

**(2009) 11 MAD CK 0206**

**Madras High Court**

**Case No:** Second Appeal No. 1644 of 1995

P. Satchidhanandam

APPELLANT

Vs

Chinnu and Muniammal

RESPONDENT

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**Date of Decision:** Nov. 23, 2009

**Citation:** (2010) 1 LW 925

**Hon'ble Judges:** M. Jeyapaul, J

**Bench:** Single Bench

**Advocate:** V. Nicholas, for the Appellant; V. Raghavachari, for the Respondent

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### **Judgement**

M. Jeyapaul, J.

The Plaintiff is the Appellant herein.

2. The suit is filed by the Plaintiff seeking declaration of possessory title and also for permanent injunction. The Plaintiff would contend that the suit property which is a poramboke land was originally possessed and enjoyed by Ramasamy Goundar. The Plaintiff having originally entered into an agreement to purchase the possessory right of the said Ramasamy Goundar, clinched the sale transaction with him in the name of the Plaintiff's brother's wife by name Kanagavalli Ammal. Alleging that the Defendants are making an attempt to encroach upon the suit property, the Plaintiff filed a suit for the aforesaid reliefs.

3. The Defendants, having controverted the allegations found in the plaint, submitted in the written statement that the Defendants have been in possession and enjoyment of one acre of land in the suit S. No. 312. The Defendants disputed the allegation that the Plaintiff has been in possession and enjoyment of 2.43 acres of land in S. No. 312 belonged to the Government. The Defendants also set up a plea that the suit is bad for non-joinder of necessary parties.

4. The Trial Court having observed that the Plaintiff has established that he has been in possession and enjoyment of the suit property which belonged to the Government, granted the reliefs as prayed for. The first Appellate Court found that

the suit is bad for non-joinder of necessary parties inasmuch as the Government who has admittedly the paramount owner of the suit property was not made a party. The first Appellate Court having perused the receipts Exs. A4 to A13 evidencing payment of "B" memo charges rendered a finding that those documents do not relate to the suit property. The first Appellate Court also doubted the very veracity of the revenue proceedings under Ex. A3 as it does not bear the designation of the Revenue Officer who issued the said proceedings. The first Appellate Court having thus observed returned a finding that the Plaintiff was not entitled to the reliefs as sought for.

5. While admitting the second appeal, the following substantial questions of law were framed for determination:

1. Whether the lower Appellate Court erred in law in dismissing the suit in toto instead of granting a lesser relief to the Plaintiff in respect of 1.43 acres out of 2.43 acres.

2. Whether the lower Appellate Court is correct in not granting the relief to the Plaintiff, on the ground that the Government of Tamil Nadu was not made a party, as the suit property is a poramboke land.

6. The learned Counsel appearing for the Plaintiff/Appellant would vehemently submit that Exs. A1 and A3 would go to establish that the Plaintiff having got into possession of the suit property, has been paying B-memo charges under Exs. A4 to A. 13. It is his further submission that the suit is not one for declaration of title. In a suit for declaration of possessory title, the Government need not be arrayed as one of the necessary parties to the suit. It is his further submission that the first Appellate Court failed to appreciate the voluminous materials produced to establish long possession of the Government poramboke land by the Plaintiff. Therefore, he would submit that interference with the judgment of the first Appellate Court is called for.

7. The learned Counsel appearing for the Defendants/Respondents would submit that in a suit for declaration of title or possessory title with respect to poramboke land, the Government shall be the necessary party. The first Appellate Court has rightly dismissed the suit as the Government was not made a necessary party. It is his further submission that Ex. A3 does not bear the designation seal of the officer who issued the said proceedings. Therefore, no evidentiary value can be attached to Ex. A3. AS Exs. A4 to A13 do not bear the Survey number, by no stretch of imagination, it can be construed that those documents relate to the suit poramboke land. Therefore, he would submit that the first Appellate Court has rightly appreciated the materials on record and rejected the plea for declaration of possessory title and permanent injunction.

8. The fact remains that the suit has been filed for declaration of possessory title. Even if the Government has recognized the possession of the poramboke land by an

individual pursuant to his encroachment, when he sought for the relief of declaration of possessory title, the Government has a say in the matter. Behind the back of the paramount title holder whether title or possessory title of a third party cannot be decided and declared. The Government being the paramount owner of the poramboke land, may have serious objection in granting the declaratory relief for very many reasons. It may be a case where the Government might have recognised some other person as the encroacher and consequently they might have started collecting B-memo charges from them. There may be a case where the Government would object to such a declaration of possessory title of an encroacher who had failed to pay the B-memo charges. Unless the paramount title holder is made as a necessary party, declaratory relief cannot be granted. Therefore, it is held that no relief for declaration of possessory title can be granted to the Plaintiff as the paramount owner of the poramboke land namely the Government was not made a proper and necessary party to the suit. At any rate the aforesaid finding of the Court would not affect the other relief of permanent injunction sought for by the Plaintiff as against the Defendants.

9. Coming to the merit of the case, it is found that the Plaintiff sets up a plea that he purchased the possessory title to the suit property from one Ramasamy Goundar under Ex. A2 in the name of his brother's wife, Kanagavalli Ammal. He pleads that Kanagavalli Ammal was a name lender for the benami sale clinched by the Plaintiff. Such a plea was taken by the Plaintiff behind the back of the said Kanagavalli Ammal. In the absence of Kanagavalli Ammal the possessory title to the property cannot also be determined, inasmuch as Ex. A2 stands in the name of the said Kanagavalli Ammal.

10. Now the Court will have to find whether the Plaintiff can get a relief for permanent injunction with respect to 2.43 acres of land in S. No. 312. Ex. A1 would disclose that the Plaintiff had entered into an agreement for sale with one Ramasamy Goundar with respect of the suit property as early as on 31.03.1958. The Court is not inclined to go into the subsequent sale deed Ex. A2 dated 02.05.1958 as it stands not in the name of the Plaintiff but in the name of one Kanagavalli Ammal, reportedly, the wife of the brother of the Plaintiff.

11. Ex. A3 is an important document which would go to establish that the Government who is the paramount owner of the property recognised the possession and enjoyment of the property in S. No. 312 admeasuring 2.43 acres. It is vehemently contended by the learned Counsel appearing for the Defendants/Respondents that the said document does not bear the date and designation of the officer who issued the said proceedings. True it is that the date of issuance of the proceedings under Ex. A3 is not mentioned specifically thereunder. But on a careful perusal of Ex. A3, it is found that the encroachment and possession of the property by the Plaintiff during the year 1972-73 was under challenge by the Government. The Government has directed the Plaintiff to appear before the

Revenue Authorities to enquire as to why he should not be evicted from the premises in his occupation. The survey number and extent of the property in his occupation were clearly referred to on the back side of the document Ex. A3. Though the designation seal was not found on the back side of the proceedings under Ex. A3, the signature of the official is found over it. It is a document which originated in the year 1972-73. At this distance of time we cannot expect the Plaintiff who has been in lawful custody of Ex. A3 to explain as to why the designation of the Revenue Official who issued the said proceedings did not find a place in Ex. A3. The Court does not entertain any doubt as to the veracity of the document Ex. A3 which would go to establish that the possession of the suit property by the Plaintiff was recognised by the Government.

12. As rightly pointed out by the learned Counsel appearing for the Defendants/Respondents none of the documents Exs. A4 to A13 refers to specifically the extent of the property and the relevant survey number. Firstly, it is found that there is no separate column in the receipt for B-memo charges to note down the survey number. There is a separate column to enter the patta number of the property concerned. The suit property being the poramboke land, no patta for the said property in the name of third party would have come into existence. Just because the survey number is not found in the receipts for payment of B-memo charges, the Court cannot come to a conclusion that Exs. A4 to A13 have no connection with the suit property. Exs. A4 to A13 will have to be carefully appreciated in the background of the agreement of sale Ex. A1 and the proceeding Ex. A3 issued u/s 7 of Act 3 of 1950 by the Revenue Authorities. Exs. A.1 to A.3 and would go to establish that the Plaintiff has come to occupy the suit property bearing S. No. 312 admeasuring 2.43 acres. It is nobodies case that the Plaintiff has been in possession of any other poramboke land in the very same village. In fact, the Defendants would admit that the Plaintiff has been in possession of 1.43 acres and not 2.43 acres in the suit property. In such circumstances the Court will have to draw an inference that Exs. A4 to A13 relate only to the suit property.

13. By producing the aforesaid voluminous documents which came into existence long prior to the suit, the Plaintiff has established that he has been in possession and enjoyment of the suit property which is a poramboke land.

14. The Defendants also made an unsuccessful attempt to establish their possession of the suit property with respect to one acre of land. Firstly, it is found that the B-memo charges alleged to have been paid by the Defendants under Exs. B3 to B7 have come into existence only after the suit has been filed by the Plaintiff on 12.05.1987. The other documents namely Exs. A1 and A2 which also came into existence long subsequent to the suit would not go to establish the possession of one acre of land in the suit property by the Defendants.

15. Though the Plaintiff is not entitled to seek for declaration of possessory title, either factually or legally, he is entitled to protect his possession from third parties

including the Defendants, so long as the paramount owner of the property, namely, the Government permits the Plaintiff to continue in possession of the suit properties. Inasmuch as the Plaintiff has established his possession with respect to the entire 2.43 acres of land in S. No. 312, the question of granting lesser relief with respect to 1.43 acres does not survive for consideration. The first Appellate Court should have granted the relief of permanent injunction inasmuch as the Plaintiff has established that he has been in possession and enjoyment of the suit property. The prayer for grant of declaratory relief, as the Government, a proper and necessary party, was not impleaded in the suit is rejected. The substantial questions of law framed by this Court are answered accordingly.

16. In the result, the Second Appeal is partly allowed and the judgment of the first Appellate Court is set aside and the judgment of the Trial Court is modified and as a result, the prayer for declaratory relief sought for by the Plaintiff is dismissed and the prayer for permanent injunction sought for by the Plaintiff is granted. There is no order as to costs.