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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2026

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THE HONOURABLE **MR. JUSTICE V.LAKSHMINARAYANAN**

S.A.No. 106 of 2018
And
C.M.P.No. 2259 of 2018

Desing
S/o. Krishna Gounder

Appellant/Respondent/Plaintiff

...

Vs.

1. The Thasildar
Gingee Taluk
Gingee
Villupuram District.

2. The District Collector
Villupuram District
Villupuram.

...

Respondents/Appellants/Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree passed by the Subordinate Court, Gingee, made in A.S.No. 07 of 2014 dated 26.10.2017 reversing the Judgment and Decree passed by Additional District Munsif Court, Gingee dated 11.07.2014 made in O.S.No. 475 of 2004.



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For Appellant : Mr. B.Jawahar

For Respondent : Mr.S.Gunasekar
Government Counsel

JUDGMENT

The plaintiff is the appellant. The respondents are the defendants.

2. For the sake of convenience, parties shall be referred to as per their ranks in the suit.

3. The plaintiff presented O.S.No. 475 of 2004 on the file of the Additional District Munsif Court, Gingee seeking for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property.

4. According to the plaintiff, he is the owner of the property situated in S.No. 183/1B. The suit property is bearing S.No. 184/1. According to the plaintiff, he had gifted an extent of 20 cents in S.No. 183/1B to the Government for the purpose of constructing a school. At that time, an understanding was arrived at that the Government will not interfere with his possession of the suit property. The Village President also executed a document to that effect. The plaintiff claims to be in possession pursuant to the transfer of his assets in S.No. 183/1B in favour of the Government. As defendants were interfering with his possession at the instigation of some



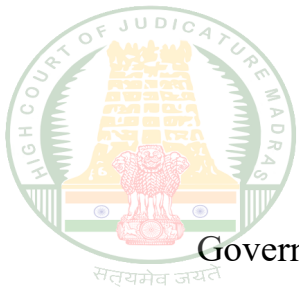
third parties, he came forth with the present suit.

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5. Summons were served on the defendants. The defendants took up a plea that notice was not issued as required under Section 80 of the Code of Civil Procedure. They pointed out that the land is classified as “Kallankuthu poromboke” and no suit is maintainable against the Government, which is the true owner of the property. They denied the allegation that the plaintiff had gifted the land in lieu of his enjoyment rights. They further denied the right of the plaintiff to continue to be in possession of the property against the interest of the Government.

6. Before the learned trial Judge, the plaintiff marked Exs. A-1 to A-20. He examined himself as PW-1 and two other witnesses as PW-2 and PW-3. On the side of the defendants, the Tasildar entered the witness box as DW-1 and two other witnesses were examined as DW-2 and DW-3. The defendants marked Exs. B-1 -B-4.

7. The learned trial Judge came to a conclusion that the plaintiff is entitled for a decree as prayed for and granted permanent injunction restraining the



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Government from interfering with his possession and also ordered mandatory injunction directing the Government to issue patta to the plaintiff.

8. Aggrieved by the same, the defendants preferred an Appeal before the learned Subordinate Judge, Gingee. This appeal was taken on file as A.S.No. 7 of 2014.

9. The Appellate Court came to a conclusion that Exs.A-2 to A-9, the documents relied by the plaintiff to prove his possession, did not relate to the suit property. He held that Ex.A-1 is a gift settlement deed executed by the plaintiff without any reciprocal consideration of enjoyment of the suit property. He further held that while the Government has granted patta to 30 persons in the very same survey number, it is not open to the Court to issue a mandatory injunction directing the Government to issue a patta in favour of the plaintiff. He concluded that it is a Government property and it is for the Government to decide as to how to dispose of the same. He concluded that there is no cause of action for the plaintiff to approach the Court because no evidence have been let in by the plaintiff to prove that the Revenue Department had initiated action against the plaintiff for



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dispossession. On these findings, he allowed the Appeal and dismissed the suit. Hence, the present Second Appeal.

10. This Court had not admitted the Second Appeal. It had ordered notice to the respondents and to serve of papers to the learned Government Counsel. I heard this Appeal on the following question of law:-

“ (i) when the defendants themselves admitted that at the minimum the Trial Court ought to have decreed the suit only for permanent injunction against the defendants in respect of eviction without due process of law, was the Lower Appellate Court correct in dismissing the suit in its entirety? ”

11. Heard Mr.B.Jawahar, learned counsel for the appellant and Mr.s.Gunasekar, learned Government Counsel for the respondent.

12. When the appeal was taken up, Mr. B. Jawahar relied on the evidence of DW-1, noting that the plaintiff's possession is admitted. He further argued that although the Government granted patta to 30 other persons, the plaintiff was denied this benefit solely due to mala fide reasons. He asserted that Exhibits B-1 and B-2 clearly establish a cause of action for the

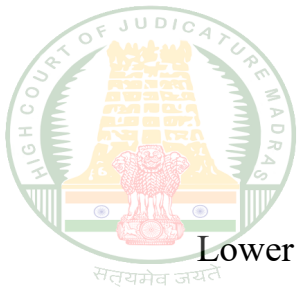


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plaintiff. Finally, he highlighted the defendants' plea in the Appellate Court that, at most, a decree should only be granted to restrain the defendants from interfering with the plaintiff's possession except in accordance with the law.

13. He added that pending the Second Appeal, the Government had initiated proceedings under the Tamil Nadu Land Encroachment Act and an order of eviction was passed under Section 6 against which he has preferred an Appeal before the District Collector. He states that the said Appeal is pending.

14. Per contra, Mr.S.Gunasekaran, learned Government Counsel submitted that the Government is admittedly the owner of the property and there is no question of injunction restraining the Government from interfering with the plaintiff's possession. He relies upon the documents filed by the plaintiff to indicate that there is no reciprocity with the plaintiff for the purpose of having gifted certain extent to the Government for construction of a school. He states that the Judgment and Decree of the



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Lower Appellate Court is perfectly justified and does not warrant interference at the hands of this Court.

15. I have carefully considered the submissions made on both sides and I have gone through the records.

16. It is undisputed that the plaintiff is in possession of the suit property. It is also not in dispute that the Government is the title holder. Let me first deal with the mandatory injunction aspect. The decision to grant a patta for the property to a third party falls exclusively within the Government's jurisdiction. The Government may grant a patta to the plaintiff or refuse to do so. To seek a mandatory injunction, the plaintiff must demonstrate that a legal duty is cast upon the Government to grant one and that there was a breach of that duty. Since the property admittedly belongs to the Government, it holds the discretion to decide whom to assign the lands. Hence, there is no legal duty to grant a patta to the plaintiff. Therefore, I find no error in the Lower Appellate Court's order in declining a decree regarding the mandatory injunction.

17. In so far as possession is concerned, DW-1 Tahsildar has entered the



witness box and has deposed that the plaintiff is in possession of the same.

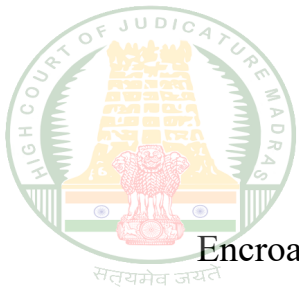
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It is a settled position of law that neither the Government nor any private individual may take the law into their own hands to forcibly dispossess an occupant. This possession has been established for at least 100 years ago in *Midnapur Zamindary Co. Ltd., Vs. Naresh Narayan Raoy*, reported in *(1924) 20 LW 770 at 777*.

18. A plaintiff in possession cannot seek a permanent injunction against the true owner in this case, or the Government. However, he will be entitled to a limited injunction restraining the Government from forcibly dispossessing him from the suit property except otherwise in accordance with law.

19. Hence, the Judgment and Decree of the Lower Appellate Court is modified, granting a limited injunction restraining the defendants from interfering with the possession of the plaintiff except under due process of law.

20. It is made clear that this order of injunction granted by this Court will not stand in the way of the District Collector to pass appropriate orders in the proceedings said to have been initiated under the Tamil Nadu Land



Encroachment Act of 1905.

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21. It is upto the District Collector to decide the Appeal on the merits.

The substantial question of law is answered in favour of the appellant. The Second Appeal is partly allowed and the dismissal of the suit in its entirety is set aside. There shall be a decree in O.S.No. 475 of 2004 in the following terms:-

There shall be an order of injunction restraining the defendants not to interfere with the possession of the plaintiff except otherwise under due process of law.

V.LAKSHMINARAYANAN, J.

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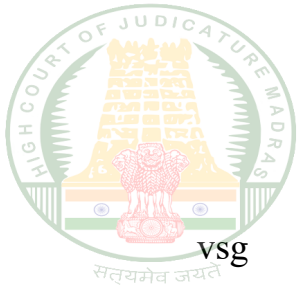
22. As the appellant is in possession of the Government land, he is not entitled to costs in the appeal.

23. Consequently, connected Civil Miscellaneous Petition stands closed.

01.07.2026

Index :Yes/No

Internet:Yes/No



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To

1. Sub-Court, Gingee
2. Additional District Munsif Court, Gingee.

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