IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1605 of 1996

&

S.A.No.2005 of 2001

S.A.No.1605/1996

1.Kalianna Gounder (deceased)
2.Thangavelu
3.Sadasivam
4.Karuppannan
5.Sarasu

(5th Appellant brought on record as LR of the deceased 1st appellant vide order of Court dated 22.02.2018 made in C.M.P.No.2134 to 2136/18 in S.A.No.1605/1996) ... Appellants/Defendants 1 to 3 & 5

Vs.

1.Muthuchamy
2.Arjunan
3.Madheswaran ... Respondents 1 to 3/Plaintiffs
4.Palaniappan

5.Kandappan @ Suruttukannan ... Respondents 4 & 5
(R-5 Given up) (Defendant No.6 & Defendant No.4)

Prayer in S.A.No.1605/1996: Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and decree made in A.S.No.44 of 1995, on the file of the Principal District Judge, Salem, dated 25.03.1996, confirming the Judgment and Decree made in O.S.No.491 of 1983, on the file of the District Munsif Court at Attur, dated 23.12.1994.

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S.A.No.2005 / 2001

1.Thangavel
2.Maruthamuthu ... Appellants(Plainitffs)

Vs.

1.Muthusamy
2.Rajammal
3.Ravi @ Balamurugan ... Respondents (Defendants)

Prayer in S.A.No.2005/2001: Second Appeal filed under Section 100 of C.P.C. against the Judgment and decree made in A.S.No.20 of 1998, on the file of Sub-Judge, Attur, dated 31.03.1999 confirming the judgment and decree in O.S.No.2 of 1995 dated 09.12.1997 on the file of District Munsif, Attur.

For Appellants : Mr.C.Vediappan
in both S.As for Mr. S.Mani

For Respondents : Mr.S.Mayilnathan
in SA.1605/1996 for Mr.D.Shivakumaran
(R1 TO R3)
R5 : Given up

For Respondents : Ms.P.Saritha
in SA.2005/2001 for M/s.Zeenath Begum
R1 to R3

C O M M O N J U D G M E N T

The defendants 1 to 3 and 5 in O.S.No.491 of 1983 who have lost their case before the Trial Court as well as the First Appellate Court are the appellants herein in S.A.No.1605/1996. The plaintiffs in O.S.No.2 of 1995 who have lost their case before the Trial Court as well as the First Appellate Court are the appellants in S.A.No.2005 of 2001.

2.For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments in O.S.No.491 of 1983 are as follows:

The first plaintiff is the father of the second plaintiff and the third plaintiff. The first plaintiff was assigned with the lands in S.No.170/6, 2.04 by the Government in order No.234/AM/90 on 30.09.1980. After the assignment, the first plaintiff was in possession and enjoyment of the lands. The second plaintiff was assigned with the lands in S.No.170/2, 1.96 by the Government in order No.233/AM/90 dated 30.09.1980 and was in possession and enjoyment after the assignment. Similarly, the

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third plaintiff was also assigned with the lands in S.No.170/6, 1.30 by the Government in order No.232/AM/90 dated 30.09.1980 and after the assignment, he was in possession and enjoyment of the same. After the assignments, the plaintiffs / respondents are paying the kist and house taxes to the revenue authorities and all the three plaintiffs are the owners of the respective lands by way of the rights given through assignments.

4.The defendants are the neighbouring land owners. Their lands are situated at East South and West of the plaintiffs / respondents' lands. The defendants / appellants were planning to lay a road through the lands of the plaintiffs in order to reach Palaniyapuri Road by short cut though they have alternative roads to reach the said Palaniyapuri Road, the plaintiffs / respondents were preventing the attempts of the defendants/ appellants. Hence, the plaintiffs / respondents have filed this present suit for permanent injunction against the defendants / appellants.

5.The sum and substance of the written statement filed by the first defendant in O.S.No.491 of 1983 are as follows:

The first defendant stated that the first plaintiff was assigned with the lands in Survey No.170/6 2.04 acres by the Government in order No.234/AM/90 on 30.09.1980 is absolutely false. It is only a concocted document connived and fabricated for the purpose of defeating the lawful claim of the defendant. The assignment D card produced by these plaintiffs consist material alternations in survey numbers in all the D cards. So they are not admissible. The said assignment order has been cancelled before 1980 and the same is only a Tharisu land provided with a cart track. The plaintiffs / respondents were never in possession and enjoyment of the suit property and they were only trespassers. Since the assignments were cancelled by the Tahsildar in the year 1980 itself, now the lands have been taken by the Government and the Tahsildar, Attur is in possession of the property. All the above lands are Tharisu provided with portions with cart-track more than that the Block Development Officer, Peddanaickenpalayam has also laid jalli road very near to the plaintiffs' land. It is only when the Block Development Officer, further attempted to extend the road in the Tharisu land, these plaintiffs have come up with this suit against the defendants. The real dispute is between the assignment Tahsildar, Attur and Block Development Officer, Peddanaickenpalayam. The defendants are only the neighbouring land owners.

6.The sum and substance of the plaint averments in O.S.No.2 of 1995 are as follows:

The first plaintiff was assigned with the lands in S.No.181/1, an extent of 1.37 acres by the Government in order

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No.A.M.155/89 and after the assignment, he was in possession and enjoyment of the lands by living in and cultivating it. The 2nd plaintiff was assigned with the lands in S.No.172/8; 1.15 by the Government in order No.70/A.M./90 and was in possession and enjoyment of the same. The plaintiffs are paying the kist to the Government.

7.The plaintiffs are using the mamool cart-track to the property branches from the Palaniyapurai to Oddapatti Village Panchayat Road through the Survey No.170/4 as shown in the Rough Plan. The defendants due to enemity attempted to destroy the cart-track and annexed it with their own lands. All the good advice by the neighbours have become fruitless and the plaintiffs have no other way except to file a suit for decree for permanent injunction.

8.On 26.12.1994, the defendants tried to destroy the cart-track and well wishers of the village prevented them from obliterating the cart-track and the defendants went away from the place sensing that they will obliterate the cart-track within a short time. Hence, the appellants/ plaintiffs have filed the suit for permanent injunction.

9.The sum and substance of the written statement filed by the defendants/ respondents in O.S.No.2 of 1995 are as follows:

The respondents / defendants deny the allegations made in the plaint. Admittedly, the lands shown by the plaintiffs in S.No.170/4 is not a Tharisu land. Originally, the lands in S.No.170 of Oddapatty consisted of only 3 sub divisions viz. 170/1, 170/2 and 170/3. During 1980 when portions of lands were assigned to this defendant, his brother Arjunan and brother's son Madeswara the said 3 sub divisions were further sub divided and S.No.170 consisted of 6 sub divisions as on 30.08.1980. As per the sub divisions made during 1980 and as per the 'A' Memos in the assignment files pertaining to the assignments of land in S.No.170/2, 170/5 and 170/6, the sub division 170/4 was in a rectangular shape lying in between S.No.170/1 and 170/5 and west of 170/2 and 170/6 leaving out 170/4, S.Nos.170/2, 170/5 and 170/6 and were assigned to the above said Arjunan, Madeswaran and this defendant on 30.08.1980. By virtue of the assignments and completion of the condition period the above said 3 persons have become the absolute owners of the respective lands. Later in a family partition that took place in 1993 the lands in S.No.170/2, 170/5 and 170/6 fell to the share of the defendant and now he is the absolute owner thereof.

10.During the year 1983, the first plaintiff and others who are living on the south and west of S.No.170 attempted to lay a new short cut pathway to their lands through the patta lands of this defendant. The said attempt was

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prevented by this defendant. Aggrieved by the same, the respondent / plaintiff filed a suit in O.S.No.491/1983 on the file of District Munsif Court, Attur, against one Thangavel, the first appellant / first plaintiff herein in respect of the lands in S.No.170/2, 170/5 and 170/6 for permanent injunction restraining them from laying a road in the said lands. An order of temporary injunction was also obtained restraining the defendants therein from laying any road till the disposal of the suit.

11.The defendants in O.S.No.491/83 having been prevented by the said order of injunction influenced the then Tahsildar of Attur and the Commissioner of the Pethanaickenpalayam Panchayat Union to attempt to lay the said short cut road along S.No.170/2, 170/5 and 170/6 which are patta lands of the defendants. The Tahsildar and the Commissioner also made attempts to lay the said road by force. But they were also prevented from doing so by this defendant and the said Arjunan and Madeswaran by filing a suit against them and the Tamil Nadu Government on the file of District Munsif, Attur in O.S.No.65/84 with a prayer for permanent injunction.

12.During the pendency of the suit in O.S.No.65/84, under the UDR scheme in 1986, at the instigation of the defendants in O.S.No.491/83 the Revenue authorities of Attur have unlawfully and without notice to the defendants concerned changed the shape, lie and measurements of S.No.170/4, in the FMB. This was done by them in order to evade the decree that might be passed in O.S.No.65/84 and O.S.No.491/83 and also to create evidence in favour of the defendants in O.S.No.491/83.

13.Finally, O.S.No.65/84 was decreed as prayed for restraining the defendants therein permanently from laying a road in S.No.170/2, 170/5 and 170/6 of Oddapatty Village. While answering the additional issue, the Lower Court gave a finding that the shape of S.No.170/4 at the time of assigning 170/2, 170/5 and 170/6 was not pleased to hold that the shape of 170/4 as on 30.09.1980 has been changed by the defendants in O.S.No.65/84 during the pendency of the suit unlawfully and without notice.

14.Aggrieved by the same, the Government officials filed an appeal in A.S.No.157/93 on the file of the Principal District Judge, Salem. The said appeal was also dismissed on 20.12.1993 confirming the judgment and decree of the Lower Court.

15.During the pendency of both the suits in O.S.No.491/83 and O.S.65/84, the defendants in O.S.No.491/83 with the active aid of the defendants in O.S.No.65/84 and in the absence of the

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plaintiffs therein, trespassed into the lands and after destroying the standing crops therein laid a cart track in S.No. 170/2 and 170/5 by force, claiming that they are laying a road only in S.No.170/4. Both the non-existence of the road in 1988, and the new existence of the road in 1989 were noted down by the 2 Commissioners appointed in O.S.No.491/83.

16.After considering all the facts, the lower court was pleased to decree the suit in O.S.No.491/83 restraining the defendants therein from laying a road in S.Nos.170/2, 170/5 and 170/6. Having failed in all the litigations and attempts, the defendants in O.S.No.491/83 have come up with the present suit in order to defeat the rights and enjoyment in the suit schedule properties.

17.After elaborate discussions and after framing of issues, in both the suits, the Lower Court decreed the suit in O.S.No.491 of 1983 in favour of the respondent / plaintiff and dismissed the suit in O.S.No.2 of 1995 against the appellant / plaintiff.

18.As against the judgment and decree of the Trial Court, the Appellant / defendant has filed an appeal in A.S.No.44 of 1995 on the file of Principal District Judge, Salem and the Appellant / plaintiff has filed A.S.No.20 of 1998 on the file of Sub Judge, Attur and both the appeals were dismissed. As against the concurrent findings, the second appeals have been filed.

19.At the time of admission of the second appeal in S.A.No.1605 of 1996 the following substantial questions of law were framed:

> "a) Whether the findings of the Courts below that the defendants cannot interfere with their possession, particularly, ignoring the existence of the cart track in S.No.170/4 is sustainable in view of the revenue records wherein the existence of cart track has been shown?
>
> b) Whether the judgment and decree of the Courts below are sustainable in the absence of any finding with reference to the location of the property and cart track thereon much less without any discussion on the U.D.R.Patta.
>
> c) Whether the Courts below are right in non considering the exhibits C1 to C6 which speak about the existence of cart-track in S.No.170/4?"

20.At the time of admission of the second appeal in S.A.No.2005 of 2001 the following substantial questions of law were framed:

> "a) Whether the judgment of the Courts below is

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just and proper in negativing the claim of bare injunction with regard to path way in S.No.170/4 admittedly the land is poromboke land and there is also existence of pathway?"

21.In order to establish their case, in O.S.No.1605 of 1996, the first plaintiff examined himself as PW1 and two other witnesses were examined as witnesses and marked Exhibits Ex.A1 to Ex.A31. On the side of the defendants, the second defendant examined himself as DW1 and Exhibits Ex.B1 to Ex.B5 were marked. In O.S.No.2005 of 2001, no witness was examined on either side. However, Exhibits Ex.A1 to Ex.A7 were marked on the side of the plaintiffs and Ex.B1 to B10 were marked on the side of the defendants.

22.The learned counsel appearing for the appellants would submit that the suit schedule properties are Tharisu land of the Government and the respondents have been enjoying the existing suit cart track. However, the appellants were interfered with the enjoyment of the suit cart track. Thereby the respondents and the appellants have filed the respective suits before the Trial Court. However, the suit filed by the appellants is dismissed and the suit filed by the respondents is decreed.

23.The Courts below without considering the Commissioners' report and other relevant Government records, have erroneously passed judgments. The First Appellate Court also not considered the matter in a proper and prospective manner and dismissed both the appeals. As against the concurrent findings, the second appeals have been filed.

24.The learned counsel appearing for the respondents would submit that the respondents were assigned with the suit schedule lands by the Government. After the assignment, the lands were brought under cultivation by the respondents. Thereafter, the respondents have been enjoying the properties and paying the kist and other revenue taxes to the Government.

25.After satisfaction and complying with the conditions imposed by the Government in the assignment order, the respondents became the absolute owners of the property. Thereafter, the appellants were planning to lay a road through the lands of the respondents in order to reach Palaniyapuri Village Panchayat Road by short cut though they have alternative roads to reach the said Palaniyapuri Village Panchayat Road.

26.The appellants herein were trying to destroy the paddy crops by laying new cart tract in the assigned land of the respondents. The same was prevented by the respondents. Both the Courts below have concurrently held in favour of the

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respondents which is a well considered judgment and there is no reason to interfere with the same. The substantial questions of law are not available in favour of the appellants.

27.On a perusal of the entire records and other materials, it is seen that the lands were assigned in favour of the respondents. The said assignment orders were marked as Ex.A1 to Ex.A3 in O.S.No.491 of 1983. After the assignment, the respondents also produced Kandhayam and other revenue receipts through Ex.A4 to Ex.A12. Thereafter, the 'D' cards were assigned in favour of the respondents and the same were marked as Ex.A13 to Ex.A18 and the land measurement books were also granted in favour of the respondents on 29.12.1971 and 17.09.1984. The same were marked as Ex.A19 and Ex.A20 and other revenue records namely chitta and adangal also show that the respondents are in enjoyment of the property in S.Nos.170/1, 170/2, 170/5 and 170/6. Chitta and other Adangal receipts were marked as Ex.A21 to Ex.A27.

28.Apart from the above, the suit in O.S.No.65 of 1984 filed by the respondents against the Government for permanent injunction for forming the road has been decreed and the judgment and decree have been marked as Ex.A28 and Ex.A29 and the Judgment and Decree of the First Appellate Court have been marked as Ex.A30 and Ex.A31.

29.On a perusal of the entire documents, the Trial Court has arrived at a conclusion that the suit schedule properties were enjoyed by the respondents and decreed the suit in favour of the respondents. The First Appellate Court also confirmed the Judgment and decree of the Trial Court.

30.The learned counsel appearing for the appellants subsequently stated that the assignments were cancelled against the respondents. Since the appellants did not mark any document in respect of the cancellation of the assignment against the respondents, the appellants have not established their case, that the existing suit cart track road from the appellants land to Palaniyapuri Village Panchayat Road. In the absence of any material for proving the existing cart track, I do not find any error or infirmity in the judgment and decree passed by the Trial Court as well as the First Appellate Court. The Advocate Commissioner's Report also did not establish that there was a cart track existing and the same was enjoyed by the appellants.

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31.Accordingly, the substantial questions of law are answered against the appellants and the second appeals are dismissed. The Judgment and decree made in A.S.No.44 of 1995, on the file of the Principal District Judge, Salem, dated 25.03.1996 and the Judgment and decree made in A.S.No.20 of 1998, on the file of Sub-Judge, Attur, dated 31.03.1999, are confirmed. No costs.

Sd/-
Assistant Registrar(CS-ii)

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Sub Assistant Registrar

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To.

1.The Principal District Judge, Salem

2.The District Munsif Judge, Attur

3.The Subordinate Judge, Attur

4.The Section Officer, V.R.Section,
High Court of Madras
Chennai 600 104. (2 copies)

+2cc to Mr.C.S.ASSO. Advocate, S.R.No. 16806
+1cc to Mr.D.SHIVAKUMAR, Advocate, S.R.No.17038

S.A.No.1605 of 1996
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S.A.No.2005 of 2001

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