

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

CORAM

THE HONOURABLE MR. JUSTICE P.KALAIYARASAN

S.A. No.1295 of 2007
and M.P.Nos. 1 and 2 of 2007

1. Palaniappan
 2. Selvakumar
 3. Ravi
- Appellants

vs.

1. State of Tamil Nadu
Rep. by the District Collector
Salem.
 2. The Forest Range Officer
Serviroys South Range, Salem - 7.
- ... Respondents

Second Appeal is preferred under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 08.06.2007 made in A.S.No.22 of 2006 on the file of the Sub-Court, Mettur, reversing the Judgment and Decree, dated 31.01.2006 made in O.S.No.20 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Omalur.

For Appellants : Mr.B.Nedunchezhiyan

For Respondents : Mr.M.K.Subramaniam
Spl. Government Pleader (Forest)

J U D G M E N T

This Second Appeal is filed against the Judgment and Decree, dated 08.06.2007 made in A.S.No.22 of 2006 on the file of the Sub-Court, Mettur, reversing the Judgment and Decree, dated 31.01.2006 made in O.S.No.20 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Omalur.

2. The plaintiff in O.S.No.20 of 1996 on the file of the District Munsif-cum-Judicial Magistrate Court, Omalur is the appellant herein. The suit was initially filed in the District

Munsif Court, Mettur as O.S.No.753 of 1987. The suit is for permanent injunction. The parties herein will be referred to according to their rank in the suit.

3. The plaintiffs have been in possession of the suit property. Adjacent to their patta land, the suit property, which is poramboke land is situate and the same has been in enjoyment along with patta land even by the predecessors and the plaintiffs have been in enjoyment for more than two decades from the date of purchase of the patta land. The plaintiffs reclaimed and developed the suit property at a huge cost, to make it fit for cultivation of crops like sugarcane. The Forest Department is having its land beyond the cultivable land and in no time, the department has been in possession of the suit property. It is also necessary that the Forest Department is to leave more than one chain of breadth between the patta land and reserve forest land. Since the department attempts to dispossess the plaintiffs, the suit has been filed.

4. In the written statement filed by the defendants, it is contended that the suit property is reserve forest area. The original notification clearly mentions the description of the boundaries. No forest land can be diverted without the prior permission of the Government of India and that the plaintiffs claim is illegal. As per the Forest Conservation Act, the Forest Department has full right inside the reserve forest. It is false to state that the plaintiffs are enjoying the suit property for a long time. It is also false to state that this defendants came to the suit property with a motive to destroy the usage of cultivable land. Injunction cannot be granted against the true owner. There is no cause of action, as alleged in the plaint.

5. The trial Court, after raising issues, took oral and documentary evidence. Exs.A.1 to A.9 were marked on behalf of the plaintiffs and P.W.1 to P.W.5 were examined. On the side of the defendants, 8 Exhibits were marked and one witness was examined. The Commissioner's Report and plan were also marked as Ex.C.1 and Ex.C.2.

6. The trial Court, after discussing the entire evidence, oral and documentary, came to the conclusion that plaintiffs 6 to 8 are in possession of the suit property, i.e., Item 1 of the plaint sketch and granted permanent injunction, restraining the defendants from interfering with the cultivation and peaceful possession and enjoyment of the suit property, except under due process of law.

7. The first appellate Court, reversed the Judgment of the trial Court, holding that when the plaintiffs admit through the

description of property in the plaint and also in oral evidence that the suit property belongs to the Forest Department, permanent injunction cannot be granted. The above Judgment of the first appellate court is under challenge in this Second Appeal.

8. While admitting the second appeal, the following Substantial Questions of Law were raised :

"1. Whether the lower appellate Court erred in shifting the burden of proof on the plaintiff against the provisions of Sections 102 to 104 of the Indian Evidence Act, 1872 ?

2. Whether the lower appellate Court is right in holding that the suit properties are Reserve Forests, on the basis of the wordings in the Schedule to the plaint ?"

9. Heard Mr. B.Nedunchezhiyan, learned counsel appearing for the appellants as well as Mr.M.K.Subramaniam, learned Special Government Pleader appearing for the respondents.

10. The specific case of the plaintiffs is that from the date of purchase of the patta land, they have been in enjoyment of the suit property, lying adjacent to the patta land. From the very inception of the plaint, the plaintiffs contend that the suit property is a poramboke land. Through oral evidence of the first plaintiff as P.W.1, two V.A.Os, P.W.4 and P.W.5, documentary evidence, Ex.A.8 and Ex.A.9, certificates issued by Tahsildars and also through Commissioner's Report and Plan, the plaintiffs established that they have been in possession and enjoyment of the suit property, i.e., 2.5 acres, lying on northern side of the patta land.

11. The Forest Officer, examined as D.W.1, admits during cross-examination that as per rule, there would be buffer zone in between the reserve forest and patta land and if there is any buffer zone, it will not come in their account. The plaintiffs pleaded and gave evidence about buffer zone. The second defendant, though produced notification regarding reserve forest, it is not asserted about the absence of any such buffer zone, either by rebutting in their pleadings or through evidence. The absence of denial by the defendants in their written statement, when there is specific plea about the buffer zone in the plaint is to be construed as implied admission of the buffer zone.

12. No doubt in the plaint schedule, it is described as "In

Salem R.D, Omalur S.R.D, Thatghaiyangarpettai village, North of S.No.2 in Pannikaradu, R.F. The area of 2.25 acres of land enjoyed by the first plaintiff, 1.50 acres enjoyed by the plaintiffs 2 and 3 and 0.50 acres enjoyed by the plaintiffs 4 and 5 shown in the plaint sketch as items 1, 2 and 3 and in red colour with standing trees like tamarind and other trees. As the same is reserve forest land, there is no survey number and only the description is Pannikaradu R.F".

13. This description of property in the plaint is mainly to identify the property. In the plaint, it is clearly pleaded that the suit property is a poramboke land, adjacent to the patta land and plaintiffs have been in possession and enjoyment. Therefore, the lower appellate court is not correct in taking the words in description of property in the plaint as admission.

14. Ex.A.4, dated 29.03.1995 is the eviction notice issued by the second defendant. The suit is of the year 1987. The issuance of notice in 1995 also discloses that the plaintiffs have been in possession and enjoyment of the suit property.

15. It is well settled that a person in possession can be evicted only by due process of law and even the rightful owner cannot eject the trespassers by force.

16. If the land is within the boundaries of Reserve Forest, as per notification, the defendants are entitled to dispossess the plaintiffs, by following the procedure under Section 68A of the Tamil Nadu Forest Act, 1882.

17. The lower Appellate Court is not right in placing the burden on the plaintiffs, to prove that the suit property is a poramboke land, when there is no specific denial to the pleadings about the buffer zone.

18. As already discussed, the lower appellate court is also wrong in holding that the suit property belongs to Reserve Forest, on the basis of the wordings in the description of property in the plaint.

19. For the aforesaid reasons, the substantial questions of law are answered in favour of the appellants and against the respondents. The Second Appeal is therefore allowed, by setting aside the Judgment and Decree of the lower appellate court and

confirming the Judgment and Decree of the trial Court. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Sub-Court,
Mettur.
2. The District Munsif-cum-
Judicial Magistrate
Omalur.
3. The District Collector
Salem.
4. The Forest Range Officer
Serviroy South Range, Salem - 7

Copy to:
The Section Officer,
VR Section,
High Court,
Madras 104.

1 cc to The Special Government Pleader (Forest), sr.29366

S.A. No.1295 of 2007

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