

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.61 of 2016
and

C.M.P.No.1773 of 2016

- 1.P.Pappathi
- 2.P.Saravanakumar
- 3.P.Sakthivel
- 4.S.P.Velliangiri
- 5.P.Subramani
- 6.P.Krishnan

... Appellants

vs.

- 1.The Commissioner,
Sathyamangalam Municipality,
Municipal Office,
Sathyamangalam,
Erode District.
- 2.The Chairman,
Sathyamangalam Municipality,
Municipal Office,
Sathyamangalam,
Erode District.
- 3.The Junior Engineer,
Tamilnadu Electricity Board,
S.T.Road,
Sathyamangalam,
Erode District.
- 4.The Executive Engineer,
Tamilnadu Electricity Board,
Sathyamangalam,
Erode District.

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 13.10.2015 made in A.S.No.38 of 2015 on the file of the Sub Court, Sathyamangalam, confirming the the judgment and decree dated 20.07.2015 made in O.S.No.164 of 2014 on the file of the District Munsif Court, Sathyamangalam.

For Appellants : Mr.N.Manokaran
For Respondents : Mr.P.Srinivas for R1
No Appearance for R2
Mr.V.Viswanathan
for R3 and R4

J U D G M E N T

The appellants are the plaintiffs in a suit for bare injunction. Their case is that the suit property, admittedly owned by Government, was occupied by their predecessor in title viz., Palanisamy being the husband of the first plaintiff and father of the other plaintiffs. Long ago, he died on 26.05.1990, leaving these plaintiffs as his legal heirs. Therefore, it is contended that the plaintiffs being the legal heirs of the said Palanisamy, are in continuous possession and enjoyment of the suit property with which the defendants cannot interfere. They also contended that the said Palanisamy filed a suit in O.S.No.402 of 1988 against the very same defendants for permanent injunction and got a decree on 03.05.1988. Therefore, it is contended by the plaintiffs that the defendants are not entitled to interfere with their peaceful possession and enjoyment of the same.

2.The defendants contested the suit. It is their case that the suit property is a part of the odai poramboke which is meant to drain the storm water and floods and the plaintiffs have unlawfully converted the suit property and thereby obstructed the free flow of rain water. It is further contended by the defendants that there had been many complaints from the public about the unlawful encroachment of the plaintiffs. Therefore, the plaintiffs were called upon to remove the unlawful encroachment which they voluntarily removed on 31.10.2014. Therefore, it is contended by the defendants that the plaintiffs filed the present suit for mandatory injunction suppressing the above stated facts.

3.The trial court after considering the rival pleadings of the parties and the evidence let in by the plaintiffs and also by considering the very admission made by the second plaintiff, P.W.1 during his examination that he has vacated the premises and shifted his place to some other place, dismissed the suit by holding that the plaintiffs are not in possession and enjoyment of the suit property on the date of filing of the suit. Such finding was confirmed by the Appellate Court by dismissing the appeal filed by the plaintiffs. Challenging such concurrent findings, the present second appeal is filed before this court.

4. At the time of admitting the appeal, the following substantial questions of law were raised:

"i) Whether the courts below are right in affirming the conduct of the defendants in taking forcible possession of the suit property from the hands of the plaintiffs particularly when they have established their settled possession as per the decision of the Hon'ble Supreme Court in 2004(3)143 (SC)?

ii) Whether the courts below are correct in holding that the defendants are entitled to evict the plaintiffs summarily by ignoring the long duration of occupation of the plaintiffs for an appreciable length of time over the suit property as held by the Hon'ble Supreme Court in 1982(2)SCC 134?

iii) Whether the courts below have committed an error in not drawing an adverse inference against the defendants for not let in oral evidence in support of their written statement as per the law laid down in AIR 1999 SC 1441?

iv) Whether the Courts below have committed an error in not applying the issue of estoppel against the defendants in view of the decree granted in O.S.No.402 of 1988 (Ex.A1)?"

5. Heard learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the materials placed before this court.

6. It is not in dispute that the suit property is a Government property classified as odai poramboke and that the plaintiffs' predecessor in title viz., the said Palanisamy encroached and occupied the property, without having any title over the same. No doubt, the said Palanisamy seems to have filed a suit in the year 1988 and obtained injunction against the very same respondents on 03.05.1988. But the defendants specifically contended in their written statement that the plaintiffs have vacated the premises as early as on 31.10.2014, voluntarily, on notice for removal of such encroachment. Therefore, it is the contention of the defendants that the plaintiffs are not in possession and enjoyment of the suit property on the date of filing the suit. The said contention of the defendants is admitted by the plaintiffs while cross-examining PW1 viz., the second plaintiff. He has categorically admitted that the plaintiffs have demolished the house and shifted their residence to some other place. When such being the fact and categorical admission made by PW1, I do not think that the plaintiffs are entitled to maintain the suit for injunction and for mandatory injunction to restore the electricity connection, when there is no superstructure existing

in the suit property. It is well settled that the plaintiff who seeks for injunction has to plead and establish that he or she is in possession and enjoyment of the suit property on the date of filing of the suit. On the other hand, in this case, when the very plaintiffs have admitted during the cross-examination of PW1 that they have already vacated the suit property as early as on 31.10.2014, the courts below are justified in refusing to grant the relief of injunction. Therefore, the appellants are not entitled to succeed in this appeal. Accordingly, the questions of law raised in this appeal are answered against the appellants. Consequently, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

To

1.The Sub Court,
Sathyamangalam.

2.The District Munsif Court,
Sathyamangalam.

+1 cc to Mr.N.Manoharan Advocate sr 67032

+1 cc to Mr.V.Viswanathan Advocate sr 66577

+1 cc to Mr.P.Srinivas Advocate sr 66858

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S.A.NO.61 OF 2016

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