

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2017

PRONOUNCED ON : 26.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1092 of 2001

1. Vanathaiyan (Deceased)... Appellant/Respondent/Plaintiff
2. Susairathinam
3. Arulmary
4. Chinnappan
5. Kuzhandai Therasal Appellants
(Appellants 2 to 5 brought on record as
LRs of the deceased sole appellant vide
order of the Court dated 11.12.2014 made
in CMP Nos.51 to 53/2014)

Vs.

1. Susaiamul
2. Iruthayamary
3. Francis.A.
4. Minor Yesudas,
S/o. Arockiasami,
Represented by mother and
guardian second respondent. Respondents/Appellant 2 to 5
2nd defendant 3rd parties

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 20.02.2001 in A.S.No.127/96 before the Subordinate judge, Panruti reversing the judgment and the decree dated 23.02.1996 in O.S. No. 628/92 on the file of the District Munsif, Panruti.

For Appellants : Ms.A.Nilapher for M/s.R.Meenal

For Respondent No.1 : Mr.T.Sezian

For Respondent
Nos. 2 to 4 : Mr.R.Sunil Kumar

JUDGMENT

The second appeal is directed against the judgment and decree dated 20.02.2001 passed in A.S.No.127/96, on the file of the Sub Court , Panruti reversing the judgment and decree dated 23.02.1996 passed in O.S.No.628/92, on the file of the District Munsif Court, Panruti.

2. The parties are referred to as per their rankings in the Trial Court.

3. Suit for permanent injunction.

4. The case of the plaintiff in brief is that the suit properties consist of Odai poramboke and Natham poramboke belonging to the Government and the plaintiff has been in possession and enjoyment of the suit properties, continuously for more than forty years, by putting up a dwelling house therein and using the vacant site as garden and paying kist in respect of the tamarind trees situated in the suit properties and also paying necessary penal taxes for the enjoyment of the suit properties and the defendants who are the sons of the plaintiff's brothers, having no manner of right over the suit properties and never enjoyed the same at any point of time, taking into consideration, the old age of the plaintiff and the inability of his handicapped son, are attempting to snatch the suit properties from the plaintiff unlawfully and the defendants are not entitled to use force, to dispossess the plaintiff from the suit properties and in this connection, police complaint had been laid and as the attempts of the defendants to dispossess the plaintiff from the suit properties persisted, according to the plaintiff, he has been necessitated to lay the suit for permanent injunction.

5. The case of the defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and the allegations that the suit properties have been in the possession and enjoyment of the plaintiff continuously for more than forty years and that the plaintiff is enjoying the same by paying necessary kist and penal taxes to the Government are false and the plaintiff has never been in possession and enjoyment of the suit properties at any point of time and the case of the plaintiff that the defendants unlawfully attempted to dispossess him from the suit properties is also false. The documents filed by the plaintiff are not related to the suit properties and it is only the plaintiff who attempted to trespass and dispossess the defendants from the properties, in which, they had put up dwelling hut and in this connection, the defendants have also lodged a police complaint against the plaintiff and the plaintiff has come forward with a false suit

and accordingly, unable to give the particulars of the suit properties correctly and the plaintiff being not in the possession and enjoyment of the suit properties, as described in the plaint, is not entitled to obtain the relief sought for and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined and Exs.A1 to A6 were marked. On the side of the defendants DWs 1 and 2 were examined and Exs. B1 to B11 were marked. Exs. C1 to C3 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court was pleased to decree the suit as prayed for. On appeal by the defendants, the First Appellate Court was pleased to set aside the judgment and decree of the Trial Court and accordingly, allowed the appeal preferred by the defendants, thereby, dismissed the suit laid by the plaintiff. Impugning the same, the plaintiff has preferred the second appeal.

8. At the time of the admission of the Second Appeal, following substantial questions of law were formulated for consideration.

1. Whether in law the Lower Appellate Court was right in failing to see that the amendment of plaint having been allowed, the amendment dated back to the date of suit and that it should not prejudice the Court in deciding the matter in issue?

2. Whether in law the Lower Appellate Court was not wrong in omitting to see that injunction could be granted against everyone except the true owners?

9. It is not in dispute that the suit properties consist of Odai poramboke and Natham poramboke and it is further found and also admitted that the major portion of the suit properties is Odai poramboke and only a smaller portion represents Natham poramboke. It is thus found that the suit properties as such, belong to the Government. Now, according to the plaintiff, he has been in possession and enjoyment of the suit properties continuously, for more than forty years, by putting up a dwelling house and using the remaining space as garden and enjoying the suit properties by paying necessary kist and penal taxes to the Government and the defendants without any authority attempted to interfere with his lawful possession of the suit properties, to which, they are not entitled to and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendants that the plaintiff has never been in possession and enjoyment of the suit properties as described in the plaint, at any point of time and the documents filed by the plaintiff to establish his possession are not related to the suit properties and it is only the plaintiff, with his influence, attempted to interfere with the possession and enjoyment of the defendants and in this connection, according to the defendants, a police complaint has been lodged and hence, it is pleaded by them that the plaintiff is not entitled to obtain the relief sought for.

11. Originally, the suit has been laid by the plaintiff showing three items of suit properties with some particulars. Subsequently, on the defence put forth by the defendants, it is found that the plaint has been amended and accordingly, it is further seen that the plaintiff has deleted one item of the suit properties and has amended the other items of the suit properties suitably and continued the suit. Thus pointing out to the same, it is found that the First Appellate Court has observed that inasmuch as, the plaintiff is not sure about the extent and the identity of the properties, to which he claims to be in possession and enjoyment for more than forty years, commented that as the plaintiff is not in possession and enjoyment of the suit properties as putforth by him, the plaintiff had come forward with the suit, with incorrect particulars. The above comment of the First Appellate Court cannot be ignored as such. As rightly noted by the First Appellate Court, if really the plaintiff had been in possession and enjoyment of the suit properties, as described in the plaint for more than forty years, by putting up dwelling house and using the same as garden etc., the plaintiff would have, at the inception itself, given correct and clear particulars of the suit properties in the plaint. However, as the plaintiff is not in possession and enjoyment of the suit properties as described in the plaint and as claimed by him, it is found that the plaintiff has been necessitated to amend the description of the suit properties and also sought for the deletion of the first item of the suit properties, subsequent to the laying of the suit. In such view of the matter, it is found that when the First Appellate Court, as putforth by the plaintiff's Counsel, has not held that the plaintiff cannot take advantage of the amendment carried out in the plaint or when the First Appellate Court has not held that the amendment would not date back to the filing of the suit, it is found that the above observation/comment of the First Appellate Court was not the main factor for the dismissal of the suit laid by the plaintiff by the First Appellate Court. In such view of the matter, the contention now put forth by the plaintiff's counsel that the First Appellate Court has erred in not noting that the amendment

of the plaint would date back to the date of filing of the suit and the same has not been properly appreciated by the First Appellate Court, cannot be accepted. In such view of the matter, it is found that the first substantial question of law formulated for consideration in this second appeal is unnecessary and in any manner, the same having been formulated for consideration, it is found that the First Appellate Court has declined the relief sought for by the plaintiff not on mainly focusing the amendment carried out by the plaintiff in the plaint but on other factors.

12. On a perusal of the reasonings and conclusions of the First Appellate Court, it is found that the First Appellate Court has not decreed the suit of the plaintiff, mainly on the footing that the plaintiff has miserably failed to establish that he is in possession and enjoyment of the suit properties as described in the plaint and as claimed by him in the plaint. It is the specific defence of the defendants that the plaintiff has never been in possession and enjoyment of the suit properties as described in the plaint at any point of time and the documents projected by the plaintiff are in no way related to the suit properties as such. In such view of the matter, as rightly argued by the counsel appearing for the defendants, it is for the plaintiff to establish that he has been in possession and enjoyment of the suit properties as described in the plaint, by placing necessary acceptable and reliable materials.

13. In this connection, it is found that the defendants have examined the local Village Administrative Officer (VAO) as DW2 and it is also found that the VAO was present, even at the time of the inspection of the suit properties by the Advocate Commissioner. It is further found that the plaintiff has not attributed any enmity against the VAO for deposing against him. Being the VAO of the locality concerned, it is noted that DW2 would be competent to speak about the possession and enjoyment of the suit properties, particularly, the suit properties being Odai poramboke and Natham Poramboke. In this connection, DW2 has specifically stated that the adangal marked as Ex.A1, on the side of the plaintiff do not relate to the suit properties. Further, according to DW2, the name Vanathaiyan mentioned in Ex.A1, do not relate to the plaintiff and there are other persons in the name of Vanathaiyan in the village.

14. Further, the plaintiff examined as PW1 has also admitted that there are other persons in the village named as Vanathaiyan. In such view of the matter, when there is nothing to indicate that the name Vanathaiyan in Ex.A1, relate to the plaintiff as such and further, when Ex.A1 has not been established to be related to the suit properties as described in the plaint, as rightly held by the First Appellate Court, Ex.A1

would not in any manner be helpful to sustain the case of the plaintiff. Further, it is the specific testimony of DW2 that the plaintiff in possession and enjoyment of certain properties belonging to the Government, situated to the West of the Kullanchavadi road and therefore, according to DW2, the tax receipts marked by the plaintiff, only relate to the said properties and not to the suit properties as such and when it is further seen that even, as per the evidence of PW2, when the plaintiff is in possession and enjoyment of the properties of the Government, situated to the West of Kullanchavadi road and when Kullanchavadi road is shown as Western boundary of the suit properties, it is found that the claim of the plaintiff that he has been in possession and enjoyment of the suit properties for more than forty years on the mere production of certain tax receipts as such cannot be accepted readily. When the tax receipts projected by the plaintiff are not shown to be related to the suit properties as such and particularly, when it is also noted that the plaintiff is in possession and enjoyment of the properties of the Government, situated to the West of Kullanchavadi road, the First Appellate Court was right in not placing reliance upon the tax receipts projected by the plaintiff for holding that he is not in possession and enjoyment of the suit properties as claimed by him. Particularly, when the defendants have disputed the documents projected by the plaintiff as not relating to the suit properties as described in the plaint and when the case of the defendants is buttressed by the evidence of the VAO, examined as DW2 and when no enmity has been attributed against DW2 for deposing against the plaintiff as such and when it is further found that the plaintiff is in possession and enjoyment of the other Government properties situated to the West of Kullanchavadi road and when there is no indication as such in the documents projected by the plaintiff that they relate to the suit properties, it is found that the First Appellate Court has rightly held that merely on the documents projected by the plaintiff, it cannot be held that he is in possession and enjoyment of the suit properties as such.

15. Particularly, as rightly held by the First Appellate Court, when the major portion of the suit properties being Odai poramboke and when no particular individual could claim to be in lawful possession of Odai poramboke as such and when it is further found that the plaintiff has miserably failed to establish that he is in possession and enjoyment of the suit properties as such and in the light of the evidence of the VAO examined as DW2 and further when it is found that the parties are at issue, even prior to the filing of the suit as regards the possession and enjoyment of the properties and the plaintiff having come forward with the suit for appropriate reliefs, the burden being imposed on the plaintiff to establish the same, particularly, when his lis has been severely impugned by the

defendants and considering the reasons aforesaid, it is found that the First Appellate Court, on the proper reasonings of the issues involved in the matter and also on the proper appreciation of the materials placed, has rightly held that the plaintiff has failed to establish that he is in possession and enjoyment of the suit properties as put forth by him. In such view of the matter, it is found that the First Appellate Court was right in declining the relief of permanent injunction sought for by the plaintiff.

16. It is contended by the plaintiffs' counsel that the suit properties being the properties of the Government, the plaintiff is entitled to maintain the suit for permanent injunction against all, except the true owner and the same being the position of law, according to her, the plaintiff is entitled to maintain the suit against the defendants. Further, it is contended that the plaintiff having not claimed any relief against the Government, the suit for permanent injunction against the defendants is maintainable and in this connection, strong reliance is placed upon the decision reported in (1999) 4 SCC 403 (Prataprai N. Kothari Vs. John Braganza). However, it is found that when the plaintiff has miserably failed to establish that he is in lawful possession of the suit properties as described in the plaint and when the documents projected by the plaintiff are found to be not related to the suit properties as such and when the First Appellate Court has considered the gamut of the case in all aspects, accordingly, both on the factual as well as the legal aspects, it is seen that the plaintiff, as rightly held by the First Appellate Court, cannot be granted the relief of permanent injunction and in such view of the matter, the substantial questions of law formulated in this second appeal are answered against the plaintiff.

17. In the light of the above discussions, the second appeal fails and accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar (CS-)

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Sub Assistant Registrar

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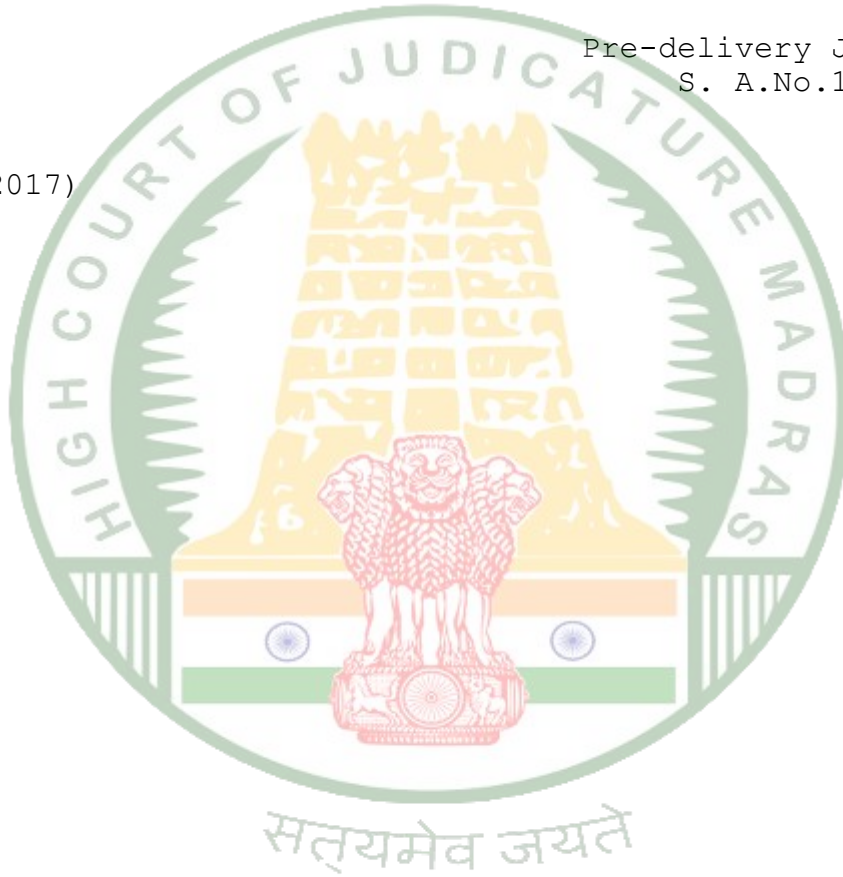
1. The Subordinate judge,,
Panruti.

2. The District Munsif,
Panruti.

+1cc to Mr.R.SUBRAMANIAN Advocate, S.R.No. 75936
+1cc to Mr.R.SUNIL KUMAR Advocate, S.R.No. 75610

Pre-delivery Judgment in
S. A.No.1092 of 2001

GJ II (CO)
TR(04/12/2017)



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