



S.A.No.740 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.740 of 2010

1.Kaveri,
2.Alamelu.

... Appellants

-Vs-

Ramasamy

... Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.12.2007 in A.S.No.111 of 2007, on the file of the learned Principal Subordinate Judge, Salem, against the judgment and decree dated 02.04.2007 in O.S.No.676 of 2005, on the file of the learned I Additional District Munsif, Salem.

For appellants : Mr.P.Jagadeesan

For respondent : Mr.K.Selvaraj



S.A.No.740 of 2010

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JUDGMENT

The instant second appeal has been filed at the instance of the defendants. The respondent herein was the plaintiff before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which give rise to this second appeal, are as follows:

3. The first and second items of the suit property was purchased by the plaintiff's father Mr.Kandasamy Gounder on 26.04.1954 and 16.06.1956, respectively. Alongwith the item 1 & 2 properties, the plaintiff had also been enjoying the third item of suit property. The plaintiff's father died leaving behind the plaintiff as his sole legal heir to succeed his estate.

4. According to the plaintiff, the third item of the property is a poramboke land situated on the southern side of the first and second items of the suit properties. He had been cultivating all the three items of



S.A.No.740 of 2010

the suit properties and he got patta in respect of his two properties. The defendants owned the property which is adjacent to the suit property on southern side. In order to grab the suit properties, the defendants wanted to purchase the said property from the plaintiff. However, the plaintiff refused to sell the same. Due to the vengeance, the defendants and their hatchman gathered near the suit property and attempted to trespass into the suit property. Hence, the plaintiff filed the suit seeking the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff.

5. The said suit was resisted by the defendants by contending that they did not have any objection in respect of the item nos.1 and 2 of the suit properties which belonged to the father of the plaintiff. However, the third item of the property is Odai poramboke. Therefore, the plaintiff could not encroach and hold the suit property. The defendant's predecessors had been using the Odai poramboke for their access to reach their property. Hence, the defendants prayed to dismiss the suit.



S.A.No.740 of 2010

WEB COPY

Evidence and documents:

6. Before the Trial Court, on behalf of the plaintiff, the plaintiff himself was examined as P.W.1 and two more witnesses viz., Mr.P.Arumugham and Mr.G.Vaiyapuri were examined as P.W.2 and P.W.3, respectively and 12 documents were marked as Exs.A1 to A12. On behalf of the defendants, the first defendant herself was examined as D.W.1 and three more witnesses viz., Mr.M.Ramu, Mr.P.Appasamy and Mr.Govindasamy were examined as D.W.2 to D.W.4, respectively and eight documents were marked as Exs.B1 to B8.

Findings of both the Courts below:

7. The Trial Court, after having considered the oral and documentary evidence, granted an injunction in respect of the item nos.1 and 2 of the suit properties. However, in respect of item 3 of the suit properties, since the same is a water body, the Trial Court declined to grant permanent injunction and dismissed the suit. Aggrieved by the



S.A.No.740 of 2010

same, the plaintiff had approached the First Appellate Court by filing the appeal. The First Appellate Court allowed the appeal and thereby granted decree as prayed for including the third item of the suit properties. Challenging the same, the defendants are now before this Court by way of this second appeal.

Submissions of both sides:

8. The main contention put forth by the learned counsel for the appellants/defendants is that the third item of the suit property is odai poramboke and that the plaintiff could not encroach upon the said property. In this regard, the learned counsel for the appellants relied upon the common order passed by the First Bench of this Court in ***W.P.(MD).No.22163 of 2018 etc., batch (decided on 27.01.2022.*** In the above judgment, this Court has given considerable guidelines as to how the Government authorities to deal with the encroachment in respect of the water body. Hence, the learned counsel for the appellants/defendants prayed to interfere with the judgment rendered by the First Appellate Court.



S.A.No.740 of 2010

WEB COPY

9. Per contra, the learned counsel for the respondent/plaintiff would contend that, even if there is an encroachment of odai poramboke, the Government alone is competent to interfere with the plaintiff's possession and not the defendant, who is a third party and has not in actual physical possession and enjoyment of the suit property. It is also contended by the learned counsel for the respondent/plaintiff that the finding recorded by the First Appellate Court that the defendant has no right to interfere with the possession is well merited one and does not require any interference by this Court under Section 100 of the Civil Procedure Code. Hence, he prayed to dismiss this second appeal.

10. This Court has given its anxious consideration to the submissions made by both sides.

Analysis of the submissions:

11. While looking at this Case, the plaintiff and the defendants



S.A.No.740 of 2010

are neighbours. According to the plaintiff, he had been using the said odai poramboke, in which, the defendants were attempting to interfere with the same.

12. The only concern, which has been raised by the learned counsel for the appellants/defendants, is that the third item of the suit property is a water body and there is an encroachment. Even if the same is presumed to be true for argument sake, it is for the Government to take action according to law and not by the defendants on their own. Here the plaintiff has come forward with the suit only upon the interference made by the defendants. Therefore, the First Appellate Court has rightly arrived at a conclusion that though the 3rd item of the suit property is classified as odai poramboke, when the defendants interfered with the possession of the plaintiff, he is entitled to have permanent injunction against the defendants as the defendants has no authority to take law on their own hand.

13. Therefore, this Court is of the firm view that the finding recorded by the First Appellate Court is well merited and this Court does



S.A.No.740 of 2010

WEB COPY

not want to interfere with the same. However, this Court makes it clear that in future, if the Government wants to proceed against the alleged encroachment of odai poramboke by the plaintiff, the Government is at a liberty to resume the land by following due procedure.

14. In view of the above discussions, there is no substantial question of law arising in this matter.

15. In the result, this second appeal is dismissed as indicated above by confirming the judgment and decree of the First Appellate Court. There shall be no order as to costs.

08.12.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Principal Subordinate Judge, Salem,

2. The I Additional District Munsif, Salem,



S.A.No.740 of 2010

WEB COPY

3.The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.

apd

S.A.No.740 of 2010