

(1998) 01 MAD CK 0056

In the Madras High Court

Case No : S.A. No. 533 of 1984 and C.M.P. No. 5232 of 1984

Karuppa Thevar and Others

APPELLANT

Vs

V.P. Kaluva Thevar and Another

RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (1998) 01 MAD CK 0056

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : S.V. Jayaraman for M.N. Maninarayanan, for the Appellant; M.V. Venkataseshan, for the Respondent

Judgement

1. The plaintiffs are the appellants. They filed suit on O.S.No. 1346 of 1981 before the District Munsif s Court, Tirumangalam for declaration ad
injunction averring as follows: The suit property was Veerachari Oorani and burial ground in S.No. 240 measuring 4 acres 55 cents Government
Poramboke in Vikramangalam Village of Udlampatti Taluk. This was a public Orrani intended for public use, main source of drinking for cattle, for
bathing and other purposes from time immemorial. There was a Village burial ground on the southern side for the Village. It was classified as a
Government Porornboke in settlement "A" register. The appellants and other residents of Vaiyathan Village had by their open undisputed user and
enjoyment of the said Oorani and the burial ground for over the statutory period had acquired prescriptive rights. The respondents were sons of
brothers and residents of Vaiyathan Village. The authorities had sanctioned Rs. 3000 for deeping the Oorani desilting and for carrying out other

maramathu work in the year 1981. When the contractor went to execute the work in September, 1981 the respondents obstructed and in a quarrel, the first appellant's brother was injured. The respondents wanted to lay claim to the suit property in derogation of the rights of the appellants. The suit had therefore been filed for a declaration that the suit property was a Public Oorani and burial ground of the residents of Vaiyathan Village and for consequent injunction restraining the respondents from in any way interfering with the appellants' and Villagers' peaceful enjoyment of the property.

2. The first respondent filed a written statement and the second respondent adopted the same and the suit was resisted on the following grounds:

The respondents and their families were in peaceful possession and continuous enjoyment of 2 acres 75 cents in suit survey number to the West of the Oorani for generations together. The respondents were doing personal cultivation by paying land revenue. 2-C Patta had been granted for tamarin trees by the authorities in favour of the respondents. The burial ground was not in the suit property but was actually on the eastern side of the village in Neeravi Oorani Medu. The revenue Divisional Officer, Usilampatti, himself admitted in Section 107 of the Criminal Procedure Code proceedings that the respondents were in possession and enjoyment of the suit property for 2 acre and 75 cents. They also (sic) paddy in the property. The Commissioner of Land Reforms had also admitted respondents' possession and enjoyment over the suit property and their personal cultivation and permitted the respondents to harvest the paddy and also issued stay order. The appellants were not at all the representative of the public of Vaiyathan Village. Out of ill-will the appellants were moving attempt to dispossesses the respondent abruptly from the suit lands. The dispute was purely between the Government and the respondents and the appellants did not have any locus standi to represent on behalf of the Villagers, who were in no way affected. The suit was not maintainable under law and on facts. It had not been properly valued and proper court fee had not been paid.

3. The trial court framed the following issues:

- (1) Whether the plaintiffs are entitled to declaration and injunction?
- (2) Whether the defendants are in possession of 2.7 acres in the suit property?

(3) Whether the suit is not maintainable? And

(4) To what relief any, are the plaintiffs entitled?

4. On an appreciation of the oral and documentary evidence and the materials on record, the trial court held that the appellants were entitled to

declaration and injunction that the respondents were not in possession of 2 acres 75 cents of the suit property and that the suit was maintainable.

So holding, by his judgments and decree dated 24.11.1983 the learned District Munsif, Tirumangalam decreed the suit. On appeal by the

respondents in A.S.No.239 of 1983 the learned First Additional Subordinate Judge, Madurai, by his judgment and decree dated 9.3.1984

reversed the decision of the trial court, allowed the appeal and dismissed the suit of the appellants. Aggrieved the present second appeal has been

filed.

5. At the time of admission the following substantial questions of law were framed for decision in the second appeal:

Whether the lower appellate court was justified in holding that the Government is a necessary party to the suit, especially when no such objection

was raised by the respondents herein to that effect and no issue had also been framed in this regard?

Whether the court below was justified in holding that the respondents have established their possession for the property for 12 years when on

17.2.1982 the respondents had been dispossessed by the Government from the property which is admitted a Government Poramboke? And

(3) Whether the lower appellate Court was right in its conclusion in rejecting the claim of the appellants without adverting to the effect of

dispossession by the paramount title holder?

6. Mr. S.V. Jayaraman, learned Senior Counsel for Mr. M.N. Maninarayanan appearing for the appellants, contended that as per the

respondents' own document Ex.B.4 they had been evicted from the suit property on 17.2.1982 in which event their contention that they had

established their possession for 12 years could not be accepted. When once it was established that the suit property admittedly belonged to the

Government and was classified as Government Poramboke and such classification remained unaltered, it was not open to the respondents to resist

the suit on the ground that they were in possession. The lower Appellate Court

ought to have held that dispossession of the respondents by the Government put an end to the rights, if any, of the respondents and they could not have any defence to the suit at all. It was lastly contended by the learned Senior Counsel that even if the finding of the lower Appellate Court that the Government was a necessary party was accepted, it clearly erred in dismissing the suit on the ground of non-joinder of Government as a party. What it should have done was to afford an opportunity to the appellants to implead the Government as a party to the proceedings, instead of rejecting the appellant claim on the ground of non-joinder of Government as a party.

7. Mr. M.V. Venkateshan, learned Counsel for the respondent sought to support the judgment of the lower Appellate Court on the ground that

factually it had been found that the respondents had established their possession for well over the statutory period, that they had prescribed title by adverse possession, that the appellants had not established that the villagers of Vaiyathan Village had used the suit property as common oorani and burial ground and had prescribe title by adverse possession and the decision of the lower appellate court could not be disturbed.

8. If we take the first substantial question of law for consideration, an answer is found immediately in Pakkila alias D. Parvath Nadar and Ors. v. P.

Aiyasami Ganapathi and Ors., 1969 (1) MLJ 638. In that case, the suit was filed on behalf of the Villagers of a particular village to restrain the

defendants from laying salt pans in the bed of the suit tank, thereby making the water in it useless to the people for bathing and taking drinking

water. It was resisted contending inter alia that the plaintiffs were not representatives of the village, that the villagers used to take water from

another tank, that there were salt pans all over the suit land, that the suit land was fit only for raising salt pans and that there was no drinking water

in the locality. The trial court in that case though found that villagers used to take water from the suit tank, that cattle also used to drink water from

it and that the Villagers used to take bath and wash their cattle therein, but still during the ten years preceding the suit, a number of persons had

laid extensive salt pans almost on all the sides of suit tank with the result that even of the rain water were to gather and flow into the suit tank, it

could not but be saltish and it could not be said that water had become saltish

because of the defendants laying salt pans in a portion of the suit tank and the plaintiffs were not entitled to injunction. The lower Appellate Court held that the property in dispute was a tank and it had been recognised and used as such by the Villagers in general and that the question as to whether the water from the tank was fit for domestic use or not was foreign to the scope of the enquiry on hand, but the question was whether the defendants, though they were some of the Villagers, were as of right entitled to convert the property or any portion thereof into salt pans that they were not so entitled and therefore the injunction prayed for had to issue. This was confirmed by this court. In the second appeal, similar contentions as are raised were put forth before the learned Judge. The tank being a Government property was not the property of the villagers in general and there could be injunction at the instance of the plaintiff herein and that it was for the Government who were the owners of the tank to prevent the defendant from doing anything on the property. The plaintiff would have a cause of action only if they had some right in the tank. The remand was prayed for giving finding as to whether the plaintiffs had any right over or in respect of the tank as a finding on that point was necessary for a proper disposal of the appeal. The learned Judge held that, Once it was established that the Villagers had common right over the water in tank for purposes of using it for their bathing and drinking purpose, any interference with that right would give them a cause of action, even though the interference was not in respect of a land belonging to the plaintiffs. The action of the defendants would amount to a nuisance. In coming to the said decision the learned Judge referred to a number of treatises on this point by eminent jurists. In my view, the ratio of the above decision will squarely apply to the facts of the present case. Therefore, the lower Appellate Court was not justified in holding that the Government was a necessary party to the suit. The appellants were entitled to maintain the suit without impleading the Government as a party.

9. The trial court relied on the report of the Commissioner and held that the suit property was used by the public for communal purposes. As per Ex.B-4 document relied on by the respondents, it is seen that the respondents had been evicted by the Revenue Authorities early as 17.2.1982. This would clearly show that respondents were not in continuous possession of

any definite extent for any particular length of time. It was only a sporadic enjoyment of an indefinite extent. They had also not shown that they paid kist for any of the period for which they had filed B memos. The reliance by the respondents on Ex.B.7 temporary assignment order granted to a instant relative of D.W.1 was also rightly rejected by the trial court as there was no record to show that D.W.1 succeeded to the interest of his distant relative. The trial court also relied on the admission of D.W.1 that his request for assignment for over ten years prior to the suit, had not been acceded to by the Government. The trial court held that the encroachment by the respondents of a communal property like the suit property would not create any right on the respondents against the public user of the community at large.

10. When once it had been established that the respondent had been thrown out of the property even in 1982, they could not claim any right in the suit property as a matter of course. This aspect of the matter has been completely lost sight of by the lower Appellate Court. The lower Appellate Court was wrong in holding that the respondents had possession. The reliance placed by the lower Appellate Court on M. Kallappa Setty Vs.

M.V. Lakshminarayana Rao, :, is also not correct. The facts of that case have no application to the facts of the present case. Sufficient material had

been placed before the trial court to show that the suit property was being used by the public for bathing and other purposes and as a burial

ground. The discussion on this point by the lower Appellate Court leaves much to be desired. The lower appellate court had been clouded in its

approach by its finding that the Government had not been made a party. The lower Appellate Court did not appreciate properly and advert to the

effect of dispossession of the respondents by the paramount title-holder, viz, the Government. Consequently, the other, two substantial questions of

law also have to be answered in favour of the appellants and the judgment and the decree of the lower Appellate Court have to be set aside and

accordingly they are set aside and the judgment and the decree of the trial court are restored. However, there will be no order as to costs. In view

of the disposal of the main appeal, no orders are necessary in C.M.P.No.5235 of 1984.