



S.A.No. 1507 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.11.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1507 of 2011
and M.P.Nos.1 of 2011

1. Janakiammal (deceased)
2. Ravichandran (deceased)
3. Mariammal
4. Vijaya Nirmala
5. M.Santhikala
6. S.Abiramasundari
7. M.Sivakadacham
8. M.Venniladevi
9. R.Saraswathi
10. R.Elavarasi
11. R.Iswarya
12. R.Aarthi
13. R.Vishnuprasath

... Appellants

Vs.

1. Kannaipapn
2. Dayalan
3. Nagappan
4. Rudrakotti
5. Sabapathi
6. Palani
7. Mani
8. Jayalakshmi
9. Saravanan
10. Manoharan
11. Balakrishnan
12. Karunanidhi
13. Athi
14. Chitra (minor)



S.A.No. 1507 of 2011

15. Arun (minor)

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R14 and R15 are represented by their mother Athi (13th appellant).

... Respondents

(Appellants 4 to 8 are bring on record as legal heirs of deceased first appellant vide order dated 24.04.2023 made in C.M.P.No.19481, 19495, 19517 of 2022 in S.A.No.1507/2011.

Appellants 9 to 13 are bring on record as legal heirs of deceased second appellant vide order dated 24.04.2023 made in C.M.P.Nos.19441, 19483, 19515 of 2022 in S.A.No.1507/2011)

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against judgment and decree in A.S.No.20 of 2010 on the file of Additional Subordinate Judge of Chengalpattu dated 29.06.2011 in reversing the well considered judgment and decree in O.S.No.107 of 1996 on the file of the District Munsif cum Judicial Magistrate, Thirukalukundram dated 23.06.2010.

For Appellants : Mr.N.Srinivasan

For R1 to R13 : Mr.S.Ramesh

R14 to R15 : Minors represented by R13

JUDGMENT

Heard Mr.N.Srinivasan, the learned counsel for the appellants and Mr.S.Ramesh, the learned counsel for the respondents 1 to 13.



S.A.No. 1507 of 2011

2. The plaintiffs are the appellants in the suit who have filed the suit for the relief of bare injunction and that was decreed by the trial Court. On the first appeal preferred by the defendants, the first appellate Court allowed the first appeal and reversed the judgment and decree of the trial Court. Aggrieved over that the plaintiffs have preferred this second appeal.

3. The brief averments in the plaint are as follows:

The suit property is a Kallankuthu promboke. The plaintiffs are in possession and enjoyment of the same for the past 10 years. The first plaintiff is in possession of the suit 'A' Schedule property and the second plaintiff is in possession of suit 'B' Schedule property and the third plaintiff is in possession of suit 'C' Schedule property and they are in enjoyment of their respective property by paying penal charges. The revenue records stands in the name of the plaintiffs. The plaintiffs are entitled to the assignment and the assignment proposal are pending before the Revenue Department. The plaintiffs are entitled to continue to be in possession until they are evicted through due process of law and they have better title than the third parties.



S.A.No. 1507 of 2011

3.1 The suit property was originally encroached and possessed by one Mavalingammal, the female ancestors of plaintiffs and she had spent considerable amount in reclaiming the suit property even from the year 1964 and she has been paying penal charges and the plaintiffs have filed the receipts. After her death, her son Kannimuthu was in possession by paying the penal charges. Subsequent to the lifetime of Kannimuthu, the children of Kannimuthu, who are the plaintiffs have effected oral partition among themselves in the year 1981 and continued to be in possession and enjoyment of their respective shares as shown in the suit schedule. The defendants have got no manner of right whatsoever in the enjoyment of the plaintiffs over the suit property. As the defendants have tried to interfere with their possession, the plaintiffs have filed the suit for permanent injunction.

4. The brief averments of the written statement filed by the first defendant and adopted by defendants 2 to 9 are as follows:

The suit is frivolous, vexatious and unsustainable in law and on facts. The suit property is already in possession of the villagers of Paramasivam Nagar. The total extent of the suit property is 44.47 acres. The land comes under the classification of Kallankuthu Promboke. One portion of the said



S.A.No. 1507 of 2011

promboke land is occupied by one Kannimuthu of Paramasivam Nagar and another portion was occupied by villagers. The plaintiffs are in possession of the property 'ABCD' and 'EFGH' as shown in the rough sketch. The plaintiffs are cultivating in the above said land. The property in occupation of the respondents and other villagers is shown as 'AIJKB'. Neither the plaintiffs nor their ancestors have enjoyed the lands in 'AIJKB'. The defendants have been in possession and enjoyment of the said property for more than 30 years. The first plaintiff's sister Malliga and Karpagam have not been added as party in the suit.

5. On the basis of the above pleadings and submissions, the trial Court framed the following issues:

“ i) முதல் வாதி தாவா 'ஏ' அட்டவணை சொத்து குறித்தும் 2ம் வாதி தாவா 'பி' அட்டவணை சொத்து குறித்தும் 3ம் வாதி 'சி' அட்டவணை சொத்து குறித்தும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற உரிமை உள்ளவர்களா ?

ii) இந்த தாவா சொத்துக்கள் பரமசிவ நகர் கிராமத்தை சேர்ந்தவர்கள் அனுபவத்தில் ஏற்கனவே இருக்கிற சொத்து என்பது உண்மையா ?



S.A.No. 1507 of 2011

iii)வழக்கு மாதிரி வரைபடத்தில் ஏ.ஐ.ஜே.கே.பி. என்று

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காட்டப்பட்டு சொத்து பிரதிவாதி மற்ற கிராமத்தார்களின்

அனுபவத்தில் உள்ள சொத்தா ?

iv) வேறு என்ன பரிகாரம் ?”

6. During the course of trial, on the side of the plaintiffs two witnesses have been examined as P.W.1 and P.W.2 and Exs.A1 to A4 were marked. On the side of the defendants one witness was examined as D.W.1 and Exs. B1 to B6 were marked.

7. At the conclusion of the trial and the evidence available on record, the trial Court has decreed the suit. The first appeal preferred by the defendants before the first appellate Court has been allowed by reversing the decree and judgment of the trial Court. Now the present second appeal has been preferred by the plaintiffs.

8. The only substantial question of law that arises in this Second Appeal is as follows:

“ Whether the first appellate Court is right in reversing the judgment and decree of the trial Court without appreciating the fact that proper issues have not been framed and that would affect the course of judgment ?”



S.A.No. 1507 of 2011

9. The learned counsel for the appellants submitted that the trial Court has rightly appreciated the evidence in respect of the possession of the plaintiffs over the suit property especially the revenue records Exs.A2 to A4; however the first appellate Court has ignored the same; the fact that the plaintiffs are in possession of the suit property has not been properly appreciated by the trial Court and hence the appeal should be allowed.

10. The learned counsel for the respondents submitted that the first appellate Court has rightly appreciated the facts in evidence; the plaintiffs claim that out of 128 acres in Survey No.57/1A, the plaintiffs are in possession of 2 acres and 47 cents; but the Commissioner could not demarcate the extent of the lands which is said to be in possession of the plaintiffs.

11. The suit properties are admittedly the promboke properties over which no one except the Government has got the better title. The plaintiffs are said to be paying penal charges and they are in enjoyment of 'ABCD' Schedule properties. Even according to the plaintiffs, they are only encroachers and they try to get assignment from the Government. It may be true that the plaintiffs might have encroached over the suit property and



S.A.No. 1507 of 2011

unless assignment is issued to them, it may not be possible to demarcate any extent of property which is said to be in possession of the plaintiffs. Without adding necessary party who is the State Government, the plaintiffs have filed the suit. When the plaintiffs claim right of possession over the specific extent of property then they ought to have filed a document showing the possession over the exclusive area. The plaintiffs could only produce the tax receipts and from which the alleged extent over which the plaintiffs are in enjoyment, cannot be presumed.

12. The fact that the plaintiffs are encroachers over the Government land is not denied. However, the contention of the learned counsel for the appellants is that the appellants have got a better title over the third party trespasser and they have got the right to be evicted only under due process of law. Even though the plaintiffs might claim that they have better title over the defendants in their capacity as encroachers under the Government as against the third parties, they have to prove before the Court about the specific extent under which they are in alleged possession and enjoyment. In the instant case the plaintiffs were not able to show the specific extent and it is being submitted that they have been moving the Government in order to get the assignment. The Commissioner who had visited the suit property also



S.A.No. 1507 of 2011

could not demarcate the suit properties under the enjoyment of plaintiffs.

The plaintiffs who are said to be in occupation of 2 acres 47 cents out of 44 acres 47 cents, cannot simply claim to protect their possession even against the third parties without defining their specific boundary and area in which they are in possession.

13. As the plaintiffs have filed the suit without producing any fundamental records and without examining the Revenue Officials, I do not find any reason to allow the appeal.

14. In the result, the Second Appeal is dismissed and the judgment and decree dated 29.06.2011 passed in A.S.No.20 of 2010 on the file of learned Additional Subordinate Judge, Chengalpattu is confirmed and the judgment and decree dated 23.06.2010 passed in O.S.No.107 of 1996 on the file of the District Munsif cum Judicial Magistrate, Thirukalukundram, is dismissed. No costs. Connected miscellaneous petition is closed.

25.11.2024

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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S.A.No. 1507 of 2011

R.N.MANJULA, J.

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To:

1. The Additional Subordinate Judge,
Chengalpattu.
2. The District Munsif cum Judicial Magistrate,
Thirukalukundram,

S.A. No.1507 of 2011

25.11.2024