



S.A.(MD).No.598 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.598 of 2007

- 1.Karuppiah Servai (Died)
- 2.Rani
- 3.Nagavalli
- 4.Moorthy
- 5.Susila
- 6.Sankar

... Appellants

(Appellants 2 to 6 brought as LR's of the deceased sole appellant, vide Court order, dated 03.03.2016, made in CMP(MD)No. 356 to 358 of 2016 in SA(MD)No.598 of 2007)

/Vs./

- 1.The State of Tamil Nadu,
by its District Collector,
Ramanthapuram District,
Collectorate Complex,
Ramanathapuram.
- 2.The Commissioner,
Mandapam Panchayat Union,
Uchipuli.
Ramanathapuram Taluk & District.
- 3.Rajamanickam (Given up)

...Respondents



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WEB JUDIS (3rd respondent is given up. Memo is recorded.
Memo USR No.1723/18.3.16, vide Court order,
dated 21.10.16, made in M.P.(MD)Nos.
1 and 2 of 2007 in SA(MD)No.598 of 2007)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 27.02.2007, made in A.S.No.58 of 2006 on the file of the Sub Court, Ramanathapuram, reversing the Judgment and Decree, dated 24.10.2005 made in O.S.No.445 of 1994 on the file of the District Munsif Court, Ramanathapuram.

For Appellants	: Mr.K.Sathiya Singh
For R1 and R2	: Mr.M.Muthumanikkam
	Government Advocate
R3	: Given up

JUDGMENT

The present second appeal is filed by the plaintiff against the Judgment and Decree dated 27.02.2007, passed in A.S.No.58 of 2006 on the file of the Sub Court, Ramanathapuram, reversing the Judgment and Decree, dated 24.10.2005 passed in O.S.No.445 of 1994 on the file of the District Munsif Court, Ramanathapuram.



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2. The plaintiff in the suit is the appellant herein and the defendants in the suit is the respondents herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

3. The suit is filed for declaration and consequential injunction against the defendants Government. The contention of the plaintiff is that the land situated in Pymas No.315/6 admeasuring 3 acres 50 cents is a ryoti land belonging to his ancestors and at present the same is renumbered as Survey No.246. After the demise of the plaintiff's father, the plaintiff and his brother Veluchamy were in enjoyment of the property. After the demise of the said Veluchamy, his wife Nagasoundra Valliammal had inherited the Veluchamy's share and she was in possession and enjoyment and right from Samasthanam period the Pymas No. 315/6 was in the name of Nagasoundra Valliammal and she was granted Patta No. 105. The plaintiff had mortgaged the property and was in enjoyment. After the Estate Abolition Act, the suit property was wrongly classified as "Odai". Based on the wrong classification, the defendants are disturbing the plaintiff's possession. Further, the plaintiff has submitted that the defendants are aware of the plaintiff is in possession for long period and if it is a government land then the



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defendants would have issued “B-Memo” but the same was not issued. Therefore, the plaintiff is entitled to the property on his own right and hence the prayer for declaration and injunction.

4. The defendants had filed the written statement and submitted that the Survey No.246 is sub divided as 246/1, 246/2 and 246/3. The said survey numbers were classified as “Odai”, “Road” and “Odai” respectively. When the land is classified as “Odai poramboke”, patta would not have been issued, hence the plaintiff cannot claim patta for “Odai Paramboke” Therefore, the case of the plaintiff is unbelievable. Hence, the defendants prayed to dismiss the suit.

5. After considering the rival submissions based on the documentary evidence the suit was allowed. Aggrieved over the same, the Government preferred an appeal and the same was allowed. Aggrieved over the same, the plaintiff has preferred the present second appeal. The second appeal was admitted on the following substantial question of law:

“Whether the 1st Appellate Court is legally right in impeaching Exhibit A13 registered mortgage deed which is 30 years old



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document against the legal presumption available under Section 90 of Evidence Act?”

6. The contention of the plaintiff is that the property is a samasthanam land and subsequently the plaintiff father had got patta. After his demise the plaintiff and his brother had inherited the property. Thereafter, the plaintiff was in possession and enjoyment of the property and to prove the enjoyment the plaintiff had relied on Ex.A13 which is the registered mortgaged executed in the year 1956. The contention of the plaintiff is that the said mortgage deed is 30 years old document and hence the said document ought to be accepted based on the legal presumption under section 90 of Indian Evidence Act. Further submitted that the A register was prepared by the defendants after 1963, wherein it was wrongly classified as “Odai” and “Road”. Further, the defendants have not produced any pymas number and correlation register to prove the Pymas No.315 as Survey No. 246. Therefore, the claim of the defendants cannot be entertained.

7. However, the contention of the defendants is that the “Odai” and “Road” are vested with the government and they are meant for common public and the



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plaintiff is not entitled to claim the “Odai” as ryoti land. The ryoti land can be granted patta only if it is agricultural land and not for water body.

8. After considering the rival submissions, this Court is of the considered opinion that the mortgaged land will not confer title on the plaintiff. More so when the land is a water body. The Court has a duty to protect the water bodies. Even if it is a “Odai”, it has to be protected, since it is channel for “Oorani”. The defendants allege the plaintiff has made wrong entry and has usurped the property. The plaintiff alleges that the defendants have made wrong entry. It is seen both the plaintiff and the defendant had not proved whether the suit land is odai. The pyamas number ought to be correlated with the subsequent survey number. Both the plaintiff and the defendants had never taken any steps to correlate the numbers. Therefore, the matter is remitted back to the Trial Court.

9. The parties are permitted to file additional pleadings and evidences to prove their case and all the issues are left open. Since the plaintiff is in possession, the defendants are restrained from disturbing the possession of the plaintiff until the disposal of the suit.



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10. With the above said observation and directions, the second appeal is disposed of. The Judgment and Decree dated 27.02.2007, passed in A.S.No.58 of 2006 on the file of the Sub Court, Ramanathapuram, and the Judgment and Decree, dated 24.10.2005 passed in O.S.No.445 of 1994 on the file of the District Munsif Court, Ramanathapuram are set aside. No costs.

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Index : Yes / No

NCC : Yes / No

Tmg

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1. Sub Court, Ramanathapuram.
2. District Munsif Court,
Ramanathapuram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. The District Collector,
Ramanathapuram District,
Collectorate Complex,
Ramanathapuram.
5. The Commissioner,
Mandapam Panchayat Union,
Uchipuli.
Ramanathapuram Taluk & District.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.598 of 2007

Dated:
15.10.2024