

IN THE COURT OF SUB-ORDINATE JUDGE, AT ARAKONAM

Present: Dr.S.T.Lakshmi Ramesh. M.L.,Ph.D.,
Subordinate Judge, Arakonam.

Wednesday the 11th day of March 2020

O.S. No 01/2018

E. Parasuraman.

... Plaintiff.

.Vs.

1. The Thasildhar,
Nemili Taluk Office,
Nemili Taluk, Vellore District.

2. The Revenue Divisional Office,
RDO Office, Ranipet.

3. The Collector of Vellore District,
Collector Office,
Sathuvachari, Vellore.

...Defendants.

This suit for coming on 03.03.2020 for final hearing before me in the presence of Thiruvallargal.S.P.Sampathkumar, P.Jaisankar and Tmt.K.Shanthi, counsels for the plaintiff and Thiru.S.Thiyagarajan, Addl.Government Pleader counsel for the defendants and having stood over for consideration till this day, this court delivered the following:-

JUDGMENT

Suit for Declaration of title and Permanent Injunction.

2. **Plaintiff's side averments:-**

The plaintiff submit that the portion in the schedule mentioned properties hereafter called the suit property and other properties originally belonged to one Lakshmi Ammal and her elder sister Givndhammal who were in possession and enjoyment of the said property. The said Govindhammal died leaving behind her younger sister Lakshmi Ammal was in possession and enjoyment of the suit property as the absolute owner of the same. The plaintiff's brother namely Chockalinga Naicker purchased the said property from the said Lakshmi Ammal under the

registered sale deed dated 22.05.1978 bearing document No.824/1978 for the valid sale consideration.

The plaintiff's brother Chockalingam purchased the said property and also the other portion in the schedule mentioned property from the adjacent owner Dharmalinga Naicker on oral sale. The plaintiff's brother Chockalingam purchased the schedule mentioned property out of income from the joint family consists of the said Chockalingam and his brothers namely Rajagopal, Ganesan, Parasuraman, Arumugam and Shanmugam, including the plaintiff were in joint possession and enjoyment of the schedule mentioned property after purchasing the same. In the oral partition took place between the said Chockalingam and his aforesaid brothers including the plaintiff were in joint possessions and enjoyment of the schedule mentioned property after purchasing the same. In the oral partition took place between the said Chockalingam and his brothers including the plaintiff on 16.01.1982, the schedule mentioned property was allotted to the plaintiff. The plaintiff has been in possession and enjoyment of the schedule mentioned property from the date of oral partition took place between the said Chockalingam and his aforesaid brothers including the plaintiff. At the time of oral partition, the schedule mentioned property is the old tiled house with common passage. Subsequently the plaintiff constructed the RCC Roofed house in the year 1998. The plaintiff has been in possession and enjoyment of the schedule mentioned property.

The plaintiff has been in possession and enjoyment of the schedule mentioned property as the absolute owner of the same without any interference from anybody. The plaintiff's possession and enjoyment of the schedule mentioned property is open, continuous and uninterrupted. The plaintiff is living with his family. The plaintiff also paid the house tax and water tax.

The plaintiff's brother Chokalingam purchase the suit property with the revenue survey number as 1176A/1B, subsequently the defendants changed the revenue survey number into the village Natham Survey number as 1335/8. When the defendants changed the revenue riot way land into the Natham land, they changed the

said survey number 1335/8 as the Natham Sandhu. The change the revenue records as Natham Santhu without any enquiry with the absolute owners will not bind over the absolute owners. Further it is also against the Tamil Nadu survey and boundaries Act.

The 1st defendant issued the notice dated 01.12.2017 that the plaintiff has no right in the 'A' schedule mentioned property because it belonged to the Government and further stated that they will remove the constructions raised in the 'A' schedule mentioned property. The defendants has no any right to dispossess the plaintiff from the suit property because any change of revenue riot way land will not bind over the plaintiff as per several reported judgments. So the notice issued by the 1st defendant is not valid under law and it is against the natural justice. Hence the plaintiff filed this suit for the declaration of title to the suit property and declaration that the notice dated 05.12.2017 issued by the 1st defendant is not valid under law and it will not bind over the plaintiff. The 1st defendant demolished the building, the plaintiff with his family will be in the street and so the plaintiff also filed the petition for interim injunction. The 1st defendant issued the notice to demolish the building, the plaintiff is unable to issue the notice under section 80 of CPC to the defendants. So the plaintiff filed the petition to dispense with the issuing of notice under section 80 of CPC.

3. Written Statement filed by 1st defendant adopted by 2nd and 3rd defendants:-

The defendant denies all the averments to the plaint. One Mrs.Jayanthi W/o.Late Ravichandran, resident of Perumal Kovil Street, Kaveripakkam Village, had submitted a representation with the District Collector, Vellore District, assigned number to the said representation as No.2017/9005/04/477953/0508 dated 08.05.2017 and directed this defendant to enquire into the matter and take appropriate action on the petitioner. The Nemili Taluk Survey officials conducted survey on the suit property and in result of survey it was revealed that the said survey No.1335/8 is lane as per village revenue records. The plaintiff has encroached the common lane which

is ingress and egress to the petitioner Mrs.Jayanthi's house. This defendant issued notice to the plaintiff on 05.12.2017 to the plaintiff calling upon the plaintiff to reply thereon within 7 days and to remove the encroachment.

The 1st defendant submit that basing on the report given by the officials of survey department, this defendant has issued notice to the plaintiff to demolish the super structure constructed by the plaintiff by encroaching the common lane which is purely Government property, which has been used by the residents of the village as ingress and egress. A copy of the eviction notice issued by this defendant to the plaintiff along with a copy of field map book in respect of survey No.1335 of Kaveripakkam Village wherein the encroachment has been highlighted in yellow colour is enclosed herewith and the same may please be read as part and parcel of this written statement. The suit property comprised under survey No.1335/8 of Kaveripakkam Village is common lane, which belongs to the Government. The 1st defendant stoutly denies the averment of the plaintiff that the plaintiff's brother namely Chockalinga Naicker purchased the suit property from Mrs.Lakshmiammal under Registered sale deed dated 22.05.1978 bearing document No.824/1978 for the valid sale consideration. The said document is not at all related with the suit property. The plaintiff has enclosed the said document only to mislead this court.

It is pertinent to note the sec.14 of Tamil Nadu Land Encroachment Act 1905 in this matter and the said provision reads as under:

Sec.14. Bar of jurisdiction of Courts - Notwithstanding anything contained in any law of the time being in force no order passed or proceeding taken by any officer or authority or the State Government under this Act shall be called in question in any court, in any suit or application and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority of the State Government in pursuance of any power conferred by or under this act.

The plaintiff has received the eviction notice issued by this defendant and the plaintiff neither sent any reply nor removed the encroachment. The plaintiff knows very well that the 1st defendant has taken all steps to remove the encroachment basing

on the representation given by Mrs.Jayanthi, W/o.Late.Ravichandran, who is resident of the same village. The plaintiff has conveniently omitted Mrs.Jayanthi, who has brought the encroachment of the plaintiff to the light of this defendant. The complainant Mrs.Jayanthi is the just and necessary party. The plaintiff has not joined the complainant Mrs.Jayanthi as defendant in the suit. This suit is bad for non joinder of necessary party.

The suit property being a Government land , the plaintiff is duty bound to remove the encroachment. The 1 st defendant has already initiated eviction proceedings by issuing notice to the plaintiff under section 7 of Tamil Nadu Land Encroachment Act. Under such circumstances, filing of the suit itself not maintainable and the plaintiff is not entitled for any interim relief.

The plaintiff has not issued any notice to these defendants under section 80 of CPC which is mandatory for adding any public officer as party. Hence this suit is not maintainable against the defendants. The claim of the plaintiff is vague and vexatious. The plaintiff has no merit to file this suit against these defendants and the same is liable to be dismissed in view of the above said facts and circumstances.

The plaintiff is not at all having any right, title and interest over the suit property. The plaintiff is an encroacher and in view of the same the plaintiff is not entitled to seek any relief in respect of suit property.

4. In this suit the following issues have been framed:-

1. Whether the plaintiff is entitled for declaration of his right and title over the suit property?
2. Whether the plaintiff is entitled for permanent injunction as claimed for?
3. To what other relief?

5. Plaintiff was examined as PW1 by way of filing Proof Affidavit Ex.A1 to Ex.A4 were marked. One Mr. Chokkalingam was examined as PW2. Ex.A1 is the Original Registered Sale deed, dated 22.05.1978. Ex.A2 is the Tax receipt. Ex.A3 is the Water Tax receipt. Ex.A4 is the Electricity Bills. No oral evidence and documents were not examined on the defendants side.

6. ISSUE NO 1 to 3:-

Before advertng to the facts of teh case, this court feels that it would beappropriate to keep in mind the following maxims:

(i) *Affirmantis est probare [He who affirms must prove]*

(ii) *Affirmanti non neganti incumbit probatio*: The burden of proof lies upon him who asserts and not upon him who denies.

7. First and foremost, in a suit for declaration of title, it is the bounden duty of theplaintiff to prove his case. The burden of proof is ambulatory. The initial burden of proof in cases of this nature is only on the plaintiff, who should enter into the box and prove his title positively as has been already highlighted supra. If at all the plaintiff succeeds in establishing his title by producing such clinching evidence, then the burden of proof gets shifted from the plaintiff's side to the defendants' side and the defendants had to place sufficient material in order to disprove the plaintiff's case. Therefore, It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The Apex Court had examined the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. *In Maran Mar Basselios Catholicos v. Thukalan Paulo Avira* reported in *AIR1959 SC 31* it was observed that “in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title.” *In Nagar Palika, Jind v. Jagat Singh, Advocate (1995) 3 SCC 426*, this Court held as under:

“the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that

question first before going into any other question that may arise in a suit.”

8. Thus, it is clear that the legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. The Apex Court also held that, even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be nonsuited. In light of such holdings, this court has to see if the trial court had examined question in depth, as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land or went on to examine in depth the case of the defendants and dealt with a question whether the defendant has proved his case.

9. In the instant case, according to the plaintiff the suit property originally belonged to one Lakshmiammal and her elder sister namely Govindammal who were in possession and enjoyment of the same . After the death of Govindammal and her pre deceased husband who died issue less the said Lakshmiammal was in possession of the properties as absolute owner. The plaintiff is the brother of one Chockalinga Naicker who purchased the said property from Lakshmiammal through a registered sale deed dated 22.05.1978 for a valid sale consideration. The said original sale deed has been produced Ex.A1. It is the plaintiff case that the adjacent property was also purchased by his brother out of the joint family income and thereafter they effected a oral partition among themselves on 16.01.1982 through which the suit schedule property was allotted to the plaintiff. Thus claims to be in possession of the same from the date of oral partition. To substantiate his case the plaintiff relied on Ex.A2 the tax receipt which according to him was constructed as RCC roofed house in 1998. Apart from that the water tax receipt in the name of one Geetha running from the year 2013

to 2017 has been produced. The plaintiff claims that the same to have been paid by him. Apart from that the electricity bills in his name has been produced from the year 2014 to 2017 for electricity connection No.082777-001-1793. Thus by producing the above documents the plaintiff claims to have proved his case. The plaintiff filed by the suit against the defendant 1 to 3 by stating that after his brother Chockalingam purchased the suit property in S.No.1176/1B the defendant changed the same into village Natham S.No.1335/8 and named it has Natham Sandhu. According to him the change by revenue records would not bind him. The case of the plaintiff was opposed by the defendant stating that one Mrs.Jayanthi of the said village made a representation to the District Collector, Vellore requesting to remove the encroach made by the plaintiff for which an enquiry was made and surveyor reveled that as per the village revenue records the S.No.1335/8 is a lane. And that the plaintiff as encroached the same. Notice was issued by the 1st defendant to the plaintiff for eviction but the plaintiff failed to remove the same no such change in revenue record were made the said Jayanthi is necessary party to the suit thus claims the suit to be dismissed. Issues were framed and the case went on trial.

10. As earlier stated the plaintiff as examined as himself as PW1 and marked Ex.A1 to A4. the plaintiff claims that he derived the right and title over the property through and oral sale deed from his brother Chockalingam, Rajagopal, Ganesan, Arumugam, Shanmugam and himself on 16.01.1972. Apart from that the plaintiff claims that his brother Chockalingam purchased the suit property from one Lakshmiammal.

11. In the present case, the plaintiff who claims that the suit property was purchased by his brother from one Lakshmiammal has failed to produce the parent document through which his brother derived title. Further the plaintiff who claims to have obtained the suit property by way of oral partition is expected to prove his case on his own merits. The plaintiff failed to examine any of his brothers among whom the oral partition was made to establish such partition if any. Therefore, the plaintiff

not only failed to prove the title of his predecessor nor attempted to establish the oral partition between his brothers. The plaintiffs through the oral partition claims that the suit property which was an old tiled house had a common passage which he subsequently constructed into a roofed house in 1998. The documents tax receipts, water tax receipts and electricity receipts produced does not reveal that he had been in possession are constructed the suit property in 1998. The plaintiff failed to explain as to why the tax receipts in Ex.A2 pertaining to the year 2012 to 2017 still stood in the name of Govindammal while he claim, that the same was purchased by his brother Chockalingam as early on 22.05.1978. No reason was also offered for not examining his brother Chockalingam in whose name Ex.A1 stands. The water tax receipts produced in Ex.A3 series stood in the name one Geetha. The plaintiff failed to explain has to how the said Geetha was connected with the suit property. Further no relating documents were produced to show that the RCC roofed house in which the plaintiff claims to be in possession is connected with Ex.A3 series. The electricity bills in Ex.A4 though stands in the name of plaintiff was not related to the electricity card since no electricity white meter card was produced. No connecting documents were produced to show that the electricity receipts pertains to the suit property in which the plaintiff claims to be in possession.

12. It is needless to state that the person claiming oral sale has to prove the same. Further, though the plaintiff claims an oral partition no efforts were taken to produce any witnesses who were aware of the alleged oral partition. Therefore, the plaintiff at the first instance has not established his title over the suit property. The next contention of the plaintiff through the evidence of PW1 is that the revenue S.No.1176A/1B referred in Ex.A1 has been changed by the defendants as village Natham S.No.1335/8. The same has not been established. No documents on the side of the plaintiff was produced to prove that there was any change in the nature and character of the S.No.1176A/1B into S.No.1335/8. At this juncture it is pertinent to note that the defendants 1 to 3 have categorically stated in the written statement that

they have not effected any changed in the survey number as alleged and that as per revenue records S.No.1335/8 is a lane. In such circumstances in the absence of any evidence either oral or documentary to establish that the S.No.1176A/1B was changed in 1335/8 this court is of the considered view that the plaintiff has failed to prove his case. It is also essential to note that the plaintiff himself in his claim admitted that the 1 st defendant issued a notice to the plaintiff stating that the plaintiff has no right in the schedule property since the same belonged the Government and that they will remove the construction raised by the plaintiff. In the absence of the plaintiff producing sufficient documents to show that the suit property derived through his predecessor by way of examining his brother or by way of producing his brothers predecessor's title deeds, it could not be concluded that the plaintiff established his case. In such circumstances, this court if of the view that the plaintiff failed to establish his title. The plaintiff is not entitled for declaration of his right and title in the suit property as claimed.

13. It is true that the defendants 1 to 3 though filed written statement did not enter into the box. The learned counsel for the plaintiff contented that the defendant safely restricted themselves from entering into the box and that the same would clearly that they do not have a fit case. Thus the learned counsel for the plaintiff argued that the plaintiff has proved his case.

14. This court is not able accept the contention of the plaintiff since in a suit for declaration as earlier discussed the plaintiff has to stand on his own legs and cannot take advantage of the weakness on the side of the defendant. Thus, issue No.1 and 2 is decided against the plaintiff. The plaintiff is not entitled for the relief claimed.

In the result the suit is dismissed. No cost.

Dictated by me to the Steno – Typist, and computerized by her, corrected and pronounced by me in the open court on this 11th day of March 2020.

Subordinate Judge,
Arakkonam.

Plaintiff's side Witness:-

PW1. E.Parasuraman.

PW2. Chokkalingam.

Plaintiff's side Exhibits:-

1.	Ex. A1	22.05.1978	The original Registered Sale deed.
2.	Ex. A2	-	Tax receipts.
3.	Ex. A3	-	Water Tax receipts.
4.	Ex. A4	-	Electricity Bills.

Defendant side Witnesses and Exhibits:- ..Nil..

Subordinate Judge,
Arakkonam.