
(2011) 11 MAD CK 0262
In the Madras High Court
Case No : S.A. No. 659 of 1998

State of Tamil Nadu

APPELLANT

Vs

Madasami and Others

RESPONDENT

Date of Decision : 12-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2012) 2 CTC 315

Hon'ble Judges : V. Periya Karuppiyah, J

Bench : Single Bench

Advocate : Ayiram K. Selvakumar, Additional Government Pleader CS, for the Appellant;

Final Decision : Dismissed

Judgement

V. Periya Karuppiyah, J.—This Second Appeal is directed against the judgment and decree passed by the 1st Appellate Court viz., the District Judge, Srivilliputhur, in dismissing the Appeal filed by the Appellant in A.S. No. 307 of 1993, dated 25.7.1995, by confirming the judgment and decree passed by the Principal District Munsif, Sattur, in O.S. No. 418 of 1984, dated 30.7.1987. The case of the Plaintiffs, in brief, are as follows:

(i) The suit property situated in Irukkankudi Melmadai village was originally belonged to one Saminatha Pattar, who enjoyed the said property ancestrally for over 100 years and the said property comprised houses and stable for cattle. However, the buildings raised in the said property fell down except one house and the same remained as vacant sites. The tax registry with the panchayat was standing in the name of Saminatha Pattar and the tax was paid by him. The said Saminatha Pattar died some 25 years back without any issues. His wife predeceased him and his brother's sons viz., Thangasamy Pattar and Parasurama Pattar inherited the said property as the legal representatives of the said Saminatha Pattar and they were enjoying the said property. The tax payable to the panchayat was also paid by them in the name of Saminatha Pattar.

(ii) The Plaintiffs and one Muthanna Pillai as representatives of Irukkangudi Melatheru people purchased the suit property for a sum of Rs. 14,000/- on 13.10.1982 from the legal representatives of Saminatha Pattar and took possession of the suit property. The said Muthanna Pillai died and his legal representatives were not impleaded since he had no personal interest in the said property. The Tahsildar of Sattur, with a view to defeat the rights of the Plaintiffs, had granted patta in favour of the Defendants 2 & 3 in respect of the suit property. The Plaintiffs objected and filed Appeal before the Revenue Divisional Officer and on enquiry, the Revenue Divisional Officer, set aside the order on 9.9.1984, passed by the Tahsildar. However, the said Revenue Divisional Officer, mentioned in the order that the property was not belonging to the Plaintiffs and it is belonging to the Government. Further, the Revenue Divisional Order had passed an order to issue patta in favour of the 3rd Defendant. The order of the Revenue Divisional Officer was not valid in law. The Defendants did not deny the rights of the Plaintiffs over the buildings situated on the southern side of the property. The property lying on the immediate south of the suit property was purchased by one Subbiah Poosari, son of Periya Ramasamy Poosari, on 4.6.1956, in which, the suit property was shown as northern boundary with the description that it was belonging to Saminatha Pattar. Similarly, the Sale Deed dated 28.8.1957, in which, the property lying on the north of the suit property was sold by one Marimuthu Asari, son of Vellaiyan Asari, in which, the southern boundary was shown as the property belonged to Saminatha Pattar. Furthermore, one Mariappan Asari, son of Periya Karmegam Asari purchased the property on 17.2.1968, in which, the suit property was shown as a boundary as belonged to Thangasamy Pattar. Similarly, the property lying on the northern side was purchased on 1.5.1972 by the Irukkangudi Arulmighu Mariamman temple Devasthanam, in which, the suit property was shown as southern boundary as belonging to Thangasamy Pattar. Yet another Sale Deed dated 19.12.1979, where, one Mariappan Chettiar purchased a house lying on the southern side of the suit property from one Muthuraman Poosari, in which, the northern boundary was shown as belonging to Thangasamy Pattar. The Revenue Divisional Officer, had come to a conclusion that the suit property belonged to Government on the sole ground that the suit property was classified as Gramanatham, which is not correct. The property in Gramanatham is meant for the occupation of the village people for their personal use. The Defendants cannot claim any right over the said property since the Plaintiffs and their predecessor in title had exclusively enjoyed the property by prescribing the title to the same.

(iii) The Tahsildar of Sattur is attempting to issue Patta in favour of the 3rd Defendant and the Defendants 2 & 3 are also threatening to put up constructions in the said property and if permitted, it would prevent the enjoyment of the Plaintiff in the suit property and therefore, the Plaintiffs seek for permanent injunction against the Defendants restraining them from in any way interfering with the possession and enjoyment of the suit property and for costs.

2. The case of the 1st Defendant would be as follows:

The suit property comprised three buildings and a vacant site. The building situated in the south west corner alone was belonging to Pattar. The said buildings were surrounded by vacant sites, which are classified as Gramanatham and the part of the building also comes under the category of Gramanatham. The Plaintiffs, therefore, cannot claim any right over the property. The payment of property tax in respect of buildings would not entitle to Pattar in respect of the vacant site. The extent of the property purchased by the Plaintiffs were not shown in the Sale Deed. The measurement of the property shown in the Plaint would cover different house including a house belonging to one Gurunatha Mudaliyar. The case of the Plaintiffs that they are in possession of the suit property is not correct. The Revenue Divisional Officer had passed an order, setting aside the order passed by the Tahsildar since he had not followed the procedure properly. The reversal of order of Tahsildar would not disentitle the persons, to whom the Pattas were granted by the Tahsildar. The property is a "Government Natham" and the sketches prepared during the settlement property would also show that it belonged to the Government. Since the property belonged to the Government, no injunction can be granted against the true owner. The notice issued u/s 80, C.P.C. was not in accordance with law and therefore, the Suit is liable to be dismissed in that aspect also.

3. The case of the 3rd Defendant as per his Written Statement would be as follows:

The suit property did not belong to Saminatha Pattar or his ancestors. The description of the suit property is not correct. The properties said to have existed in the suit property were not true and the Plaintiffs' case that the buildings fell down are not correct. If there were any building in the suit property, it would have been classified as panchayat wards and the tax would have been collected paid. The legal representatives of the Saminatha Pattar or Thangasamy Pattar or Parasurama Pattar were not in the possession of the suit properties. The Plaintiffs are not the representatives of the Irukkangudi Melatheru. The alleged purchase of the property on 13.10.1982 from the said Pattars are not correct. The Tahsildar had allotted three cents in favour one Gurunathan. But, he was not impleaded as one of the Defendant in the Suit. The house of Gurusamy Mudaliyar was located in the said place for over 150 years. The house of 3rd Defendant was also situated with boundaries described in the suit property and it cannot be relied upon to establish the title of the Plaintiffs. The Plaintiff cannot claim both title to the property as well the prescribed title through adverse possession. The Plaintiffs have no cause of action. The Suit filed by the Plaintiffs without issuing proper notice u/s 80, C.P.C. is not sustainable. The buildings belonging to 3rd Defendant is at the end of the road and the Plaintiffs are insisting to remove the said building, which is not proper. Therefore, the 3rd Defendant, request the Court to dismiss the Suit.

4. On the basis of the aforesaid pleadings, the Trial Court has framed necessary issues and had come to the conclusion that the suit property is classified as

Gramanatham and the Plaintiffs are entitled for declaration and permanent injunction against the Defendants as prayed for and the Suit was decreed in favour of the Plaintiffs. Furthermore, the Trial Court had appointed a Commissioner and the Commissioner visited the suit property and filed his report with sketch in respect of the suit property. On the basis of the evidence adduced on either side, the Trial Court had found that the property belonged to the Plaintiffs and accordingly, it had granted a decree of declaration and permanent injunction against the Defendants.

5. On Appeal by the 1st Defendant before the 1st Appellate Court, the said Court had also framed necessary points and had appraised the evidence produced on either side and had come to the conclusion that the Plaintiffs are entitled to "NMLKAJIHO" property as described in Ex. C2, "Commissioner's Sketch, and granted a declaratory decree against the Defendant and also granted permanent injunction in favour of the Plaintiffs.

6. Aggrieved on the concurrent judgments passed by both the Courts below, the 1st Appellant has preferred the present Second Appeal and the same was admitted on 12.6.1998 and the following substantial questions of law, were framed for being decided in this Appeal:

1. Whether the Plaintiffs are entitled to the relief of declaration in respect of Natham poramboke?

2. Whether the Courts below have acted illegally in decreeing the Suit claim for declaration in respect of Natham Poramboke lands and on an erroneous construction of the nature of the Suit land?

7. Heard Mr. Ayiram K. Selvakumar, learned Additional Government Pleader (CS) for the Appellant. There was no representation for the Respondents.

8. I have also perused the records containing the evidence and judgment of the lower Courts.

9. The learned Additional Government Pleader (CS) would submit in his argument that the Courts below ought to have held that the suit property is a Government Natham as per the Settlement Register of the year 1923 and should have found that the Government is the owner of the property and was entitled to issue Patta in favour of deserved people. He would further submit that the concept of ownership of the property would not vest with Government as found by the 1st Appellate Court is an erroneous conclusion and the finding that the Plaintiffs are entitled to declaration in respect of Natham Poramboke lands, to which the Government is the owner, is not correct.

10. He would further submit that the 1st Appellate Court was erroneously proceeded that the Respondents/Plaintiffs were in possession and enjoyment in the vacant land, in which no person can be considered in possession. He would further submit in his argument that the Suit for declaration filed by the Plaintiffs/ Respondents was not in a proper perspective and the declaration given to the

Plaintiffs ought to have been set aside and the Appellant, being the owner of the "Natham lands", cannot be enjoined from doing its function of issuing pattas to the deserved people and therefore, he would request the Court, to set aside the judgments of both the Courts below and to allow the same and thereby, to dismiss the Suit filed by the Plaintiffs.

11. I have given anxious thoughts to the arguments advanced by the learned Additional Government Pleader (CS).

12. On careful perusal of the judgments of both the Courts below, I could find that the was Suit filed by the Plaintiffs for declaration of their title to the suit property and for permanent injunction against the Defendants from in any way disturbing the possession and enjoyment of the Plaintiffs and the same was decreed by the Trial Court and it was confirmed by the 1st Appellate Court. Both the Courts below have discussed elaborately regarding the evidence produced on either side and had come to the conclusion that the suit property is a "Grama Natham" land and the Plaintiffs are in possession and enjoyment of the suit property by virtue of their purchase from Parasurama Pattar and Thangasamy Pattar and the vendors were also entitled to the suit property by virtue of a long possession and enjoyment by putting up buildings in the suit property, which fell down later and found that the 1st Defendant/Appellant herein is not entitled to the said property.

13. The factual aspects discussed and found by both the Courts below in respect of the nature of the property viz., Gramanatham is not denied by the Appellant. Supporting the same, the learned Government Pleader (CS) would submit in his argument that the property was classified as Gramanatham in the settlement register of the year 1923 and the property, being a Gramanatham, the Government alone be the owner of the property. If, the argument of the learned Additional Government Pleader (CS) is accepted, the Suit filed by the Plaintiffs would have no legs to stand and the Appeal should have been consequently allowed. For deciding such crux, we must firstly consider the character and qualities of a land classified under "Gramanatham". There is no dispute that wherever the lands classified as Natham or Natham Poramboke or Gramanatham are only meant a Gramanatham. The Gramanatham lands were classified and allotted for village people to use them as house sites or for any other purposes for storing his hay and manure or as a smithy or as a brick-kiln or as a place for weaving, etc.

14. It is very much understood that once, the properties have been classified as Gramanatham, the Government cannot claim right over the said property. The said concept has been elaborately discussed in a judgment of this Court reported in between S. Rengaraja Iyengar v. Achikannu Ammal and another, 1959 (2) MLJR 513- The relevant passage would be thus:

In order that a land may property be described as house-site within the meaning of that expression in Section 2 of Madras Act 3 of 1905, it is not necessary that

there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the Gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act 3 of 1905. Madras Act 3 of 1905 is made applicable to an estate when it is notified under Madras Act 3 of 1905 is made applicable to an estate when it is notified under Madras Act 26 of 1948. The provision as to vesting u/s 3(b) of Madras Act 26 of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas which are expressly made applicable to estates notified under the Act.

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 building wherever they may be situate, whether in the Gramanathams, or in Ryoti lands or Pannai lands or waste lands. Section 18 has no particular Application to buildings or house-sites in a Gramanatham. A building in a Gramanatham (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 Gramanatham is protected from transfer to Government by the operation of Madras Act 3 of 1905.

Emphasis supplied

15. Following the aforesaid judgment, in yet another judgment of this Court reported in between A.K. Thillaivanam and another v. District Collector, Chengai Anna District and 3 others, 1998 (3) LW 603, it has been reiterated the said principle. The relevant passage would be thus:

That apart, it has been admitted in the Counter Affidavit that the land is a Village Natham. The Village Natham is a land which never vested with the Respondents and they have no right to it. Admittedly, when the land has been classified as village Natham, it is obvious that no portion of the land vests with the Respondents. The admitted classification is Village Natham and merely because the Petitioners have converted the same into agricultural lands, no right could accrue to the Respondents even after conversion."

Emphasis supplied

16. In the aforesaid judgments, this Court has categorically come to the conclusion that it is not necessary that building must exist in the vacant site so

as to claim right over the said vacant and once the buildings have been put up the character of Gramanatham would become as house sites, such Gramanatham house sites either with building or with building as house sites cannot be claimed by the Government as a property belonged to the Government. The rights of other classification of lands like Poramboke lands is different from the Gramanatham properties, since it is meant for the occupation of the village people for putting up their houses as well as their use for agricultural or weaving or smithy purposes without any discrimination. The 1st Appellate Court has come to the conclusion that the Plaintiffs were entitled to the suit property, by virtue of the purchase of the house sites, in which place, there were buildings existed once and now it is lying as a vacant site though a valid transfer made by the descendents of Samanitha Pattar viz., Parasurama Pattar and Thangasamy Pattar in favour of the Plaintiffs and the Plaintiffs are thus entitled to the suit property and the Government has no locus-standi to initiate the proceedings for the issuance of Patta to 3rd parties so as to interfere with the rights of the Plaintiffs or their predecessors in title, who were already vested with the title.

17. When, once a person occupied a Gramanatham land and put up construction, the said vacant site becomes a house site of that person and the character of the property changes and the person, who had been vested with the right of the said site or the property, is entitled to transfer the same to anybody as he likes. The Government has no say in the said right accrued to the person, who occupied a Gramanatham land. The extent so occupied by such person has to be considered towards his enjoyment of the said property. The 1st Appellate Court had found that the Plaintiffs are in the possession and enjoyment of the land described in the Commissioner's sketch viz., "NMLKAJIHO" property. The findings of the 1st Appellate Court confirming the judgment and decree passed by the Trial Court to the effect that there were buildings put up by Saminatha Pattar in the said property and thereby, he was vested with the right in the property situated in Gramanatham cannot be disturbed by this Court, which was decided on merits.

18. In the said circumstances, the only point raised before this Court as to whether a person, who claims to be the owner of Gramanatham land, be declared as the owner of the said property, is made possible in view of the principle laid down by this Court already. As regards the claim of the Plaintiffs over the suit property that it is a Gramanatham property and the Plaintiffs' vendors and ancestors had put up buildings in the suit property and thereby, the Gramanatham property had become house sites of the ancestors of the vendors of the Plaintiffs can not be disturbed. Furthermore, it cannot be divested by the Government from the persons with whom those right of Gramanatham lands vested already.

19. In the earlier judgments of this Court, it was found that the Government was not entitled to transfer the said Gramanatham property, under the Act discussed in the said judgment. The case of the Government in the said case that compensation need be paid by the Government while acquiring Gramanatham

lands were not accepted by this Court on the ground that the Government was never be the owner of the Gramanatham land.

20. Therefore, I am of the considered opinion that the Courts below have acted correctly in accordance with law in decreeing the suit claim of the Plaintiffs for declaration and for injunction as prayed for, regarding the Gramanatham lands and therefore, said judgments and decrees passed by the Courts below are in consonance with the legal principles and therefore, they are sustainable. Since the said judgments of the Courts below are not liable to be set aside, the present Appeal preferred by the Appellant is not sustainable. Accordingly, the Second Appeal is dismissed and the Judgment and Decree dated 25.7.1995 made in A.S. No. 307 of 1993 on the file of the District Judge, Srivilliputhur, confirming the Judgment and Decree dated 30.7.1987 made in O.S. No. 418 of 1984 on the file of the District Munsif, Sattur are hereby confirmed. In the peculiar of circumstances that the Respondents did not appear before this Court, to contest the Appeal there is no order as to costs in this Appeal.