

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2016

PRONOUNCED ON : 11.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 257 of 2011
and
M.P.Nos.1 of 2010 and 1 of 2011

1.Veerannan		
2.Bomman		
3.Veeran		
4.Rangasamy		
5.Selvaraj		
6.Thambi @ Karivaradaraj	...	Appellants

Vs.

1.Erammal @ Veerammal		
2.Kalappan	...	Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 28.02.2007 passed in A.S.No.31 of 2006 on the file of Principal Sub-Court, Gobichettipalayam confirming the Judgment and Decree dated 22.08.2006 passed in O.S.No.159 of 2002 on the file of District Munsif Court, Sathyamangalam.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : No appearance

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 28.02.2007 passed in A.S.No.31 of 2006 on the file of the Principal Sub Court, Gobichettipalayam confirming the judgment and decree dated 22.08.2006 passed in O.S.No.159 of 2002 on the file of the District Munsif Court, Sathyamangalam.

2. The suit has been laid for permanent injunction.

3. The case of the plaintiffs in brief is as follows:

The suit properties are Government Poramboke lands and the plaintiffs have encroached into the suit properties and enjoying the same by paying necessary charges to the Government by way of "B" memos and the defendants have no right or possession and enjoyment over the suit properties. While so, the defendants, without any authority, unlawfully attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties and also, evicted them from the suit properties and hence, the plaintiffs have been necessitated to file the suit for permanent injunction. Further, according to the plaintiffs, neither the Government nor the revenue authorities have caused any interference with the possession and enjoyment of the suit properties by the plaintiffs.

4. The case of the defendants in brief is as follows:

The suit is not maintainable either in law or on facts. It is false to state that the suit properties are in possession and enjoyment of the plaintiffs and that, the plaintiffs are paying necessary charges to the Government by way of " B " memos and that, the defendants are unlawfully interfering with the possession and enjoyment of the plaintiffs in respect of the suit properties. The documents, alleged to have been filed by the plaintiffs styled as "B" memos, are not admitted by the defendants. The second item of the suit properties has not been correctly described with reference to the survey number as well as boundaries. The survey number given for the second item of the suit properties pertains to the lands situated in a different village. The plaintiffs are not entitled to institute the suit against the defendants in their official capacities. On the above ground alone, the suit laid by the plaintiffs should be rejected. The defendants, being official members of the Panchayat Union of the concerned villages, have taken steps to assign the suit properties in favour of the tribal people and in this connection, based upon the resolution of the Panchayat, steps were taken to identify the lands to be assigned as plots to the tribal people and the persons, who were in possession of the suit properties, have also put forth no objection and at the time of inspection, the plaintiffs were not in possession and enjoyment of the suit properties and the plaintiffs at the instigation of one Ruthraiyan,

who is having political enmity against the defendants, have instituted the suit and therefore, the suit is liable to be dismissed.

5. In support of the plaintiffs' case, PW1 has been examined and Exs.A1 to 10 were marked. On the side of the defendants, DW1 has been examined and no document has been marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. The first appeal preferred by the defendants against the judgment and decree of the trial Court failed. Aggrieved over the same, the defendants have come forward with the present second appeal.

7. The Second appeal was admitted on the following substantial Questions of Law;

(i). Whether both the courts below are right in holding that even though the suit was instituted by the plaintiffs against the defendants, in their official capacity, the non-impleadment of government is not necessary? Such a suit would not hit by laws of non-joinder of necessary parties?

(ii) Whether both the courts below are right in granting the decree of permanent Injunction to the plaintiffs in respect of the plaint suit schedule property, admittedly, who are not lawful owners?

8. The case of the plaintiffs is that the suit properties are Government Poramboke lands and that, they are in possession and enjoyment of the same by paying necessary charges to the Government by way of " B " memos and the defendants have no right or possession and enjoyment over the suit properties and on the other hand, inasmuch as the defendants, without any authority, unlawfully attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties, the plaintiffs have been necessitated to lay the suit for necessary relief.

9. Per contra, it is the case of the defendants that the plaintiffs are not in possession and enjoyment of the suit properties by paying necessary charges to the Government and therefore, the suit laid by the plaintiffs is liable to be rejected. Further, according to the defendants, they had taken steps as members of Panchayat Union to allot the suit properties as house sites to tribal people and also, measured the suit properties and other properties and at that time, the plaintiffs are not found in possession and enjoyment of the suit

properties and therefore, the case of the plaintiffs' that they are in possession and enjoyment of the suit properties is a false one and liable to be rejected.

10. It is admitted that the suit properties are Government poramboke lands. Therefore, it could be seen that the Government is the lawful owner of the suit properties. The plaintiffs have specifically pleaded in the plaint that neither the Government nor the revenue authorities are attempting to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties in any manner. The case of the plaintiffs is that it is only the defendants who had been causing interference to their possession and enjoyment without any authority.

11. To establish that the plaintiffs are in possession and enjoyment of the suit properties by paying necessary charges by way of "B" memos, the plaintiffs have marked Exs.A1 to A10. The Courts below have rightly appreciated the oral and documentary evidence adduced on the side of the plaintiffs and found that, it is only the plaintiffs who are in possession and enjoyment of the suit properties. The findings of the Courts below, with reference to the above aspects, cannot be faulted in any manner.

12. The counsel for the defendants argued that the plaintiffs,

having laid the suit against the defendants in their official capacities, should have issued the necessary statutory notice before the institution of the suit and the plaintiffs having not done so, on that ground alone, the plaintiffs' lis should be rejected. However, the above argument of the defendants' counsel cannot be accepted. A perusal of the records submitted would go to show that the defendants have cross examined the plaintiffs on the footing that the plaintiffs have deliberately laid the suit against the defendants in their individual capacity and not filed the suit against them in their official capacity. Therefore, as seen from the nature of the cross examination of the plaintiffs witness P.W.1, it could be seen that they are well aware that the suit has been laid by the plaintiffs against them only in their individual capacity and not in their official capacity. Only, in case, the plaintiffs had filed the suit alleging that the defendants had misused their official position and as such, interfered with their possession and enjoyment, the plaintiffs would have been necessitated to issue the statutory notice before the institution of the suit and thereafter, laid the suit. On the other hand, when it is the specific case of the plaintiffs that the defendants have independently caused interference to their possession and enjoyment of the suit properties, it could be seen that the plaintiffs have been necessitated to institute the suit against the defendants in their individual capacity. Therefore, the contention of the defendants' counsel that the suit laid

by the plaintiffs should have been rejected by the Courts below on the footing that the statutory notice under Section 80 CPC has not been given before the filing of the suit, cannot be accepted.

13. It is further argued by the defendants' counsel that the Government being the true owner of the suit properties, the suit laid by the plaintiffs without impleading the Government or the Revenue authorities is bad in law i.e. according to the defendants, the suit is bad for non joinder of necessary parties. However, the above argument does not merit acceptance. As averted to earlier, it has been admitted by the plaintiffs that the suit properties belonged to Government, they being Government Porambockku lands. Further, according to the plaintiffs, the Government or Revenue authorities have not put forth any resistance to their enjoyment of the suit properties. In such view of the matter, the plea now put forth that the suit is bad for non joinder of Government/ Revenue Authorities, as such, cannot be countenanced. That apart, the plea of non joinder should have been taken by the defendants' specifically in the written statement. A perusal of the written statement would go to reveal that they have not taken a plea in particular that the suit is bad for non joinder of necessary parties i.e. The Government. Hence, the above plea now projected by the defendants counsel is rejected outright.

14. As adverted to earlier, it is only the Government, who is the

true owner of the suit properties. Therefore, if at all, the plaintiffs possession and enjoyment of the suit properties should be interfered or they be evicted from the suit properties lawfully, it is only the Government, who would be entitled to lay the necessary suit or institute appropriate proceedings against the plaintiffs for recovery of possession of the suit properties. The above being the true position, it has not been explained by the defendants as to how they would have any authority to cause interference to the plaintiffs' possession and enjoyment of the suit properties as such.

15. Though the defendants have pleaded, as members of the Panchayat union, they have taken steps to allot the suit properties as house sites, to the tribal people, based upon the resolution of the Panchayat, to sustain the above case of the defendants, no material whatsoever is forthcoming. Other than making such pleas in the written statement, no shred of evidence has been projected by the defendants to sustain their pleas.

16. No doubt, it is only the plaintiffs who have to establish their case for seeking necessary relief. As seen earlier, the plaintiffs have established their case by producing acceptable and reliable evidence and the same has also been correctly analysed by the courts below in the right perspective. In such view of the matter, when the plaintiffs

are found to be in possession and enjoyment of the suit properties, the defendants have no right whatsoever to cause interference to their possession and enjoyment in any manner.

17. No interference is called for to the findings of the Courts below as regards the possession and enjoyment of the suit properties or that the plaintiffs are entitled to seek the relief of permanent injunction as prayed for against the defendants. In view of the above discussions, I hold that there is no substantial question of law involved in this second appeal as claimed by the defendants. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11.11.2016

Index : Yes/No
Internet: Yes/No
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To

1. The Principal Sub-Court,
Gobichettipalayam.
2. The District Munsif Court,
Sathyamangalam.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No. 257 of 2011
and
M.P.Nos.1 of 2010 and 1 of 2011

11.11.2016

Pre -delievery judgment
in S. A.No. 257 of 2011

and
M.P.Nos.1 of 2010 and 1 of 2011

To

The Hon'ble Mr.Justice T.Ravindran

Respectfully submitted
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(P.A.to the Hon'ble Judges)