
(2013) 04 MAD CK 0097

In the Madras High Court

Case No : CRP (NPD) No. 1633 of 2013 and M.P. No. 1 of 2013

G. Annadurai

APPELLANT

Vs

The District Collector, The Tahsildhar and The Commissioner

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 25
Penal Code, 1860 (IPC) — Section 183, 186, 188

Citation : (2013) 3 LW 802 : (2013) 6 MLJ 295

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : R. Margabandhu, for the Appellant;

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Material on record discloses that 27 cents of land in Survey No. 253/2, is vested with Enjambakkam Panchayath

Board. According to the Revision petitioner/plaintiff, that the panchayat passed a resolution dated 06.10.2010, expressing its willingness for

assignment of house sites, in Survey No. 253/2, for all those persons residing there. It is also the case of the Revision petitioner/plaintiff that the

Panchayat Board had informed that one Rajan Nagar and Selva Nagar Association in its letter dated 15.10.2010, has sought for removal of

encroachments. It is the case of the petitioner that he has put up construction prior to 1976. He has been given ration card and that the names of

the occupants have been included in the voter's list. Electricity Board Service connection is also given to the occupants. According to him, he has

been in continuous possession and enjoyment of the property for more than 30 years and hence he has perfected title by adverse possession.

2. In the above said circumstances, he has filed a suit before, the learned Subordinate Judge, Tambaram, for a declaration of his title to the suit

property and for an injunction restraining the District Collector, Kancheepuram District, Kancheepuram, the Tahsildar, Shozhinganallur Taluk,

Kancheepuram and the Commissioner, Chennai Corporation, Chennai, the defendants therein, from any manner interfering with his peaceful

possession and enjoyment of the suit property and for costs.

3. Reading of the plaint averments shows that one Rajan Nagar and Selva Nagar Welfare Association has filed W.P. No. 31073 of 2007, seeking

for a direction against the District Collector, Kancheepuram District, Kancheepuram and the Tahsildar, Shozhinganallur Taluk, Kancheepuram, the

1st and 2nd defendants therein, to remove the illegal encroachments in Vettuvangan Enjambakkam Link road measuring 17 feet breadth and 500

feet length. It is the case of the Revision petitioner/plaintiff, that the learned Special Government Pleader, High Court, Madras, who appeared for

the respondents therein, informed this Court that proceedings have been initiated under the provisions of the Tamilnadu Encroachment Act.

Recording the above said statement, this Court has disposed of the writ petition.

4. The plaint averments further state that on the basis of the representation made to the Estimate Committee of Tamilnadu Assembly, the

Committee has inspected the suit property and other properties and recommended for assignment of house site patta to the plaintiff and other

occupants.

5. According to the Revision petitioner/plaintiff, the Joint Secretary to the Government in his letter dated 10.02.2009 and by another

communication dated 03.12.2009 has decided to grant house site patta and that the same amounts to Promissory Estoppel against the District

Collector, Kancheepuram District, Kancheepuram, the Tahsildar, Shozhinganallur Taluk, Kancheepuram and the Commissioner, Chennai

Corporation, Chennai, the defendants in the suit. While so, the Tahsildar, Shozhinganallur Taluk, the 2nd defendant/2nd respondent, in this revision

has issued a notice u/s 7 of the Tamilnadu Land Encroachment Act, 1905 and also passed an order on 20.06.2008 and thereafter, issued an order

u/s 6 of the Act. It is the case of the Revision petitioner/plaintiff that only from 20.06.2008, for the first time, the respondents 1 and 2 have started

disturbing the peaceful possession and enjoyment of the plaintiff, who has perfected title to the suit property by adverse possession.

6. It is the further contention of the Revision petitioner/plaintiff that an appeal u/s 10 of the Act has been preferred to the District Collector,

Kancheepuram District, Kancheepuram. The Collector has personally inspected the suit properties and found that the plaintiff had constructed a

terraced house and whereas, an order dated 21.12.2011, has been passed stating that there is no provision for grant of patta.

7. According to the Revision petitioner/plaintiff, being aggrieved by the order passed by the District Collector, Kancheepuram District, a revision

petition u/s 10(A) of the Act has been filed before the Commissioner for Land Administration and that it is pending. At this juncture, the Revision

petitioner/plaintiff, has filed the suit, to declare his title to the suit property and for an injunction restraining the respondents/defendants from

interfering in any manner with his peaceful possession and enjoyment of the property.

8. Perusal of the plaint shows that the plaint property has been shown to be situated within the jurisdiction of Tambaram Court. After considering

the plaint averments and the provision u/s 14 of the Act, the learned Subordinate Judge, Tambaram, vide order dated 01.02.2013, has rejected

the plaint, for the following reasons.

Learned counsel for the plaintiff heard. Averments of the plaint and the provision U/s. 14 of the Tamilnadu land Encroachment (Amendment) Act,

1993 considered. On perusal of the averments of the plaint it is seen that, the suit property is a Government Poromboke, (Cart track) and already

proceedings have been initiated under the Tamilnadu Land Encroachment Act (Para 11 of the Plaint) by the Government. Further from the

averments of the plaint, it is seen that, the plaintiff, admitting the title of the Government, has been taking efforts to obtain assignment patta, till the

year 2011, from the Government. Now the plaintiff has come forward with this suit under the guise of declaration of his title, on the ground of

adverse possession alongwith the prayer of permanent injunction restraining the defendant government authorities restraining from disturbing his

peaceful possession and enjoyment of the schedule property. The averment of the plaint would go to show that the ultimate aim of the plaintiff is

to safeguard his possession over the schedule property and avoiding the proceedings of the Government authorities taken under the Tamilnadu

Encroachment Act. It is pertinent to say here that, what cannot be achieved directly, cannot be achieved indirectly also.

Hence the Court is of the considered view that, the suit with the prayer of declaration of title, especially the prayer of Permanent injunction would

amount to the by pass of the S 14 of the Tamilnadu Encroachment Act and hence barred U/s. 14 of Tamilnadu Encroachment Act and is not

maintainable in this Court. Hence this plaint is rejected.

9. Being aggrieved by the rejection, the revision petitioner has preferred the present revision petition. Assailing the correctness of the order of

rejection dated 01.02.2013, Mr. R. Margabandhu, learned counsel for the Revision petitioner/plaintiff, submitted that the Court below has

committed a gross error in rejecting the plaint, by stating that it is hit by Section 14 of the Act. According to him, bar of jurisdiction of Courts u/s

14 of the said Act, is only in respect of the challenge to an order passed or proceedings taken by any officer or authority or the State Government

under the Act, and the same, shall not be called in question in any Court, in any suit or application and no injunction shall be granted by any Court

in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any power conferred by or

under the Act.

10. Learned counsel for the Revision petitioner/plaintiff submitted that in as much as the suit instituted before the learned Subordinate Judge,

Tambaram, is not against any order or proceedings taken by any officer or authority or the State Government, there is no prohibition to file a suit

for declaration to ascertain the right and title over the suit property perfected by the Revision petitioner/plaintiff, by adverse possession of the

Government property for more than 30 years.

11. Learned counsel for the Revision petitioner/plaintiff, also submitted that under similar circumstances, one Mr. Muthukrishnan, has filed a suit in

O.S. No. 372 of 2012 and that after raising a preliminary objection regarding the maintainability, the suit has been numbered and therefore, it is not

open to the learned Subordinate Judge, Tambaram to reject the plaint, by citing Section 14 of the Act.

12. Heard the learned counsel for the revision petitioner and perused the materials available on record.

13. During the course of hearing, when this Court expressed its prima facie opinion regarding the maintainability of the suit, the learned counsel for

the Revision petitioner/plaintiff, sought for permission to withdraw the revision petition. However, in as much as the Civil Revision Petition has been

argued elaborately with reference to the statutory provision, this Court is not inclined to grant permission for withdrawal of the revision petition and

propose to address the issue as to the maintainability of the suit.

14. As stated supra, earlier one Rajan Nagar and Selva Nagar Welfare Association seemed to have filed a W.P. No. 31073 of 2007 in this Court,

for a direction against the District Collector, Kancheepuram District, Kancheepuram and the Tahsildar, Shozhinganallur Taluk, Kancheepuram, the

1st and 2nd defendants therein, to clear all the illegal encroachments in Vettuvangan Enjambakkam Link road measuring 17 feet breadth and 500

feet length. Even as per the averments made in the plaint that on the submission of the learned Special Government Pleader, High Court, Madras,

who appeared for the respondents therein, stating that proceedings have been initiated under the provisions of the Tamilnadu Encroachment Act

and after recording the abovesaid statement, this Court vide order dated 02.07.2008, has disposed of the writ petition, to decide the matter on

merits.

15. In the plaint, the Revision petitioner/plaintiff has contended that there was a recommendation by the authorities for grant of house site patta and

whereas, the Tahsildar, Shozhinganallur Taluk, Kancheepuram, has issued notice u/s 7 of the Tamilnadu Land Encroachment Act, 1905. Section 7

of the Act, which reads as follows:

7. Prior notice to person in occupation: - Before taking proceedings under [Section 6] the Collector [or the Tahsildar or Deputy Tahsildar or

Revenue Inspector or any authorized officer or [any other officer specified by the State Government in this behalf (not being an authorized officer)

(hereinafter referred to as the "specified officer")] as the case may be] shall cause to be served on the person reputed to be in unauthorised

occupation of the land being [the property of the Government] a notice specifying the land so occupied and calling on him to show cause before a

certain date why he should not be proceeded against under [Section 6].

Such notice shall be served in the manner prescribed in Section 25 of the [Tamil Nadu] Revenue Recovery Act, 1864, or in such other manner as

the [State Government] by rules or orders u/s 8 may direct.

[Provided that no such notice shall be necessary in the case of any person unauthorizedly occupying any land, if he had been previously evicted

from such land u/s 6 or if he has previously vacated such land voluntarily after the receipt of a notice u/s 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector of [any specified officer] he shall require

the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, [Deputy Tahsildar or

authorized person having jurisdiction, as the case may be] and shall also make a report in writing containing such particulars as may be specified in

rules or order made u/s 8 to the Collector, Tahsildar, [Deputy Tahsildar or authorized person having jurisdiction, as the case may be.]

16. It is the admitted case of the Revision petitioner/plaintiff that an order u/s 6 of the Act has been passed on 28.09.2008. Section 6 of the Act

reads as follows:

6. Liability of person unauthorizedly occupying land to summary eviction, forfeiture of crops etc. - (1) Any person unauthorizedly occupying any

land for which he is liable to pay assessment u/s 3 (or Section 3-A) may be summarily evicted by the Collector [or subject to his control, by the

Tahsildar or Deputy Tahsildar or any other officer authorized by the State Government in this behalf (herein after referred as the authorized

Officer)] and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything

deposited thereon shall also, if not removed by him after such written notice as the Collector [or subject to his control, the Tahsildar or Deputy

Tahsildar or authorised officer] may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector [or

subject to his control, by the Tahsildar or Deputy Tahsildar or authorized officer] and any property so forfeited shall be disposed of as the

Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer] may direct.

(2) An eviction under this section shall be made in the following manner namely:-
By serving a notice in the manner provided in Section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector [or the Tahsildar or Deputy Tahsildar or authorised officer] may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector [or the Tahsildar or Deputy Tahsildar or authorised officer] shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector [or Tahsildar or Deputy Tahsildar or authorised officer] for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may sent him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Sections 183, 186 or 188 of the Indian Penal Code in respect of same facts.

[(3) Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made u/s 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.]

17. As per Paragraph 15 of the plaint it is also admitted that an appeal u/s 10 of Land Encroachment Act has been preferred to the District

Collector, Kancheepuram District and after considering the memorandum of appeal, the District Collector, Kancheepuram District has passed an order on 21.12.2011, stating that in as much as the cart tract is in an objectionable site, there is no possibility for grant of patta.

18. The plaint averments also discloses that being aggrieved by the decision made by the District Collector, Kancheepuram District, a revision

petition u/s 10(A) of the abovesaid Act has been filed by the Revision petitioner/plaintiff. After suffering adverse orders u/s 6 of the abovesaid Act,

and after availing the alternative remedies of an appeal and revision u/s 10 of the abovesaid Act, the Revision petitioner/plaintiff, has filed a suit in

the month of December 2012 for a declaratory relief as well as for injunction, and that the plaint has been rejected vide order dated 01.02.2013,

which is challenged in this revision petition.

19. Section 14 of the abovesaid Act, reads as follows:

14. Bar of Jurisdiction of Courts.:-

Notwithstanding anything contained in any law, for the time being in force, no orders passed or proceeding taken by any officer of authority or the

State Government under this Act, shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court

in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any powers so conferred by or

under this Act.

Explanation: - The cause of action shall be deemed to have arisen ---

(a) in respect of any assessment or penalty, on the date on which such assessment or penalty was levied;

(b) in respect of eviction or forfeiture, on that date of eviction or forfeiture.

20. In the case on hand, the proceedings under the Act have been initiated as early as on 20.06.2008, when the Tahsildhar, Shozhinganallur Taluk,

Kancheepuram District, has issued a notice u/s 7 of the Act and an order has been passed on 28.09.2008. The appeal preferred u/s 10(A) of the

Act has been rejected on 21.12.2011. Now, it is stated that the revision petition filed u/s 10(A) of the Act, is pending before the Commissioner of

Land Administration.

21. The expression ""In respect of an order or proceeding"", has a wide connotation and it clearly indicates the degree of connection between the

order or the proceeding taken by any officer or authority, under the Act. Proceeding means a step in action.

22. In the light of the object of Tamilnadu Land Encroachment Act, 1905, and the provisions thereof, the expression, ""in respect of an order or

proceeding"", has to be viewed that the proceeding or action taken by the competent authorities under the Act, is with reference to the object of the

Act, i.e., removal of encroachments. The intention of the Legislature is very clear

that no order or proceeding can be challenged in a Court, as the provisions of the Act, provide for a machinery and also set out appellate and revisional jurisdiction. It cannot be said that an encroacher, who had been in possession and enjoyment of the Government property over a statutory period, is prohibited under the Act from approaching a Civil Court, to seek for a declaration, on the grounds that he has perfected title, by adverse possession. Though title of the Government is accepted, still, law permits assertion of a person's right or title over the property only in a Civil Court. Assignment of land by the Government proves that the ownership vests with the Government. As the revenue authorities are not competent to decide title or grant any declarative relief, a person claiming adverse possession of Government property, has no other alternative except to approach the Civil Court. But at the same time, one has to ascertain from the facts, material on record and also the conduct of the party, opposing the action or proceeding, taken under the provisions of the Act, the time and the stage, as to when the action of the authorities is indirectly challenged in the Court. The words "'in respect of'" have to be given the plain meaning, "'connected with or attributable to'" and therefore, when the petitioner has failed to substantiate his claim, before the authorities, and when the petitioner, has not approached the civil Court, at the earliest point of time, and when the correctness of the orders passed against him are under challenge before the revisional authority, it would be inappropriate to entertain a suit for declaration that he has perfected titled, by adverse possession.

23. As stated supra, even taking it for granted that the petitioner has a right under the Civil law, to seek for declaration of title, on the grounds that he has perfected title, by adverse possession, as per explanation (b) to Section 14 of the Act, the cause of action shall be deemed to have arisen, in respect of eviction or forfeiture, on the date of eviction or forfeiture and therefore, the limitation for filing of a suit, starts from the date on which an order of eviction is passed. The time for seeking any declaratory relief is three years, i.e., from date of eviction.

24. Dehose the alternative remedies provided under the Act to substantiate that he is not an encroacher, if the petitioner was aggrieved over the non-consideration of documents produced in support of the possession over the

statutory period, still, a declaratory relief should be sought for, within the specified time. But the finding recorded by the authorities under the Act, holding that he is an encroacher and that too at the revisional stage, cannot indirectly be challenged in a suit, instituted beyond the period of limitation. As rightly observed by the Court below what cannot be directly achieved cannot be indirectly sought for. The suit instituted in the year 2012, if entertained, in effect would run contrary to the intention of the legislation, engrafted in Section 14 of the Tamilnadu Land Encroachment Act, 1905.

25. Though, Mr. R. Margabandhu, learned counsel for the Revision petitioner/plaintiff, interalia contended that by virtue of long and uninterrupted possession, the Revision petitioner/plaintiff has perfected title by adverse possession and that therefore, the plaintiff, can seek for a declaration of his title as well as an injunction, as rightly observed by the learned Subordinate Judge, Tambaram, the conduct of the Revision petitioner/plaintiff, makes it clear that in order to protect his possession, the Revision petitioner/plaintiff has couched a prayer for declaration of his title, as well as possession.

26. However, during the course of hearing, the learned counsel for the Revision petitioner/plaintiff submitted that the plaintiff, would not press the relief for injunction and be permitted to contest the suit filed for declaration of title. Even assuming that permission is granted to sue the Government, with the limited prayer for declaration, still the suit instituted in 2012, would be beyond the period provided for under the Limitation Act, for seeking declaratory rights.

27. Upon perusal of the plaint averments, it is clear that the suit property is a Government property and that proceedings have been initiated under the Act and thus admitting the title of the property, the Revision petitioner/plaintiff and others have been taking steps to obtain, assignment from the Government. But then, the authorities, have initiated proceedings for eviction under the Act. The proceedings initiated against the Revision petitioner/plaintiff has reached the stage of revision, u/s 10(A) of the Act and at this juncture, the Revision petitioner/plaintiff has filed the suit in December 2012 for declaration.

28. No doubt, the revenue authorities cannot adjudge the declaratory rights, in

so far as the title to the properties is concerned. But, in the case on hand, as rightly observed by the Court below, there is no dispute over the title of the suit properties and even the Revision petitioner/plaintiff, and others have admitted that the suit property is a Government poromboke and that is why they have sought for assignment of house sites. When the Government's title to the property is accepted, then it is not open to him to seek for any declaration, beyond the statutory period.

29. From the material on record, it could be deduced that after suffering adverse orders at the hands of the Tahsildar, Shozhinganallur Taluk

Office, Kanchipuram District, and also the District Collector, Kanchipuram, the Revision petitioner/plaintiff has chosen to file a suit in the month of

December 2012 for a declaration, as if he had perfected title by adverse possession. Such an approach by the petitioner is nothing but an attempt

to indirectly prohibit the competent authorities from exercising their statutory functions, and that the same cannot be permitted. Even taking it for

granted that the Civil Courts still have jurisdiction under common law remedy, i.e., to adjudicate declaratory rights, which the revenue authorities

are not competent to do so, in the case on hand, where an order u/s 6 of the Act, has already been passed in the year 28.09.2008, it could be

noticed that, after nearly four years from the date of the order made u/s 7 of the Act and after confirmation, in an appeal vide order dated

21.12.2011, the Revision petitioner/plaintiff has sought for a declaration of title, during December 2012, which in the opinion of this Court is a

clear attempt to indirectly to put spokes in the wheels of the functions of the authorities under the Act.

30. All along, the Revision petitioner/plaintiff had remained quiet, for so many years, even after an adverse order u/s 6 of the Act has been passed,

and now, taking advantage of the prayer in the suit, he has attempted to undo, whatever that has been done earlier by the statutory authorities

under Sections 6 and 10 of the Act, and the same cannot be permitted. If at all the Revision petitioner/plaintiff had perfected title, by adverse

possession, over the Government Property, action for declaration of title ought to have been made, the moment his possession and enjoyment has

been interfered with and not after the statutory authorities have exercised their jurisdiction and passed adverse orders. In the light of the above

discussion, this Court is of the view that no manifest illegality can be attributed to the order dated 01.02.2013 passed by the learned Subordinate

Judge, Tambaram, in rejecting the plaint.

31. The contention that yet another suit filed by one Muthukrishnan has been entertained and numbered as O.S. No. 372 of 2012 and therefore,

the learned Subordinate Judge, Tambaram ought to have numbered the present suit also, cannot be countenanced. There are no materials to

indicate as to how the suit filed by the Muthukrishnan has been numbered. Even taking it for granted that the said suit has been numbered by the

said Court, that would not bar the learned Subordinate Judge, Tambaram to address the issue of maintainability raised in the subsequent suit. A

decision to number the suit, shall not operate as res judicata on the merits of the suit claim. In the light of the above discussion, this Court is not

inclined to interfere with the order passed by the learned Subordinate Judge, Tambaram. The Civil Revision Petition is dismissed. No costs.