



S.A.No.826 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.11.2023

Delivered on: 05.01.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

S.A.No.826 of 2005

1. Nagappan
2. Natarajan

...Appellants/appellants/
Defendants 1 and 2

Vs

- 1.K.Vedachalam Naicker
2. Neelambal
3. The Block Development Officer
Katthankulathur, Chengalpattu Taluk
Kanchipuram District

... 1st respondent/Plaintiff

..Respondents 2 and 3/
Defendants 3 and 4

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code as against Judgement and Decree in A.S. No.35 of 2003 on the file of the Additional Sub Judge, Chengalpattu dated 29.10.2004 in confirming the judgment and decree in O.S.No. 277 of 1997 on the file of the District Munsif, Chengalpattu dated 27.02.2003.

For Appellants : M/s.V. Pavithra

for M/s.V.Srimathi

For R-3

: Dr. S.Suriya

Additional Government Pleader



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J U D G M E N T

This second appeal has been preferred as against the decree and judgment passed in A.S.No.35 of 2003 on the file of the Additional Sub Court, Chengalpattu, wherein the first appellate Court has dismissed the appeal by confirming the decree and judgment in O.S.No. 277 of 1997 on the file of the District Munsif Court, Chengalpattu.

2. The plaintiff has filed the suit as against the defendants for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The trial Court has partly decreed the suit and dismissed the suit in respect of the 20 feet pathway and decreed the suit in respect of remaining land by restraining the defendants from interfering with the peaceful possession and enjoyment of the property.

3. As against the decree and judgment the defendants 1 and 2 have preferred appeal in A.S. No. 35 of 2003 on the file of the Additional Sub Court, Chengalapattu and the same was dismissed by confirming the decree and judgment of the trial Court. As against the decree and judgment, the present second appeal has been filed by the appellants/defendants 1 and 2.

4. The gist of the plaint averments are as follows:

The plaintiff has encroached the oadi poramboke land in S.F.No.201/1C and they have been in possession and enjoyment of the property for an extent of 2 acres, for more than 35 years. The plaintiff has paid B memo charges to the



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Government from the year 1962 and he has been cultivating paddy and other crops. Plaintiff has also sought for patta to the property and the Village Administrative Officer has also given no objection to grant patta to the property. For the past 25 years, none of the villagers have objected the plaintiffs. The properties are adjacent to the defendants properties and also the jurisdiction limit for the village. The defendants have no right over the property and they attempted to encroach the property. While so, due to previous enmity on 31.10.1997 and 06.11.1997 the defendants attempted to cut the trees situated in the fence and the same was averted by the plaintiff. However on 08.11.1997, the defendants along with henchmen forcibly entered into the property and cut the live fence. During the pendency of the suit, on 10.05.2000 and 19.06.2000, the Keelkalvai village panchayat President gave a notice to form road over the property and the same was suitably replied by the plaintiff on 15.05.2000 and 29.06.2000. Therefore, the said suit was filed for the relief of permanent injunction.

5. The gist of the averments made in the written statement are as follows:

The averments made in the plaint are denied as false.. Infact, the property situated in S.F.NO.201/1C is classified as Odai Poramboke and thorough this land over flow of water from the lake would pass thorough this land. If the plaintiff allowed to encroach the property, there is no pathway to the over flow of water from the pond. As per the revenue records, the property situated in S.F.No.201/1B registered as road, two channels available between S.F. NO.201/1C



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ie., on the South and north of S.F.NO.201/1c. Southern side of the channel was used as pathway to the Nellikuppam villagers and they are using that land for access to their lands.S.F.NO.201/1C, 0.72 acres was encroached by the plaintiff. As per the revenue records, there is no encroachment by the plaintiff for an extent of two acres as alleged in the plaint. There was no any hut or well available in the suit property. The trees available in the oadi poramboke land are being auctioned by the panchayat every year. Already this defendants have filed suit is O.S.No.64 of 1998 to restrain the plaintiff from cultivating lands and also making any obstructions for the flow of water and enjoying the pathway right. Therefore, the suit is liable to be dismissed.

6. Based on the above said pleadings and upon hearing both sides the following issues were framed by the trial Court.

- 1) நிரந்திர உறுத்துக்கட்டடை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
- 2)வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரம் என்ன?

7. Inorder to prove the case of the plaintiffs, they have examined P.W.1 to P.W.3 and marked exhibits A1 to A42. On the side of the defendants, they have examined D.W.1 and no documents were marked. Apart from that court document, Ex.C.1 and C.2 were marked.

8. After evaluating the oral and documentary evidence, the trial Court has dismissed the suit in respect of 20 feet pathway and for the remaining land, the suit was decreed by restraining the defendants from interfering with the plaintiff



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peaceful possession and enjoyment of the suit property.

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9. As against the decree and judgment the defendants 1 and 2 have preferred appeal in A.S.No.35 of 2003 on the file of the additional Sub Court, Chengalpattu and the same was also dismissed by confirming the decree and judgment of the trial Court. As against the decree and judgment, the present second appeal has been filed by the appellants/defendants 1 and 2, on various grounds including substantial questions of law.

10. The learned counsel appearing for the appellant would contend that originally the properties are classified as odai poramboke and belongs to Government and the first respondent / plaintiff has no right or interest over the property but the trial court, had partly decreed the suit but dismissed the suit in respect of pathway. The appellant /defendants 1 to 4 and others have used the suit property as pathway and also the first respondent /plaintiff caused obstructions for the flow of water from the lake. Since the property is odai poramboke, the plaintiff has no right over the property and the Government is not impleaded as party in the suit and thereby, the first respondent/ plaintiff is not entitled for any relief and the suit is liable to be dismissed. The trial Court, without considering the above said aspect erroneously decreed the suit. Further, the first appellate Court, without considering the above said aspects confirmed the judgment of the trial Court. Therefore, the decree and judgment of the Courts below are liable to be set aside by allowing this appeal and the suit is liable to be



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11. The learned counsel appearing for the first respondent/plaintiff would contend that the property is classified as odai poramaboke and the first respondent/plaintiff encroached the property before 35 years and he is paying B memo charges to the Government and he digged the well and put up hut in the property and enjoying the property for more than 35 years. There is no any pathway is available in the suit property but the trial Court has dismissed the suit in respect of 20 feet pathway and decreed the suit since the property is under the possession and enjoyment of the first respondent /plaintiff. The appellate court also taking into consideration of all the facts and circumstances, dismissed the appeal and thereby, the second appeal is liable to be dismissed.

12. This Court heard both sides and perused the records.

13. At the time admitting the second appeal this Court has framed the following substantial questions of law.

1. In the absence of the Government as a party to the suit and when it is shown to own property in dispute can a decree for injunction be granted as prayed for?

2. When the property in respect of which injunction is sought for stands classified as a poramboke land, over which every citizen have a right of usage, can a court of law grant an exclusive right in favour of one such person alone to prevent other abusing it?



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14. In this case it is admitted fact that the suit property is odai poramboke and belongs to Government and the first respondent/plaintiff had encroached the property. First substantial question of law is concerned it is admitted fact that the property is classified as odai poramboke and the property belongs to the Government but the Government is not added as party. The Block Development Officer is added as party since he issued notice to the plaintiff for forming road in the suit property but the plaintiff failed to implead the Government as party to the suit. Since the plaintiff himself admitted that the property belongs to the Government, the plaintiff ought to have impleaded the Government as party. Though the suit is only for bare injunction impliedly, the plaintiff has claimed right over the property by saying that, he is enjoying the property for more than 35 years. Therefore, the plaintiff ought to have impleaded the Government as party . It is true that the defendant has not taken plea or non joinder of necessary party but even in the absence of plea by defendants in order to decide the case considering the nature of property the Government is proper and necessary party Therefore, the suit is not maintainable without impleading the Government as party since the property is Government poramboke. Thus the substantial question of law is answered.

15. The second substantial question of law is that, when the property is classified as poramboke land over which every citizen has right to usage, can the court grant an exclusive right over one such person to prevent others from



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abusing it. In this context, it is admitted fact that, the suit property belongs to Government and also this Court also has decided in the previous substantial question of law that, without impleading the Government, this suit is not maintainable. It is an admitted fact that, the suit property is classified as odai poramboke and the trial Court also decreed the suit in part and dismissed by holding that, there is a pathway of 20 feet is available in the suit property. Therefore the Courts below ought to have dismissed the suit in its entirety. Since the property belongs to Government, the first respondent /plaintiffs though paid B memo charges to the Government, he cannot claim right over the odai poramboke i.e., water body and the plaintiff cannot seek any remedy as against the defendants, who is also one of the person, who has right to question the plaintiff, to prevent the abuse of Government land. Therefore, in view of the admission made by the first respondent/ plaintiff that, the property is odai poramboke, he cannot claim right over the property merely because of his long possession over the property. Therefore, the courts below ought not to have granted injunction in respect of remaining properties excluding 20 feet pathway. Therefore, as discussed supra, this Court is of the opinion that the Courts below have committed error in the decreeing the suit, thereby, the decree and judgment passed by the Courts below are liable to be set aside. Accordingly the decree and judgment of the Courts below are set aside. Thus the second substantial question of law is answered.

16. In the result, this appeal is allowed and the decree and judgment



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passed in A.S. No.35 of 2003 on the file of the Additional Sub Judge, Chengalpattu and the decree and judgment passed in O.S. No. 277 of 1997 are set aside and the suit in O.S. NO.277 of 1998 is dismissed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

aav/mpa

To

1. The Additional Sub Judge, Chengalpattu
2. The District Munsif, Chengalpattu



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P.DHANABAL, J.,

aav/mpa

Pre-Delivery judgment in
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