



S.A(MD)No.751 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.(MD) No.751 of 2012

1.Nagalingam
2.Shanmugathai

.. Defendants/Respondents/
Appellants

Vs.

1.Karupayee(died)
2.Govindaraj
3.Sundarammal
4.K.Malaichamy
(R4 is impleaded as per the order of
this Court dated 09.08.2024 in C.M.P(MD)
No.9728 of 2022)

.. Plaintiffs/Appellants/
Respondents

Prayer :- Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 26.03.2012 passed in A.S.No.42 of 2011 on the file of the Sub-Court, Paramakudi, reversing the judgment and decree dated 18.04.2011 made in O.S.No.53 of 2007 on the file of the District Munsif Court, Mudukulathur.



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For Appellant	:Mr.PT.S.Narendravasan
For R2 & R3	:Mr.S.Sivathilakar
For R1	:Died
For R4	:No appearance

JUDGMENT

The unsuccessful defendants before the lower appellate Court viz., the Subordinate Court, Paramakudi, in A.S.No.42 of 2011 are the appellants before this Court.

2.For easy understanding, the parties are referred to in the same litigation status as before the trial Court

3.The suit in O.S.No.53 of 2007 was filed by the plaintiffs before the District Munsif Court, Muthukulathoor, for permanent injunction restraining the defendants from interfering with the petitioner's peaceful possession and enjoyment of the suit property and further restraining the defendants from cutting the Juliflora trees.



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4.The short facts of the plaintiffs' case is that, the suit property and the adjacent lands are the Natham Poramboke. The first plaintiff and her mother were enjoying the said lands for several decades and after the death of the plaintiffs' mother, the plaintiffs 1 to 3 are jointly enjoying the said lands. On 05.08.1991, continuing the suit property, the plaintiffs had sold the said property Kodumalur Rastha abutting to the west of the suit property has been shown as the western boundary in the sale deed. On 10.07.1979, the first defendant's mother had alienated the west of the suit property to one Kandasamy, S/o.Arumuga Konar. In the sale deed, the suit property was eastern boundary in the schedule. Since the lands were vacant, patta was not granted to the plaintiffs. Therefore, they have made an application for grant of patta. Immediately on coming to know of the same, the defendants rushed to make an application for grant of patta. Since the defendants attempted to trespass into the suit property, the plaintiffs had come forward with the suit in question.

5.The first defendant had filed a written statement *inter alia* denying the allegations contained in the plaint as false and misleading.



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The defendants would submit that the suit property is not a Government Poramboke land, but it is an ancestral property of the first plaintiff's mother and the first defendant's mother. They had, during their life time, partitioned the lands among themselves. The suit property was allotted to the share of the first defendant's mother and the first defendant is using the same by storing firewood and dumping garbage in the said land. They would further submit that at no point of time, the plaintiffs were in possession and enjoyment of the property. Therefore, they are not entitled to the decree for injunction.

6.The learned District Munsif had framed the following issues:

“1.வழக்குரை தபசில் சொத்து வாதிகளின் சுவாதினத்திலும் அனுபவத்திலும் இருந்து வருகிறதா?

2.நிரந்தர உறுத்துக் கட்டளை பரிகாரம் கோர வாதிகள் உரிமையுடையவர்களா?

3.வாதிகளுக்கு கிடைக்கக் கூடிய வேறு பரிகாரங்கள் எவை?”

7.Before the trial Court, on the side of the plaintiffs, first plaintiff was examined himself as P.W.1 and the Village Administrative Officer



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was examined as P.W.2 and marked 13 witnesses as Exs.P.1 to P.13. On the side of the defendants, first defendant was examined himself as D.W.1 and marked three documents as Exs.D.1 to D.3.

8.The learned Judge, on considering the oral and the documentary evidence, ultimately came to the conclusion that the plaintiffs had not proved their possession and enjoyment of the same and dismissed the suit. Challenging the same, the plaintiffs had filed an appeal suit in A.S.No.42 of 2011 on the file of the Sub-Court, Paramakudi. The learned Subordinate Judge, proceeded to allow the appeal by contending that the defendants have not proved their possession of the suit property. The learned Judge had relied on Exs.A.5 and A.6 to come to the conclusion that the defendants have not proved that the suit property belongs to them. The lower appellate Court also relied upon Ex.A.11 to Ex.A.13 documents obtained when the suit was pending and held that the plaintiffs were in possession of the property. The lower appellate Court reversed the finding of the trial Court on considering and re-appreciating the evidence, allowed the appeal and set aside the judgment and decree



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of the trial Court. Challenging the same, the defendants are before this Court.

9.The Second Appeal was admitted on the following substantial questions of law:

“1.Whether the lower appellate Court is right in allowing the appeal stating that on the basis of Ex.A4 and A5 sale deed, the plaintiffs are in possession and they are entitled for bare injunction particularly when in the suit for bare injunction the plaintiffs have not filed any document to prove their possession regarding the suit property?

2.Whether the lower appellate Court is right in allowing the appeal stating that the plaintiffs are in possession on the basis of Ex.A.11, A12 and A13 which are obtained by the plaintiffs only at the time of pending of the suit before the trial Court?”

10.Heard the learned counsel for the appellants and the learned counsel for the second and third respondents.

11.Ex.A.4 is the certified copy of the sale deed executed by the first plaintiff in favour of the defendants. The description in the



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schedule, it has been clearly stated that on the west of the property sold, the lands of the plaintiff was situated. Further, Ex.A5, is the sale deed executed by the first defendant's mother in favour of one Kandasamy. The eastern boundary is described as a vacant site and this described as to the first plaintiff's property. Therefore, even according to the defendants, the property to the east is that of the plaintiff.

12.From the evidence, it appears that the suit property and the other properties were Government Poramboke land, which were in the possession and enjoyment of the mothers of the first defendant and the first plaintiff. They have entered into a oral partition and the said partitioned properties are in possession and enjoyment of their respective shares. It is for the reason that in Ex.A4 and Ex.A.5 boundaries are shown as the respective sharers property. It is also seen that the defendants, in order to over come the boundary details given in Ex.A.5, has attempted to rectify Ex.A.5 through Ex.A.6. Ex.A.6 however appears to be an unilateral document executed by Kandasamy, the executant of Ex.B.2 to rectify the defects. This is a deliberate attempt to get over the



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reference to the plaintiffs property on the east. The plaintiffs had produced the revenue records and the lower appellate Court has rightly taken into consideration these details. Further Ex.A5 is a document which is over 30 years old and therefore, its genuineness has to be presumed. The plaintiffs have also produced the documents to show their possession in filing Ex.A3, Ex.A8 to Ex.A.12. The lower appellate Court has rightly considered Ex.A.4 and Ex.A.5 and granted a decree as prayed for. As regards Ex.A.11 to Ex.A.13, they are the documents equivalent to Ex.A.2, Ex.A.3 and Ex.A.9. Therefore, the reliance placed upon these documents are not misplaced as it has only proved the genuineness of the possession by the plaintiffs. Therefore, the substantial questions of law are answered against the defendants.

12.In the result, this Second Appeal is dismissed. No costs.

30.08.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes



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To

1.1.The Sub-Court,
Paramakudi.

2.The District Munsif Court,
Mudukulathur.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.T.ASHA, J.
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