wells and also constructed a temple. One Pushpam had filed a case stating that she was the owner of the portion of the suit property, but the same was dismissed. Over the said property, no one cultivates, trees, crops, etc. The suit schedule mentioned property is under the care and custody of the Forest Department.

13. D.W.2, the Forest Ranger had adduced evidence that the suit schedule mentioned property over which, the plaintiff has claimed occupation and enjoyment has been classified as Reserve Forest. The said land is under the maintenance of the Forest Department. Over the said land residential quarters had been constructed for Forest guards and a water tank has been constructed. Further, there is a check post, wherein an electrical service connection had been obtained in the name of the District Forest Officer, who had remitted electricity consumption charges. The Forest officers have also registered cases against the culprits who have cut the trees over the forest land. The criminal case had been levelled before the Judicial Magistrate, Kulithurai.

14. D.W.3, the Village Administrative Officer had adduced evidence that the subject matter of the property is comprised in Old Survey No. 3015. The said land is a patta land and the rest of the lands are revenue poramboke land in total

1368 acres. The subject matter of the land is named as Kelamalai Reserve Forests, wherein teakwood, rubber, alicia and other natural plants are standing. The property pertaining to Survey No. 3015 had been settled. D.W.4, the Forest Range Officer had spoken on the same line of other defendant witnesses.

15. After recording evidence of both sides and on perusing the exhibits marked by them and on hearing the arguments on both sides, the trial Court dismissed the said suit and assigned the reason stating that the plaintiff had not proved his possession and enjoyment of the suit mentioned schedule property. Aggrieved by the said dismissal order, the plaintiff had filed an appeal before the Principal District Judge, Nagercoil. The learned Judge after hearing the arguments on both sides and on perusing the trial Court Judgment, dismissed the said appeal.

16. Aggrieved by the concurrent findings of both Courts, the above second appeal has been filed.

17. The highly competent counsel Mr. A. Hajamohideen appearing for the appellants submits that the judgments and decree of both the Courts below are against law, evidence and probabilities of the case. Both the Courts below erred in dismissing the suit. The highly competent counsel further submits that both the Courts below did not consider the evidence both oral and documentary evidence adduced by the appellant. Both the Courts below failed to note that Ex. A3, the Royal Grant Granted by Maharaja of Travancore on 03.05.1918 Malayal Era, will show that the appellant and his predecessor-in-title have right over the suit property. Both the Courts below failed to note that withdrawal of O.S. No. 198 of 1987, on the file of Additional District Munsif, Kuzhithurai will not amount to res judicata. The said suit was only for injunction. The observation of the Courts below that the suit was withdrawn, since the appellant has no title in respect of the suit property is wrong. There are no materials for the Court to come to such a conclusion.

18. The highly competent counsel appearing for the appellants further submits that both the Courts below ought to have held that resurvey and settlement was made in Kaliyal Village during the year 1976 as per the notification of the Government. Both the Courts below erred in holding that the name of Mathankani was not included in Ex. A13, the Royal Grant. Both the Courts below ought to have held that as per the Royal Grant, Mathan Kani and others were in possession over the property by executing various documents. Both the Courts below ought to have held that Ex. A1 is valid in law since the documents are more than 30 years old. Both the Courts below ought to have held that the appellants had valid title and possession in respect of suit property from the successors in the interest of Mathan Kani and others. Both the Courts below failed to note that the Forest Department have no claim over Old Survey No. 3015 in Kaliyal Village.

19. The highly competent counsel appearing for the appellants further submits that in the lower Court Exs. A1 to A19 were marked. In the Appeal suit in A.S.

No. 11 of 1997, the plaintiff filed a petition to receive two documents as exhibit in I.A. No. 92 of 1998, on 31.07.1998 and the same was allowed on 11.06.2001 with the following orders, "heard, the additional documents are certified copies of the Government records, so no prejudice will be caused to the respondents. Petition is allowed." Those two documents are:--

"(i) Certified copy of counter filed by the second respondent in I.A. No. 285 of 1992 in O.S. No. 2 of 1992 on the file of the Vacation Civil Judge, Nagercoil and subsequently re-numbered as I.A. No. 181 of 1992 in O.S. No. 47 of 1992, on the file of the Subordinate Judge, Kuzhithurai (now O.S. No. 257 of 1994), dated 04.01.1993.

(ii) True extract of the Settlement Register of survey number 3015, Kaliyal Village dated 28.01.1997. Out of those two documents, only the document No. 1, as stated above is marked as exhibit A20 by consent on 11.06.2001 when I.A. No. 92 of 1998 was allowed."

It appears that the document No. 2 as stated above, though admitted as additional evidence by way of additional documents, was omitted to be marked as Exhibit. The lower appellate Court has not applied its mind and not looked into the provisions of Order 41 Rule 27 of Code of Civil Procedure. It is well known principles of Law that the petition filed under Order 41 Rule 27 of Code of Civil Procedure has to be heard along with the main appeal and the appeal has to be decided on merits along with the petition under Order 41 Rule 27 of CPC and findings to that effect has to be elaborately discussed in the first appeal and the same was not done by the lower appellate Court. It is a fit case for remand.

20. The highly competent counsel appearing for the appellants further submits that both the Courts erroneously dismissed the suit without proper appreciation of evidence and documents. Furthermore, the Courts below also held that the plaintiff has not correctly traced out the correct root of title to the suit properties. Both the Courts have taken advantage and wrongly applied its mind and more particularly concentrated on the deposition of the defendants. It is a well laid principle that the Courts ought to have decreed the suit on the basis of the documents put forth before them even though they have not exactly pleaded. The Courts ought to have decreed the suit by scrutiny of indisputable records even though they are not exactly pleaded by the parties. The highly competent counsel further submits that whatever changes that have taken place in the revenue records, will not change and take away the character of the suit properties and possession of the appellants. Mere changes in the revenue records do not confer any title to the Government and the appellants are in continuous possession and enjoyment of the same.

21. The highly competent counsel appearing for the appellants further submits that the plaintiff already proved his title by Exs. A1 and A13 which were very old documents and possession was also proved by producing Exs. A3 to A8. In between Exs. A1 and A13 there are so many documents which prove the title,

right, interest and possession of the plaintiff and those documents have been placed before this Court by way of additional evidence. The highly competent counsel further submits that whatever changes that had taken place in the revenue records, will not change and take away the character of the suit properties and possession of the appellants. Mere changes in the revenue records do not confer any title to the Government. Hence, the highly competent counsel entreats the Court to allow the above appeal. In support of his contentions, the highly competent counsel has cited the following judgments:--

"(i) Muthammal (died) and T. Periyasami Vs. The State of Tamil Nadu,

"Land tenures - Grama Natham land - Character of land - Possession by plaintiffs for over 30 years - Adverse possession - No documentary evidence by Revenue to disprove possession - Purchase of plaintiffs - Old deed - Proof - Stamp papers in the name of somebody used - Evidence of non-availability of stamp in the village of plaintiffs - Explanation proper - Suit for declaration and injunction against State - Findings contrary to law and based on inadmissible evidence - Interference in second appeal justified.

(ii) Practice - Evidence - Withholding vital document by party - Adverse inference to be drawn.

(iii) Civil Procedure Code (5 of 1908), Section 100 - Second appeal - Findings - contrary to law - based on inadmissible evidence - Interference justified."

(ii) B. Nemi Chand Jain and another Vs. G. Ravindran and Others,

"Contract Act, 1872 (9 of 1872), Sections 2 to 4 & 8 - Interpretation of Contract - Whether agreement is Loan Agreement or agreement for sale - Agreement has to be read as whole and intention of parties to such document must be gathered from document itself - Agreement referring to offer to sell and willingness to purchase immovable property; mentioning sale consideration and mode and time of payment; both vendor and purchaser subscribing their signatures to agreement after making amendment in hand; payment of part sale consideration; endorsements in agreement on date after date of agreement referring to sale of property; and conduct of Vendors conceding agreement to be sale agreement in reply to legal notice issued by Purchaser are factors that would prove that document is not loan agreement but contract for sale of property - Vendors disputing nature of agreement failing to explain their earliest stand conceding same to be agreement for sale proves that agreement was one for sale of property and not loan agreement."

(iii) The State of Tamil Nadu & another v. R.P. Patchirajan and another

"C.P.C., Section 9 /suit for declaration and permanent injunction against the State, Claim of right over the suit properties by the Government, that they have been remaining as poramboke lands or Gramma Natham was disputed by plaintiffs, Words and Phrases/"Grama Natham", "Village Natham" - plaintiff claimed that they and their predecessors-in-title have been in possession and

enjoyment of the suit properties openly and adversely against the third parties including the Government for more than the statutory period and they have prescribed title by adverse possession also and the second defendant (Tahsildar) has been giving out that the plaint schedule properties will be assigned by way of issuing house site pattas to house-less persons as if the suit properties are belonging to the Government and they have no right to do so."

22. The highly competent Special Government Pleader Mr. M. Govindan appearing for the respondents submits that the suit schedule mentioned property classified as Government poramboke land, was not originally belonging to Maharaja as alleged by the plaintiff. The said land is under the care and control of the Reserve Forest Department. The Forest Department had constructed residential quarters for forest officials and besides, this, a water tank had also been constructed for the needs of the residents. Further, the appellants do not possess any valid title deeds over the said property. The plaintiffs had filed a writ petition before this Court and the same was dismissed. Subsequently, the plaintiff had filed a civil suit and the same was dismissed since the plaintiff has not established their rights over the said property. The trial Court had framed necessary issues and decided the same on merits. The findings of both Courts are valid. Hence, the highly competent Special Government Pleader entreats the Court to dismiss the above appeal.

23. From the above discussions, the views of this Court are as follows:--

"(i) The plaintiffs have marked Ex. A1, which is a registered deed bearing No. 1663, dated 03.05.1918. It reveals that the erstwhile Maharaja of Travancore had given Royal Grant to and in favour of Mathan Kani and 23 others pertaining to the suit schedule mentioned property. As per the averments of plaint, the said Mathan Kani occupied the said possession and enjoying the same by way of doing cultivation of the said land. Further, a temple viz., Sastha temple was constructed for worship. This was admitted by both the parties. The Government/respondents herein have not constructed the said temple. Hence, it is obvious that the temple had been constructed by private individuals.

(ii) A registered document bearing No. 2158, had been executed by Athichan to and in favour of one Lewis and the said land was assigned by way of registered document dated 26.06.1103. It reveals that the property has been given to Lewis for lease and it clearly states that the private individuals are in occupation of the said property and enjoying the same. The trial Court have not elaborately discussed about the said parallel document and also not given any findings on the registered document.

(iii) Another registered deed dated 07.11.1985 had been executed by one Krishi to and in favour of George. The said sale deed had been registered pertaining to the suit schedule mentioned properties. However, the Courts below has not given any findings on this issue. The said sale deed clearly proves that the private individuals have occupied and are enjoying the property. Further, the said

registered document is in existence. As such, there is a nexus between the private individuals and the said property.

(iv) As per the plaint averments, there are grown trees in the suit schedule mentioned property and naturally grown plants. In the instant case, crops and other trees were cultivated by the private individuals on a routine basis, as such, the schedule mentioned property cannot be classified as forest land with natural growth.

(v) The defendants had admitted that the property pertaining to Old Survey No. 3015 belongs to Government as well as other patta holders. Therefore, the contention of the defendants that the entire land has been classified as a reserve forest land is not acceptable.

(vi) On the side of the defendant, Village Administrative Officer had been examined and he had admitted that the Old Survey No. 3015 property is a patta land. Further, the Village Administrative Officer/D.W.3 had admitted in his cross examination stating that there are private houses, gardens, plantain, paddy, rubber trees and standing crops over the said property. Besides, the cattle shed and cattle farm is in existence. The evidence of the Village Administrative Officer is of paramount importance since he is a competent authority. As such, it is evident that the property is occupied by private individuals and they are in enjoyment of the same by way of pursuing cultivation. Therefore, they are entitled to occupy the same and their normal pursuit of agricultural operations should not be interfered with."

24. Considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers and this Court's views listed above as (i) to (vi), this Court allows the above second appeal. Consequently, the judgment and decree passed in A.S. No. 11 of 1997, on the file of the Principal District Judge, Nagercoil, Kanniyakumari District dated 18.02.2003, confirming the judgment and decree in O.S. No. 257 of 1994, on the file of the Sub Court, Nagercoil, dated 25.11.1996 is set-aside and the suit is decreed in favour of the appellants/plaintiffs. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.