



WEB COPY

SA No. 797 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 797 of 2012
and M.P. No.1 of 2012**

Jadayan S/o Lakshman Gounder
Near Amman Timber Mart Roundana
Katcherimadu, Harur Town And Post,
Dharmapuri Dist

..Appellant(s)

Vs

A.T.M.V.Subramani
Proprietor Viram Garments Near SKS Hospital,
Salem Salem District.

..Respondent(s)

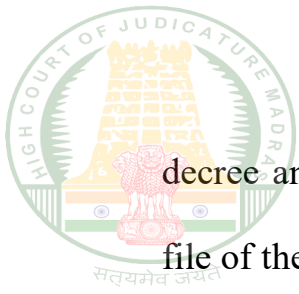
Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, as against the Judgment and Decree of the learned Subordinate Judge, Harur in A.S.No.28 of 2011 dated 09.01.2012 confirming the Judgment and Decree of the learned District Munsif, Harur in O.S.No.403 of 2006 dated 06.04.2011.

For Appellant(s): Mr. T.Murugamanickam, Senior Advocate
for M/s.Zeenath Begum

For Respondent(s): M/s.T.S.Vijaya Raghavan

JUDGMENT

This Second Appeal has been preferred as against the decree and judgment passed by the Subordinate Judge, Harur in A.S. No.28 of 2011 dated 09.01.2012, wherein the appellant herein has preferred an appeal as against the



decree and judgment passed by the trial Court in O.S. No.403 of 2006 on the file of the learned District Munsif, Harur dated 06.04.2011.

WEB COPY

2. Before the trial Court, the appellant herein filed a Suit for permanent injunction as against the respondent / defendant and the said Suit was dismissed. Aggrieved by the said decree and judgment, an appeal was preferred before the First Appellate Court and the same was also dismissed by confirming the decree and judgment passed by the trial Court, thereby, the present second appeal has been preferred by the appellant / Plaintiff.

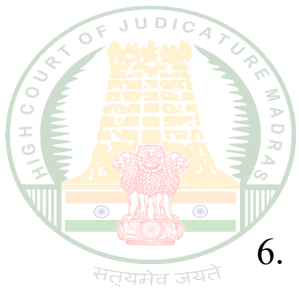
3. The *case of the plaintiff* before the trial Court is that the suit property, originally, belonged to the Government classified as 'Government poromboke' and the said property was in the hands of one Rajammal and she had put up thatched house, shop and she was in possession and enjoyment of the Suit property for more than a period of 15 years. Thereafter, she constructed house and shops. The concerned Panchayathars also approved for construction of building. However, the land belongs to the Government and the Plaintiff has not acted against the Government. While so, the defendant attempted to encroach over the property and obstructed peaceful possession and enjoyment of the property, thereby, the Plaintiff filed a Suit for permanent injunction.



4. The *case of the defendant* before the trial Court is that the Suit property is the Government vacant land and the defendant denied that one Rajammal had encroached the property and she was in possession and enjoyment of the property for 15 years. In fact, the Suit property is a road margin that belongs to the Government. Though the Panchayathars issued approval, it is not valid in the eye of law. The defendant has got patta lands on the Southern side of the road margin and he has got right of approach to the main road from all sides, but the Plaintiff had encroached the property and constructed building. The defendant gave representation before the concerned authorities to remove the encroachment made in the road margin. Since the property belongs to the Government, the Government is also a proper and necessary party to the Suit and therefore, the Suit is bad for non-joinder of necessary parties and hence the Suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial court has framed the following *issues* for trial:-

1. *Whether the Plaintiff is entitled to decree for permanent injunction as against the defendant?*
2. *Is it true that the allegation of the defendant that the Plaintiff has habit of encroaching the lands?*
3. *Whether the Suit is bad for non-joinder of necessary parties?*
4. *To what reliefs, the plaintiff is entitled to*



6. Before the trial court, on the side of the plaintiff, witnesses P.W.1 to PW3 were examined and marked exhibits, Exs.A.1 to A.10. On the side of the defendants, witness D.W.1 was examined and marked exhibits, Exs.B.1 to B.7 and also marked Ex.C.1 and Ex.C.2. The trial court after considering the evidences adduced on both sides and perusing the records, dismissed the suit with cost. Aggrieved by the said decree and judgment passed by the trial Court, the Plaintiff had preferred an appeal before the First Appellate Court in A.S. No.28 of 2011 on the file of the Subordinate Judge, Harur on various grounds. The First Appellate Court has framed the following *points for determination*:

1. Whether the finding of the trial Court that the appellant / Plaintiff is an encroacher and the Suit property is the road margin land, is correct?

2. Whether the finding of the trial Court that the Government has not vacated the appellant / Plaintiff without following the procedure to vacate the Suit property, is correct?

3. Whether the finding of the trial Court that the appellant / Plaintiff is not entitled to the relief of permanent injunction, is correct?

7. While pending appeal, on the side of the appellant, an interlocutory application was filed under Order XL Rule 27 in I.A. No.102 of 2011 to receive the additional documents and the same was allowed and the appellant marked



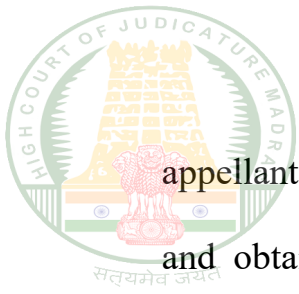
Exs.A.11 and A12 viz., 'A' Register and FMB Sketch respectively. After hearing both sides and perusing the records, the First Appellate Court also dismissed the appeal.

8. Aggrieved by the said Decree and Judgment passed by the First Appellate Court, the present Second Appeal has been filed by the appellant. This Court formulated the following Substantial Question of Law:-

“Whether the findings of the Courts below that the Plaintiff who is alleged to be in possession of Government land cannot maintain a Suit for a permanent injunction to protect his possession against private parties, without impleading the Government as a defendant in the Suit, are correct as per law?”

9. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial Court.

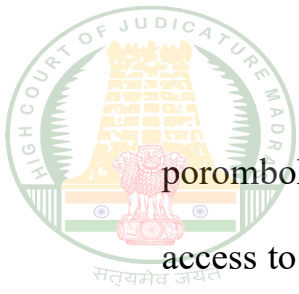
10. The learned Senior counsel appearing for the appellant would submit that the appellant, who is the Plaintiff, filed a Suit for permanent injunction as against the respondent / defendant. In fact, the property belongs to the Government and the property has been classified as Government Poromboke land, in which, the predecessor of the appellant namely Rajammal encroached the property and put up a thatched house and she was residing there. The



WEB COPY

appellant acquired the property from the said Rajammal and constructed a house and obtained permission from the concerned authorities and paid electricity consumption charges and house tax etc., to the concerned authorities. While so, the respondent, who has vacant land adjacent to the property of the Plaintiff, attempted to vacate the Plaintiff forcibly and tried to interfere with the appellant / Plaintiff's peaceful possession and enjoyment of the property and therefore, the Plaintiff immediately filed a Suit for permanent injunction. The trial Court failed to consider the evidence adduced on the side of the Plaintiff and erroneously dismissed the Suit. Both the Courts have erroneously held that the Government is also a proper and necessary party to the proceedings. The Courts below have failed to consider that the prayer is not against the Government and the same is only as against the third party. Since the dispute is between the private parties, the Government is not a proper and necessary party, but the Courts below failed to consider the same and dismissed the Suit. As far as the Suit for bare injunction is concerned, the Suit is maintainable without including the Government as a party to the proceedings, since the possession of the Plaintiff has been disturbed by the 3rd party defendant. Therefore, the second appeal is liable to be allowed.

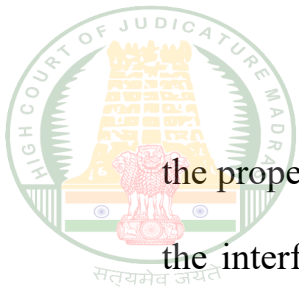
11. The learned counsel appearing for the respondent would submit that originally the property belongs to the Government and it is a Government



poromboke land and the appellant has encroached the road portion, which is the access to the respondent's land. Since the property belongs to the Government, the Government is also a proper and necessary party, but without impleading the Government as a party, the Suit is not maintainable. Therefore, the Courts below have rightly appreciated the facts and evidences, dismissed the Suit. The appellant has wrongly obtained permission from the concerned authorities for construction of building and also obtained electricity connection and paid property tax and other charges and that alone is not sufficient to maintain the Suit, as the appellant encroached the road margin. Therefore, the Courts below have correctly rendered concurrent findings and this Court need not interfere with the same and the second appeal is liable to be dismissed.

12. Heard both sides and perused the entire materials available on record.

13. In this case, it is an admitted fact that the Suit property belongs to the Government and the Plaintiff has encroached the said property and constructed building and obtained permission from the local body authorities and obtained electricity connection and has paid house tax and other charges etc., to the concerned Government authorities. While so, the Plaintiff filed a Suit for permanent injunction as against the third party defendant alleging that he attempted to interfere with the appellant's peaceful possession and enjoyment of



the property. Though the Plaintiff pleaded cause of action, the defendant denied the interference and he has only claimed that the Plaintiff has encroached the road portion, which is the access to his land adjacent to the Plaintiff's property, thereby he sent complaints to the District Collector to remove the said encroachment. Apart from that, there are no any other steps taken by the defendant.

14. Before the trial Court, on the side of the plaintiff, witnesses P.W.1 to PW3 were examined and marked exhibits, Exs.A.1 to A.10. On the side of the defendants, witness D.W.1 was examined and marked exhibits, Exs.B.1 to B.7 and also marked Ex.C.1 and Ex.C.2. The trial court after considering the evidences adduced on both sides and perusing the records, dismissed the suit by holding that the property belongs to the Government and the Government property cannot be encroached and the Government is also a proper and necessary party to the Suit. The First Appellate Court also dismissed the appeal on the same grounds and the property is a highway poromboke and without impleading the Government, the Suit is not maintainable.

15. At this juncture, the learned Senior Counsel appearing for the appellant / Plaintiff would submit that as far as the Suit for permanent injunction is concerned, the Plaintiff who constructed a building in the



Government land, has not sought for any relief against the Government, but in order to protect his possession, from the third party, he has filed the Suit as against the defendant. The third party has no right to interfere with the Plaintiff's possession and enjoyment of the property and the Plaintiff cannot be evicted without due process of law. However, the Courts below have failed to consider the same. With respect to the dismissal of the Suit on the ground of non-impleadment of the Government, the Government is not a necessary party, since the Suit has not been filed as against the Government and the Suit is not for declaration and only for permanent injunction as against the third party. The Suit has been filed for permanent injunction and not for declaration.

16. In support of his contention, the learned Senior Counsel has relied upon the following judgments:

1. Thirumangai Naidu v. R. Srinivasan and 14 others reported in 1996-1-L.W. 752.

2. Rame Gowda (Dead) by Lrs v. M. Varadappa Naidu (Dead) by Lrs and another reported in 2004-1-SCC-769.

On a careful perusal of the above judgments, it is clearer that *Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a*



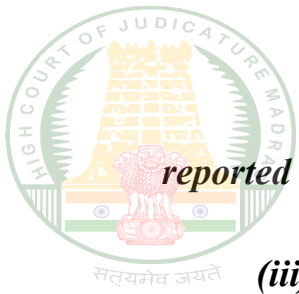
judge in his own cause. In the case on hand also, the Plaintiff filed the Suit for injunction as against the defendant alleging that he constructed a building in the Government property and the Government authorities also approved the construction of building and the defendant, being a third party, cannot interfere with the Plaintiff's possession and enjoyment of the property.

17. However, the learned counsel appearing for the defendant would fairly concede that his land is situated adjacent to the Suit property and since the Plaintiff encroached the road margin, the access of the defendant to his property has been restricted and thereby, he sent a request to the District Collector for removing the encroachment and apart from that, he has not interfered with the Plaintiff's possession and enjoyment of the property, in any way. While so, if the defendant has any grievance, he can very well approach the appropriate authority for eviction in accordance with law. Without due course of law, the Plaintiff cannot be evicted.

17.1. The learned counsel appearing for the defendant has also relied upon the following judgments:

(i) ***Karuppa Thevar and 6 others v. V.P. Kaluva Thevan and another reported in 2002 (1) CTC 338.***

(ii) ***State of Himachal Pradesh v. Milkhi Ram (dead) by Lrs and others***



reported in (2007) 15 Supreme Court Cases 750.

(iii) Packie alias D. Parvathi Nadar and others v. P. Aiyasami

Ganapathi and others in S.A. No.160 of 1964.

(iv) Karuppathal v. Arunachalam and others reported in 2014(2) MWN

(Civil) 267.

The above said judgments relied upon by the defendant will not be applicable to the present facts of the case, as the facts in this case are distinguishable.

18. As far as the **substantial question of law that** “Whether the findings of the Courts below that the Plaintiff who is alleged to be in possession of Government land cannot maintain a Suit for a permanent injunction to protect his possession against private parties, without impleading the Government as a defendant in the Suit, are correct as per law? is concerned, the Suit has been filed for the relief of permanent injunction by the Plaintiff as against the defendant and the Plaintiff can protect his possession as against the third parties. Though the property belongs to the Government, since the Plaintiff is in possession and enjoyment of the property and the same has not been disputed by the defendant, in order to protect the possession of the Plaintiff from third parties, he can file the Suit as against the third parties and in the Suit, the



Government need not be a necessary party. The Plaintiff has not filed any Suit for declaration claiming the title of the property, thereby, the Government is not a proper and necessary party to the Suit. Therefore, the Courts below have rendered perverse findings that the Government is also a proper and necessary party to the Suit, even for the Suit for permanent injunction. Therefore, the said findings of the Courts below are liable to be set aside and accordingly, set aside.

19. However, since there was no any interference caused by the defendant, except sending requisition to the Government authorities for removing the encroachment, the same cannot be termed as interference. Further the Plaintiff also not stated about the particular manner in which the defendant interfered. Mere sending complaints to the Government authorities by the Plaintiff alone is not sufficient to grant decree for permanent injunction. In view of the above discussions, though the Courts below dismissed the Suit on the ground of non-impleadment of Government is fatal to the case and the same are perverse. Since there was no interference by the defendant, the Plaintiff is not entitled to the relief of permanent injunction. Hence there is no requirement to pass decree for permanent injunction as against the defendant.



WEB COPY

20. In view of the above said reasons and discussions and by recording the submissions made on either side, this *Second Appeal stands disposed of*.

No costs. Consequently, the connected miscellaneous petition is closed.

17-07-2026

Index: Yes/No

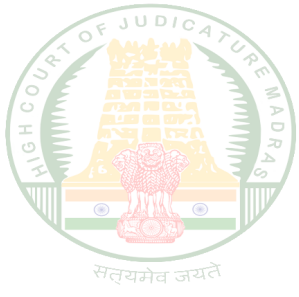
Speaking/Non-speaking order

Neutral Citation: Yes/No

MJS

To

1. The Subordinate Judge, Harur.
2. The District Munsif, Harur.



WEB COPY

SA No. 797 of 2



P.DHANABAL, J.

MJS

SA No. 797 of 2012

17-07-2026