

(2007) 05 MAD CK 0011

Madras High Court (Madurai Bench)

Case No: S.A. No. 761 of 1993

The Commissioner, Rajapalayam
Panchayat Union, Rajapalayam,
Kamarajar District

APPELLANT

Vs

Madasamy and 7 others

RESPONDENT

Date of Decision: May 16, 2007

Acts Referred:

- Constitution of India, 1950 - Article 21
- Tamil Nadu Panchayats Act, 1994 - Section 133, 143

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: V. Raghupathi, for the Appellant; S. Kadarkarai, for the Respondent

Final Decision: Allowed

Judgement

V. Dhanapalan, J.

The plaintiff, who is the appellant herein, has called in question, the legality of the judgment of the Subordinate Judge, Srivilliputtur in and by which the judgment of the Additional District Munsif, Srivilliputtur, was set aside. The case of the plaintiff, in brief, is as under:

The Thondamankulam tank is situated in S.Nos. 245,296/2 and 296/3 in an area of 47.76 acres and water would spread in other lands located in S.Nos.291/IAI, 292/1A, 286/1A1, 286/1B-1A, 286/1B-1C, 285/1 and 283/1. Though the above lands around the tank are patta lands from the time immemorial, they are shown as water spread area in "A" Register and other revenue records. The Government, in order to avoid spreading of water to the south of the suit lands, acquired the suit lands and formed a bund and the excess water in the tank would go away by the outlet (kalingu) located in S. No. 281. The suit land owners are entitled to cultivate punja crops when there is no water in the tank and the defendants, with a view to convert the suit

lands into house-sites, as an attempt to raise the level of the suit lands, in mid-January 1985, put up a bund in S. No. 291/1 and this bund would not only prevent spreading of water but would also obstruct the flow of water from the outlet (kalingu) and hence, the suit for the following reliefs:

- a. declaration that the suit properties are submersible and water-spread area of Thondamankulam tank of Chettiarpatty Village
- b. consequent permanent injunction restraining the defendants in raising the level of the suit lands and
- c. mandatory injunction to remove the earthern bund put up in S. No. 291/1 across the red line marked in the rough sketch.

2. The defendants, in their written statement, did not deny the existence of the tank in S.Nos. 245, 296/2 and 296/3 but disputed the plaintiff's claim that the other suit lands are also water-spread area. According to them, the suit lands around the suit tank are patta lands and not water-spread area, as manipulated in the Village "A" register and the bund as alleged to be put up by them, has been in existence for the last thirty years prior to the suit. It is the case of the defendants that the existence of a cinema theatre at the north of the suit lands and the emergency exit of the said cinema theatre towards the suit lands would go to show that the suit lands are not water-spread area. It is the further case of the defendants that there is no outlet (kalingu) as claimed by the plaintiff in S. No. 281 and in fact, there is no outlet at all for the tank. The strong case of the defendants is that the suit is at the instigation one Varadharajulu who is the owner of the lands in S.Nos.295 and 296 and they have also been granted new pattas by the Government without any condition, and as such, the suit tank is in no way affected by the suit lands.

3. The Trial Court, on appreciation of the oral and documentary evidence and also Revenue Board Standing Orders, (R.B.S.O), holding that grant of patta is not an absolute right, decreed the suit as prayed for.

4. On the appeal by the defendants, the appellate court, based on the admission by P.W.1, Village Administrative Officer that Ex.A.1, Village Map and Ex.A.2, Adangal do not bear the Government's seal and the hand-writing in Ex.A.2, Adangal is not his and holding that "A" Register was not marked by the plaintiff and the Government, being the owner, ought to have been impleaded, set aside the judgment of the Trial Court, thereby allowing the appeal. Against this judgment of the lower appellate court, the present Second Appeal has been preferred by the plaintiff.

5. This Second Appeal has been admitted by this Court on the following substantial questions of law:

- a. Whether the plaintiff, one of the instrumentalities of the State, has sovereign powers to impose reasonable restrictions at any time, even over the patta lands?

- b. Whether the lower appellate court is justified in not considering the Revenue Board Standing orders as per which the authorities can impose restrictions on the rights of the patta dhars whenever there is damage to the water tank?
- c. Whether the lower appellate court is justified in rejecting the evidentiary value of public documents, namely, Exs.A.1 and A.2 which are Village Map and Adangal extract respectively?
- d. Whether the lower appellate court is right in finding that the suit is not sustainable since the State Government is not impleaded as party?

e. Whether the questions of maintainability of the suit and also locus standi on the part of the plaintiff to institute the suit are correctly decided by the lower appellate court?

6. Mr. V. Raghupathi, learned counsel for the appellant has contended that the lower appellate court has failed in considering the unqualified sovereign rights of the State over all properties in the State and has brushed aside the oral evidence of P.Ws. saying that those are interested witnesses.

7. Mr. S. Kadarkarai, learned counsel for the respondents, per contra, has contended that the defendants have every right in their own patta lands and they are entitled to protect their lands. It is his strong contention that the Trial Court has miserably failed in noting that there was a cinema theatre to the north of the suit lands which would amply prove that the suit lands are not water spread bodies. He has further contended that the plaintiff had wantonly failed to appoint a Commissioner to report on the salient features of the suit property and has not even marked "A" Register, its main documentary evidence. Arguing so, he has pleaded that the appeal by the plaintiff has to be dismissed, particularly when so-called substantial questions of law raised are not so and they are merely questions of fact.

8. On his argument that adverse inference cannot be drawn against the appellant for non-production of "A" Register, the counsel for the appellant has relied on a Division Bench judgment of this Court reported in 2003 (2) CTC 106 in the case of A.S. Rathinam vs. A.S. Ponnammal & 3 others and the relevant para reads as under: (para 10)

"The general principle enunciated in the decision of the Apex Court on which counsel placed reliance is always required to be applied in relation to the facts of the given case, having regard to the context in which the plea of non-production of the best evidence is raised. When the evidence required to be produced is accessible to the plaintiff who seeks to have adverse inference drawn by reason of the non-production of that evidence by the defendants, it is the duty of such plaintiff to produce the evidence and the failure to do so cannot be got over by inviting the Court to draw adverse inference from the conduct of the defendants who had produced some evidence, but not all the evidence in their possession with regard to

the properties mentioned in the plaint schedule. In the context of the facts of the case, it cannot be said that there was a duty cast on the defendants to produce the title deeds even when the title deeds did not show the ownership of their father. The properties which belonged to them individually cannot become the subject matter of partition at the instance of their sister, and the mere fact that she chose to include them in the plaint does not cast a burden on the defendants."

9. To strengthen his argument that the development of the suit lands into house-sites would affect the water table of the suit tank, the counsel for the appellant has relied on a judgment of this Court reported in [Y. Kidhermoidheen Vs. The Secretary to Government, Revenue Department, The Collector and The Tahsildhar,](#)

"In the face of the aforesaid decision, the third respondent has taken preliminary steps to evict the encroachers on the ground that they have encroached upon Odai Poramboke. Therefore, the petitioner cannot be permitted to contend that he has been in possession of such land for ever so many years or that he has got electricity connection or that he has paid B memo charges. Further, the petitioner's contention that his house is located far away from the water source, viz., dam or that the Panchayat has constructed a canal for the flow of water or there are other buildings put by the local body. It is for the third respondent and other concerned revenue officials to take action to evict the encroachers, which they deem necessary to maintain delicate ecological balance and provide a proper and healthy environment to enable people to enjoy a quality life, which is the essence of the right guaranteed under Article 21 of the Constitution of India. The Government, including the revenue authorities, having noticed that a pond or lake is falling in disuse, should bestow their attention to develop the same, thereby they can prevent the ecological disaster and also provide better environment for the benefit of public at large. In this view of the matter, I do not find any merit in the writ petition and the same is accordingly dismissed ..."

10. I have given careful consideration to the arguments of the counsel on either side and the rulings relied on by the counsel for the appellant in support of his arguments.

11. It is not in dispute that the defendants' lands are patta lands. This is admitted by the plaintiff in the plaint itself. In support of its case, the plaintiff-Panchayat Union has marked the Village Map as Ex.A.1 and copy of the village adangal as Ex.A.2. Admittedly, the Village A Register has not been marked. For oral evidence, the Village Administrative Officer and two villagers have been examined. On the side of the defendants, the eighth defendant has been examined and no documentary evidence has been let in.

12. The Trial Court, in its judgment, based on the evidence available before it, observing that:

- a. the defendants have put up a bund in S. No. 291/1 and this bund would prevent spreading of water and obstruct the flow of water from the outlet (kalingu) and the bund has not been in existence thirty years prior to the suit as claimed by the defendants and it has been constructed sometime around 1985;
- b. the lands of the defendants are submersible and water-spread area and the defendants are arranging to increase the height of their lands with a view to convert them into house-sites;
- c. the suit was not instituted at the instigation of Varadaraja Naidu;
- d. as per Revenue Board Standing Orders, the Revenue officers, though had issued unconditional pattas to the defendants, have got every right to modify the rights of the pattadhars by virtue of sovereign rights available with the Government and thus, the plaintiff does not lack the locus standi to file a suit: and
- e. reasonable restrictions can be imposed by the State at any time with its powers, decreed the suit as prayed for.

13. On the contrary, the lower appellate court, observing that:

- a. Exs.A.1 and A.2 do not bear the Government seal and P.W.1, the Village Administrative Officer himself has admitted that the handwriting found in Ex.A.2 is not his;
- b. Village "A" Register has not been produced by the plaintiff to prove the restricted covenant;
- c. P.W.3 himself has admitted in the cross-examination that the suit has been instituted at the instigation of Varadaraja Naidu; and
- d. the plaintiff has no locus standi to file the suit and the Government ought to have been impleaded as a party to the suit reversed the judgment of the Trial Court and dismissed the suit.

14. As regards the finding of the lower appellate court that Exs.A.1 and A.2 do not bear the Government seal, I am of the view that they cannot be simply brushed aside for this reason alone. In fact, I have perused Ex.A.2, the village adangal which bears the seal and signature of the Deputy Tahsildar and in that view of the matter, the finding of the lower appellate court that it does not contain the Government seal has to fail.

15. Secondly, with regard to the finding of the lower appellate court that the Village "A" Register has not been furnished by the plaintiff, it cannot be said that the plaintiff can prove its case that the defendants" lands are submersible lands only by producing the Village "A" Register. Exs.A.1 and A.2, namely Village Map and Adangal extract and the oral evidence of P.Ws. are by themselves ample proof to show that the suit lands are of submersible nature and the finding of the lower appellate court

that the plaintiff has not produced the Village "A" Register to show that the suit lands are submersible lands does not appear to be convincing. In this regard, the Trial Court has given a cogent and convincing finding that as per Revenue Board Standing Orders, if the carrying capacity of the tank is affected, bearing in mind the public interest, the Revenue officers can modify the rights of the patta dhars by exercising the sovereign rights vested with the Government. This reasoning of the Trial Court is perfectly in order in view of the fact that maintenance of the tank in question which is of great public utility is of paramount consideration.

16. Thirdly, the lower appellate court has observed that P.W.3 himself has deposed in his cross-examination that the suit has been instituted at the instigation of Varadaraja Naidu. But, on the contrary, on a perusal of the deposition of P.W.3, I find that nowhere P.W.3 has stated so. As such, the finding of the lower appellate court that the suit has been instituted by the plaintiff only at the instigation of Varadaraja Naidu has to obviously fail and I am of the view that the lower appellate judge has held so for the reason best known to him.

17. Lastly, when Section 133 of the Tamil Nadu Panchayats Act empowers Panchayat Unions the right of maintenance and when Section 143 provides independent right to Panchayat Unions to remove the danger in respect of tanks, wells, etc., I am not in agreement with the finding of the lower appellate court that the plaintiff-Panchayat Union does not have the locus standi to file the suit and that the Government ought to have been impleaded as a party to the suit. This is because, as rightly contended by the counsel for the appellant, the plaintiff-Panchayat Union, being an instrumentality of a welfare State which has the duty and responsibility to protect the interest of the public at large, has every right to set right the wrong done to the communal property which is nothing but the tank in the instant case.

18. Admittedly, the appellant is a wing of the Government and an instrumentality of the State and it is governed by the Tamil Nadu Panchayats Act and the provisions made therein provide independent right of maintenance of tank bund to the appellant and also to take action to evict the encroachers, to maintain the delicate ecological balance and to provide proper and healthy environment to enable people to enjoy a quality life which is the essence of the fundamental right guaranteed under Article 21 of the Constitution of India. Thus, there can be no doubt that the appellant has the domain power by virtue of the, sovereign rights available with the Government and the appellant, being a wing of it, can exercise its powers particularly in the matter of public utility. Therefore, the appellant's action in preventing any kind of obstruction of flow of water is obviously within its powers and the Trial Court has gone into this matter in detail with its cogent reasonings; whereas the lower appellate court, on the contrary, has gone wrong in interfering with the findings of the Trial Court by giving unconvincing and unacceptable reasonings to disbelieve the evidence. The primary object of the appellant is to protect the interest of the public at large and the interest of the individuals certainly

cannot prevail over the public interest. Thus, on any count, I hold that the findings arrived at by the Trial Court are perfectly valid and the lower appellate court has interfered with the findings of the lower appellate court without any valid justification.

19. From the above findings, it is crystal clear that the lower appellate court has erred in each and every stage of its findings and as such, the substantial questions of law based on which this Second Appeal was admitted, are answered in favour of the appellant/plaintiff. As such, by setting aside the judgment of the lower appellate court, the judgment of the Trial Court in decreeing the suit is confirmed. In the result, the appeal stands allowed without any order as to costs.