

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

PRONOUNCED ON :07.03.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

**S. A.Nos.714 & 715 of 2011
and M.P.Nos.1 & 1 of 2011 and
S.A.No.109 of 2015 and M.P.No.1 of 2015**

S.A.No.714 of 2011

Velmurugan ... Appellant

Vs.

1.The District Collector,
Nagapattinam.

2.The Sub-Collector,
Mayiladuthurai,
Nagapattinam District.

3. The Tahsildar
Tharangambadi,
Nagapattinam District.

... Respondents

S.A.No.715 of 2011

1.Ilavazhagan
2.Sita
3.Malar
4.Manimekalai

... Appellants

Vs.

1.The District Collector,

Nagapattinam.

2.The Sub-Collector,
Mayiladuthurai,
Nagapattinam District.

3. The Tahsildar
Tharangambadi,
Nagapattinam District.

...

Respondents

S.A.No.109 of 2015

Kadakkam Village Panchayat,
Tarangampadi Taluk,
Rep.by its President,
Village Panchayat Office,
Main Road,
Kadakkam Village,
Killiyanoor Post,
Tarangampadi Taluk,
Nagapattinam District.

...

Appellant

Vs.

1.Elavazhagan
2.Velmurugan
3.Seetha
4.Malar
5.Manimegalai

...

Respondents

PRAYER IN S.A.No.714 of 2011: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.09.2010 made in A.S.No.11 of 2010 on the file of the Principal Sub Court, Mayiladuthurai, confirming the judgment and decree dated 30.10.2009 made in O.S.No.347 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

PRAYER IN S.A.No.715 of 2011: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.09.2010 made in A.S.No.15 of 2010 on the file of the Principal Sub Court, Mayiladuthurai, reversing the judgment and decree dated 30.10.2009 made in O.S.No.347 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

PRAYER IN S.A.No.109 of 2015: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.12.2012 made in A.S.No.94 of 2012 on the file of the Additional Sub-Ordinate Judge, Mayiladuthurai, reversing the judgment and decree dated 18.06.2012 made in O.S.No.297 of 2008 on the file of the Principal District Munsif, Mayiladuthurai.

For Appellants in : Mr.S.Sounthar
S.A.Nos.714 & 715/2011

For Appellant in :Mr.A.Muthukumar
S.A.No.109/2015

For Respondents in : Mr.SN Parthasarathy
S.A.Nos.714 & 715/2011 Govt.Advocate

For Respondents : Mr.S.Sounthar
in S.A.No.109/2015

For Respondents : No appearance
No.3 to 5

COMMON JUDGMENT

S.A.No.714 of 2011:

Challenge in this second appeal is made by the second plaintiff against the judgment and decree dated 13.09.2010 made in A.S.No.11 of 2010 on the file of the Principal Sub Court, Mayiladuthurai, confirming the judgment and decree dated 30.10.2009 made in O.S.No.347 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

PRAYER IN S.A.No.715 of 2011:

Challenge in this second appeal is made by the plaintiffs 1, 3 to 5 against the judgment and decree dated 13.09.2010 made in A.S.No.15 of 2010 on the file of the Principal Sub Court, Mayiladuthurai, reversing the judgment and decree dated 30.10.2009 made in O.S.No.347 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

PRAYER IN S.A.No.109 of 2015:

Challenge in this second appeal is made by the defendant against the judgment and decree dated 19.12.2012 made in A.S.No.94 of 2012 on the file of the Additional Sub Court, Mayiladuthurai, reversing the judgment and decree dated 18.06.2012 made in O.S.No.297 of 2008 on the file of the Principal District Munsif, Mayiladuthurai.

2. S.A.No.109 of 2015 has been admitted and the following substantial question of law is formulated for consideration in this second appeal.

"Whether the lower appellate court was right in holding that the respondents are in possession and enjoyment of the suit property, when in the earlier appeal in A.S.No.15 of 2010, the principal subordinate Judge, Mayiladuthurai has categorically held that the plaintiffs are not in possession of the suit property?"

3. The suit properties involved in all the second appeals are one and the same.

4. The suit in O.S.No.347/2008 has been laid by the plaintiffs against the Government and others for permanent injunction.

5. The suit in O.S.No.297 of 2008 has been laid by the plaintiffs against the appellant in second appeal No.109 of 2015 for permanent injunction.

6. Claiming that the suit properties are in their possession and enjoyment and also further claiming that the suit properties belonged to the temple, the plaintiffs have laid the suits against the Government and others for permanent injunction in O.S.No.347 of 2008 and the appellant in Second appeal No.109 of 2015 in O.S.No.297 of 2008 respectively for the relief of permanent injunction.

7. It is admitted that the suit properties are classified as Porambokku lands. In such view of the matter, on the basis of the evidence adduced, it is noted that the first appellate Court in A.S.Nos.11 of 2010 and 15 of 2010 has found that the plaintiffs have failed to establish that they are in possession and enjoyment of the suit properties and also, failed to establish that the suit properties belonged to the temple as put forth by the plaintiffs and accordingly, held that the plaintiffs are not entitled to obtain the relief of permanent injunction sought for by them in O.S.No.347 of 2008. It is, therefore, found that the first appellate Court in the above matters has rendered a clear finding that the plaintiffs are not in possession of the suit properties and therefore, declined the relief of permanent injunction sought for by the plaintiffs.

8. On a perusal of the judgment and decrees of the first appellate Court rendered in A.S.Nos.11 of 2010 and 15 of 2010, it is found that the first appellate Court has, on the proper appreciation of the evidence on record and also giving cogent, acceptable reasonings and conclusions, rejected the plaintiffs' case. No valid ground has been projected in the second appeals preferred, to warrant any interference with the findings and conclusions of the first appellate Court for rejecting the plaintiffs' case.

9. It is also, now fairly, admitted by the plaintiffs' counsel that the Government has taken possession of the suit properties and therefore, it is found that even the cause of action, on which, the plaintiffs had laid the lis, has ceased to exist and on that ground also, it is found that the present second appeals preferred by the plaintiffs do not survive any further.

10. In so far as the suit laid by the plaintiffs in O.S.No.297 of 2008, it is found that the judgment and decree rendered by the first appellate Court in A.S.No.15 of 2010 have been exhibited as Exs.B1 and 2. That apart, it is also found that the commissioner's report and plan have also been marked as Exs.C1 and C2, which go to show that the claim of the plaintiffs that they are in possession and enjoyment

of the suit properties is not true. It is, thus, found that the first appellate Court in A.S.No.94 of 2012 has not properly considered the import of the judgment and decree rendered in A.S.No.15 of 2010 and failed to appreciate the position that the plaintiffs have not established their case of legal possession and enjoyment of the suit properties as put forth by them. That apart, when it has been clearly found by the first appellate Court in A.S.No.15 of 2010 that the suit properties are only Porambokku lands and not belonging to the temple and when the said findings have become final and binding on the plaintiffs, it could be seen that the first appellate Court in A.S.No.94 of 2012 has erred in granting the relief of permanent injunction sought for by the plaintiffs, merely on the footing that the suit properties are in their possession and enjoyment. But that case of the plaintiffs is belied by the commissioner's report and plan marked as Exs.C1 and C2. That apart, as rightly put forth by the appellant in second appeal No.109 of 2015, it is found that the Government has also taken possession of the suit properties and therefore, the cause of action for the suit also ceased to exist any further and therefore, according to him, the first appellate Court in A.S.No.94 of 2012 has erred in upholding the case of the plaintiffs much against the evidence on record particularly, the judgment and decree rendered in A.S.No.15 of 2010 marked as Exs.B1 and 2.

11. In the light of the above discussions, it is found that the plaintiffs have failed to establish that they are in legal possession and enjoyment of the suit properties as put forth by them. The plaintiffs have failed to establish that the suit properties belonged to the temple. The plaintiffs have admitted that the Government has taken the possession of the suit properties.

12. In the light of the above position, it is also found that the cause of action, on which, the plaintiffs had laid the suits has ceased to exist and therefore, nothing survives to grant any further relief in the lis in favour of the plaintiffs.

13. In the light of the above discussions, the substantial question of law formulated for consideration in S.A.No.109 of 2015 is answered against the respondents/plaintiffs and in favour of the appellant/defendant. No substantial question of law is found to be involved in S.A.Nos.714 & 715 of 2011.

In conclusion,

(i) the judgment and decree dated 13.09.2010 made in A.S.No.11 of 2010 on the file of the Principal Sub Court,

Mayiladuthurai are confirmed and accordingly, the second appeal in S.A.No.714 of 2011 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) the judgment and decree dated 13.09.2010 made in A.S.No.15 of 2010 on the file of the Principal Sub Court, Mayiladuthurai are confirmed and accordingly, the second appeal in S.A.No.715 of 2011 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(iii) the judgment and decree dated 19.12.2012 made in A.S.No.94 of 2012 on the file of the Additional Sub-Ordinate Judge, Mayiladuthurai are set aside and the judgment and decree dated 18.06.2012 made in O.S.No.297 of 2008 on the file of the Principal District Munsif, Mayiladuthurai are confirmed and accordingly, the second appeal in S.A.No.109 of 2015 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

07.03.2017

To

1. The Principal Sub Court,
Mayiladuthurai.

2. The Principal District Munsif Court,
Mayiladuthurai.
3. The Additional Sub Court,
Mayiladuthurai.

T.RAVINDRAN,J.

Pre-delivery Judgment in
S. A.Nos.714 & 715 of 2011
and M.P.Nos.1 & 1 of 2011 and
S.A.No.109 of 2015 and M.P.No.1 of 2015

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