

A.R.Karuppusamy Pillai.

3)The suit filed by A.R. Karuppusamy Pillai for eviction of the tenant of the Zamindar, namely, Yakkoppu Reddiar was decreed by the trial Court. The appeal filed by Yakkoppu Reddiar was dismissed by the High Court.

4)In 1969, Karuppusamy Pillai gifted the suit properties to respondent No.1.

5) Defendant Nos.1 to 3 were questioning her title and were trying to interfere with her possession.

6) Defendant Nos. 4 to 11 had unauthorisedly occupied a portion of the suit property and, therefore, it had become necessary to seek a decree for recovery of possession.

The State of Tamil Nadu, Sub-Collector, Kovilpatti and Tahsildar, Vilathikulam, who were impleaded as defendant Nos. 1 to 3 pleaded that the suit properties were Government Paramboke and respondent No.1 has no right over the same. The petitioners, who were joined as defendant Nos. 4 to 11 pleaded that they were occupying the suit properties as tenants of the State Government.

After considering the pleadings of the parties and the evidence produced by them, the trial Court decreed the suit vide judgment dated 16.3.1989 and held that the suit properties are not

3

Government Paramboke and, as such, the State Government and its functionaries had no right over the same and defendant Nos. 4 to 11 cannot be treated as tenants of the State Government.

The judgment and decree of the trial Court were challenged by the State and its functionaries and also by petitioners by filing separate appeals. All the appeals were dismissed by the lower appellate Court by common judgment dated 20.04.1992 and the finding recorded by the trial Court that the suit properties are not Government Paramboke was upheld.

The State of Tamil Nadu, Sub-Collector, Kovilpatti and Tahsildar, Vilathikulam did not challenge the judgment of the lower appellate Court and thereby allowed the concurrent finding recorded by the Courts below that the suit land was not Government Paramboke

to become final. The second appeals filed by the petitioners were dismissed by the learned Single Judge who opined that the concurrent finding recorded by the two Courts about the nature of the suit properties does not suffer from any error apparent or perversity. This is evinced from paragraphs 7 to 10 of the impugned judgment, which are extracted below:

7. Though substantial questions of law were framed at the time of admission, after hearing the arguments, I am inclined to frame the question of law, which has to be answered first, as follows:

"Whether the appellants can sustain their claim in the above second Appeals, though the judgment and decree passed In A.S No. 90/1989, confirming the decree passed in O. S. No. 2/1986 has become final against the defendants 1 to 3 in O.S.No. 2/1986 is concerned?

8. The 1st respondent/plaintiff claims title on
4

the basis of Exs. A8 and A14, with respect to the Suit Properties. But the appellants have come forward with the plea that the suit properties are government - poromboke and so the Government are the owner of the same and not the 1st respondent/plaintiff. They came forward with the plea that with the permission of the Government, they have been in possession of the suit properties and so the 1st respondent/plaintiff cannot evict them.

9. It is not in dispute that the appellants are not claiming any independent title as against the claim of the 1st respondent/plaintiff Learned counsel for the appellants fairly submitted that they are defending the case of the 1st respondent/plaintiff only on the basis that the Government is the owner of the properties and not the plaintiff. On the basis of the above said claim, we have to now deal with sustainability of the second appeal filed by the appellants. In O.S. No. 2/1986, the plaintiff's title with respect to the suit properties had been declared in the presence of the Government, as the Government have been impleaded as 1st defendant and the officials have been impleaded as defendants 2 and 3, and a decree for injunction also had been granted, as sought for by the 1st respondent/plaintiff, against them. Defendants 1 to 3 having aggrieved by the judgment and decree passed in O.S. No. 2/1986 filed an Appeal in A.S. No. 90/1989. As stated already, the said Appeal was dismissed by confirming the judgment and decree in O.S. No. 2/1986. So the decree passed in O.S. No. 2/1986 merged with the decree in A.S. No.90/1989. But the Government had accepted the said decree without filing any further appeal to this Court. Admittedly, no Second Appeal is filed against the decree passed in A.S. No. 90/1989 by the Government, and the decree passed against the Government with reference to the title of the 1st

respondent / plaintiff with respect to the suit properties has become final.

10. In view of the above, the appellants cannot now agitate that the Government are having title in the suit properties, and the 1st respondent/ plaintiff cannot claim any right, and thereby their possession should be protected by setting aside the decree, granted by the lower Courts for possession. This Court has come to such as

5

conclusion only on the basis that the appellants are not claiming any independent right in the suit properties, but they are claiming right to be in possession only through the Government, and the Government have accepted the decree passed against them and in favour of the plaintiff."

We have heard learned counsel for the parties and perused the record. In our considered opinion, the finding recorded by the trial Court, which was confirmed by the lower appellate Court that the suit properties were not Government Paramboke was a pure finding of fact based on correct analysis of the pleadings and evidence of the parties and the learned Single Judge of the High Court rightly declined to entertain the petitioners' challenge to the said finding.

We may add that the petitioners had not claimed independent title or right to continue in occupation of the property. Therefore, it is not possible to find any fault with the decree passed by the trial Court and judgments of the lower appellate Court and the High Court.

The special leave petitions are accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master