
(2002) 10 MAD CK 0005

In the Madras High Court

Case No : S.A. No's. 872 and 873 of 1990

M. Munusamy Naicker and M. Dhamodaran Naicker APPELLANT

Vs

V. Elumalai Naicker, Sakunthala, Kanniappan, Vedagiri (Died), RESPONDENT
N. Raju Naicker (Died), Kuppusamy Naicker and Nagappan

Date of Decision : 04-10-2002

Acts Referred:

Citation : (2002) 10 MAD CK 0005

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : T.V. Krishnamachari, for the Appellant; Pushpa Sathyanarayana, for T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—The plaintiffs in O.S.No.499/83 are the appellants in S.A.No.872/90. They are the defendants in O.S.No.155/84, in

respect of which they have filed S.A.No.873/90.

2. Respondents 1 and 2 in S.A.No.873/90, viz. Vedagiri and Raju Naicker, passed away pending second appeal. Respondents 3 and 4 have

been recorded as legal representatives of deceased respondents 1 and 2.

3. O.S.No.499/83 was for permanent injunction restraining the defendants from interfering with their possession and enjoyment on the following

averments:

The plaintiffs, who are brothers, were living in Kalpakkam Edaiyur Village in S.No.194/1. For expansion of Kalpakkam Atomic Energy Plant

when the Government took over Edaiyur Village, the villagers were rehabilitated in Kazhanipakkam Village. The plaintiffs put up a hut in

S.No.87/1 in Perumal Kuppam Village. The lands in Kalpakkam Village belonging to the parents of the plaintiffs were acquired by the government

and they were paid the compensation. Thereafter, an extent of 8.33 acres in Kuntrathur Village was also acquired, but no compensation was paid.

As the plaintiffs were without any land, each of them encroached upon 4 acres in S.No.90 and put up ridge. They have also applied to the

Revenue Divisional Officer for grant of patta. The defendants, who belong to Kazhanipakkam Village, own patta lands, pump-set and well. The

plaintiffs cultivated the lands occupied by them and raised crops. At that time, the defendants without any provocation attempted to occupy the suit

lands and prevented the plaintiffs from cultivating the lands. In these circumstances, the suit came to be filed.

4. The defendants resisted the suit contending inter alia that the suit lands were Meikkal Poramboke lands and the villagers were entitled to protect

them; the plaintiffs had filed the suit as if it was a private land dispute; the plaintiffs could not obtain injunction against the villagers; necessary parties

had not been impleaded; the plaintiffs had suppressed that the suit lands were Meikkal Poramboke lands; it was disputed that the plaintiffs were

rehabilitated in Kazhanipakkam Village; it was also disputed that the plaintiffs had no other lands; in S.No.90 there was a total extent of 66 acres;

the suit property had not been properly described; it was false to say that the plaintiffs had applied for grant of patta; it was equally false to say that

they had raised crops in the suit lands; only the villagers were entitled to use the Meikkal Poramboke lands; there was no cause of action for the

suit.

5. The defendants filed a counter suit in O.S.No.155/84. It is not necessary to note the details, except to say that whatever they have stated in the

written statement in the other suit has been stated in their plaint and so far as the plaintiffs in the other suit are concerned, they have reproduced the

plaint as their written statement.

6. On the above pleadings, the trial Court framed the necessary issues in the two suits and on the oral and the documentary evidence, accepted the

case of the plaintiffs and decreed the suit O.S.No.499/83 and dismissed the suit O.S.No.155/84. There were two appeals in A.S.Nos.55 and 60

of 1989. By a common judgment and decree dated 24.1.1990 the learned

Second Additional Subordinate Judge, Chengalpattu, allowed the appeals, dismissed the suit O.S.No.499/83 and decreed the suit O.S.No.155/84.

7. It is as against that, the present second appeals have been filed. At the time of admission, the following substantial questions of law were framed

for decision in the second appeals:

(1) Whether the lower Appellate Court has properly appreciated and applied the laws relating to the grant of permanent injunction when

admittedly the plaintiffs have been in possession of the suit property on the date of the filing of the suit? and

(2) Whether the villagers can claim exclusive right over the Meikkal

Poramboke when as per the provisions of the Panchayat Act, 1958, Meikkal Porambokes do not vest with the villagers and the Government and

the Panchayat have got full control over the same and it is only the Government and the Panchayat who have to take action against encroachment if

they feel that any encroachment is objectionable?

8. Mr. T.V. Krishnamachari, learned Counsel for the appellants, submitted that Meikkal Poramboke does not vest with the Panchayat

automatically and that the Government has got control over the same and if the encroachment by the plaintiffs is objectionable, it is a matter

between the plaintiffs and the Government and that cannot be a ground for the defendants to interfere with the plaintiffs' possession. When once it

had been found that the plaintiffs were in possession of the suit property, the lower Appellate Court was in error in allowing the appeals in favour

of the respondents. The learned Counsel also submitted that only 8 acres had been encroached upon by the plaintiffs and Meikkal Poramboke is

of a total extent of 66 acres and absolutely no prejudice would be caused to anybody by reason of the encroachment by the plaintiffs. According

to the learned Counsel, Meikkal Poramboke is not a communal land.

9. Per contra, Mrs. Pushpa Sathyanarayana, learned Counsel for the respondents, submitted that the villagers had ever right to question the

encroachment as the extent of grazing land got reduced by reason of the encroachment by the plaintiffs. Revenue Board Standing Order 39 clearly

provides that Meikkal Poramboke cannot be assigned to either individuals or others and in case such an assignment is to be made, that can be

done only when there are alternative lands available for the grazing of cattle. It is not the case of the plaintiffs that they have been assigned the suit

lands by the Government. In fact, their very case is that they had applied for grant of patta and they had not been so far granted patta. In the case

of Meikkal Poramboke, priority is given to cattle grazing and only subject to that, there could be any right granted to others. It is also in evidence

that in Kazhanipakkam Village there are enough cattle and they are using the Meikkal Poramboke including the suit lands for grazing purposes.

Rightly has the lower Appellate Court found that the plaintiffs cannot claim the suit properties either for cultivation or for other purposes. The trial

Court made a mistake in favour of the plaintiffs on the ground that they had applied for patta and that the Government had not objected to the

plaintiffs' possession of the suit properties.

10. In *Jwala and Another Vs. Ram Dutta and Others*, , which is referred to by the lower Appellate Court, it has been held that in respect of a land

set apart for the common use of the villagers, whether it has been in use as such or not, the plaintiffs cannot seek for any relief against the villagers.

11. It is also in evidence that the plaintiffs have other properties in Kazhanipakkam Village. Ex.B-2 is the copy of the sale deed.

12. In *PAKKLE ALIAS D. PARVATHI NADAR AND OTHERS VS. P. AIYASAMI GANAPATHI AND OTHERS* 1969 1 MLJ 638, the

question regarding the maintainability of a suit by the villagers with regard to their common right without the Government being involved arose for

consideration. The suit was filed on behalf 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 drinking purposes. It was resisted contending inter alia that the plaintiffs were not the

representatives of the village, that the villagers used to take water from another tank, that there were salt pans all round the suit land, that the suit

land was fit only for raising salt pans and that there was no drinking water in that locality. The trial Court though found that some of the villagers

used to take water from the suit tank, that the cattle also used to drink water from that, that the villagers used to take bath and wash their cattle

therein, but still in as much as during the 10 years preceding the suit, a number of persons had laid extensive salt pans almost on all the sides of the

suit tank, with the result that even if 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, the plaintiffs were held not entitled to injunction.

However, the 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 be issued. This was confirmed by this Court.

In the second appeal, similar contentions as are raised in the present second appeals were put forth. The suit tank being a Government property

and not the property of the villagers in general, there could be no injunction at the instance of the plaintiffs and that it was for the Government, who

are the owners of the tank to prevent the defendants from doing anything on the property; the plaintiffs could have a cause of action only if they had

some right in the tank; a remand was prayed for giving a 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,

when once it was established that the villagers had a common right over the water in the tank for purposes of using it for their bathing and drinking

purposes, 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 nuisance.

In coming to the said conclusion, the learned single Judge referred to a number of treatises on this point by eminent jurists. The learned Judge held

that,

the plaintiffs in that case would be entitled to an injunction even though the land in respect of which they claimed injunction was not owned by

them and the only right which they had, was a common right over the property belonging to the Government and it was no defence to the action

that the people other than the defendants had already done something, which

had the effect of making the water in the tank brackish.

The learned Judge further observed that,

it could not be said in that case that the plaintiffs had been guilty of such an amount of acquiescence as would disentitle them to an injunction; nor

could the damage to them be compensated by money. It could not also be said that owing to the polluting matter poured into the tank by persons

other than the defendants, the plaintiffs could never be restored to the rights which they had established.

13. The principle squarely applies to the facts of this case. It is, therefore, not open to the appellants to contend that it is only the Government,

which can object to the possession of the lands by the appellants and that the villagers can have no say.

14. For the reasons mentioned above, the substantial questions of law are answered against the appellants. The second appeals fail and are

dismissed. There will, however, be no order as to costs.