

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.12.2018

PRONOUNCED ON: 19.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.796 of 2007

&

MP.No.1 of 2007

Mrs.Unnamalai ... Appellant/Respondent/Plaintiff

Vs.

1.Jayakodi

2.Kumar

3.Settu

... Respondents/Appellant/Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 04.12.2006 passed in A.S.No.146 of 2004 on the file of the Sub-Court, Kallakurichi reversing the judgment and decree dated 17.06.2004 passed in O.S.No.702 of 2000 on the file of the District Munsiff Court, Kallakurichi.

For Appellant : Mr.A.G.Rajan

For Respondents : Mr.S.Saravana Kumar

#### J U D G M E N T

The plaintiff has preferred this Second Appeal against impugning judgment and decree dated 04.12.2006 passed in A.S.No.146 of 2004 on the file of the Sub-Court, Kallakurichi reversing the judgment and decree dated 17.06.2004 passed in O.S.No.702 of 2000 on the file of the District Munsiff Court, Kallakurichi.

2. Before the appellate Court, the appellant is the respondent. Mrs.Unnamalai, the appellant herein has filed a suit in OS.No.702 of 2000 before the Principal District Munsif,

Kallakurichi, for the relief of permanent injunction restraining the defendants and their men from interfering with her peaceful possession and enjoyment of the suit property. The Principal District Munsif, Kallakurichi by the judgment and decree dated 17.06.2004 has allowed the said suit with cost. Aggrieved by the same, the defendants in the suit have filed an appeal in A.S.No.146 of 2004 before the learned Principal Subordinate Judge, Kallakurichi. The learned Principal Subordinate Judge, Kallakurichi by the judgment and decree dated 04.12.2006 allowed the said appeal and modified the judgment and decree passed by the trial Court and dismissed the suit.

3. In the judgment rendered by the Principle Subordinate Judge, Kallakuruchi, he observed that as per Ex.B4, which was the order passed by the Revenue Divisional Officer, Villupuram dated 10.03.2004, a patta issued in favour of the plaintiff was cancelled and thereby, she is not entitled to the relief of permanent injunction against the respondents. Further, he allowed the appeal and directed the parties to pay their respective costs. Feeling aggrieved, the appellant, who is the plaintiff before the trail court has filed the present second appeal.

4. For the sake of convenience, the parties are referred to as , as described before the trial court.

5. The averments made in the plaint, in brief, are as follows:

The suit schedule property initially belongs to the Government. In view of the fact that the plaintiff was in the continuous possession of 10 years, the Tahsildar, Kallakurichi on 08.01.1998 issued an assignment patta in favour of the plaintiff to the suit schedule property. As per the patta, the plaintiff paid kist to the Government. In the meantime, due to the previous enmity, from 01.08.2000 onwards the defendants attempted to interfere with the peaceful possession of the plaintiff. The defendants joined together and unlawfully tried to trespass into the suit property. Hence, the plaintiff has filed the above suit for the relief of permanent injunction.

6. The averments made in the written statement filed by the first defendant and adopted by the second and the third defendants, in brief, are as follows:

7. It is false to state that the plaintiff is assigned with a patta in respect of the suit schedule property. The defendants are having the land to an extent of two acres adjoining to the suit schedule property. For the land possessed by the first defendant, he paid the land revenues from the year 1980. Actually, the land in question and the other lands are

converted as ''Tarisu'' in the year 1997, and subsequently, a patta was issued in favour of the members belongs to the Pangaram land Development Co-operative Society. The plaintiff obtained patta with the help of one Selvi, who is her relative working as a Revenue Inspector. The patta issued in favour of the plaintiff is not acted upon. Further, there is no cause of action for the suit filed by the plaintiff. Accordingly, the defendants are prayed to dismiss the above said suit. Based on the above said pleadings, the learned Principal District Munsif, Kallakurichi has framed necessary issues and tried the suit.

8. On the side of the plaintiff, the plaintiff examined herself as PW1. She has also examined one witness as PW2 and marked four documents as Ex.A1 to A4. On the side of the defendants, the first defendant examined himself as DW1 and one Solaimuthu was examined as DW2. Further, on the side of the defendants, four documents were marked as Ex.B1 to B4.

9. The learned Principal District Munsif, Kallakurichi after considering the materials placed before him found that since the plaintiff is in continuous possession of the suit schedule property without any interruption, further based on the patta issued in favour of the plaintiff, allowed the suit filed by the plaintiff and passed a judgment in favour of the plaintiff. Aggrieved by the same, the defendants have filed an appeal before the I Appellate Court as already stated. After an elaborate enquiry, the learned Subordinate Judge, Kallakurichi, allowed the appeal on a sole ground that since the assignment patta issued in favour of the plaintiff was cancelled by the District Revenue Officer and by the Commissioner of Land Administration, the plaintiff did not get any right over the suit property. Further, after observing that since the plaintiff is not having any title over the suit schedule property, he is not entitled to the relief of injunction as prayed for as already granted by the learned District Munsif, Kallakurichi. Aggrieved by the same, the plaintiff has preferred the present second appeal.

10. This Court at the time of admitting the second appeal has formulated the following substantial question of law:

(i) Whether the lower Appellate Court has committed an error of law in reversing the well considered judgment of the Trial Court placing reliance on Ex.B4 without considering the finding of the trial Court that the appellant was in possession of the suit property on the date of filing of the suit?

11. Heard, Mr.A.G.Rajan, learned counsel for the appellant and Mr.S.Saravanakumar, learned counsel for the respondents.

12. It is an admitted fact that initially, the Tahsildar, Pangaram Village issued an assignment patta in favour of the plaintiff. Subsequent to that, she paid kist and the other dues to the Government in respect of the suit schedule property. The said assignment patta issued in favour of the plaintiff is marked as Ex.A1 and Ex.A2 to A4 are the kist receipts standing in the name of the plaintiff. So based on title and possession, the learned District Munsif, Kallakurichi granted an order of permanent injunction as prayed for by the plaintiff.

13. During the time of appeal before the learned Principal Subordinate Judge, Kallakurichi, the proceedings issued by the Special Commissioner & Commissioner of Land Administration, Chepauk, Chennai dated 20.10.2005 was marked as Ex.B5. Only based on the said document, the learned Principal Subordinate Judge, Kallakurichi allowed the appeal and set aside the judgment and decree passed by the learned Principal District Munsif, Kallakurichi.

14. Before that on go through the documents marked on the side of the defendants, the assignment patta issued by the Tahsildar dated 08.01.1998 was cancelled on 10.03.2004 by the District Revenue Officer. Against the order passed by the District Revenue Officer dated 10.03.2004 (Ex.B4), the plaintiff approached the Commissioner of Land Administration by way of filing a revision petition. In the order passed by the Commissioner of Land Administration, the order passed by the District Revenue Officer was confirmed and accordingly, the patta issued in favour of the plaintiff by the Tahsildar, is cancelled.

15. Therefore, after 20.10.2005, the plaintiff was not having any title over the suit schedule property. More over, in the order passed by the District Revenue Officer and the Commissioner of Land Administration, it was clearly revealed that the plaintiff is not the member of the Pangaram Land Development Co-Operative Society and thereby she is not entitled to any assignment. In the said circumstances, in order to show possession of the plaintiff, subsequent to 20.10.2005, no documents were produced on the side of the plaintiff. So the plaintiff has not proved the possession of the suit schedule property after the period of 20.10.2005. In general for obtaining the relief of permanent injunction the plaintiff has to prove a legal right and its violation. Perpetual injunction once granted continues for ever and it is granted only by means of a decree. Sub-sec.(i) of Section 38 clearly provides that perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour whether expressly or by implication which is, however, subject to the

other provisions. The expression ''obligation'' has been defined in Sec.2(a) of the Specific Relief Act. It includes every duty enforceable by law. But in this case, since the appellant loses the title, through the order passed by the Commissioner of Land Administration, the relief sought for by her is not necessary. Apart from that for obtaining the relief of permanent injunction, the petitioner must show the continuous possession of the suit property. But in this case, the plaintiff has not produced relevant documents to show her possession. Further, the title confirmed by the Tahsildar was also subsequently cancelled. Therefore, the judgment rendered by the first appellate Court is well considered one since the title and possession is not in favour of the plaintiff and accordingly, she is not entitled to the relief as granted by the trial Court.

16. In conclusion, I do not find any substantial question of law is involved in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Sub-Court, Kallakurichi
2. The District Munsiff Court, Kallakurichi
3. The Section Officer, VR Section, High Court, Madras.  
(2 copies)

+1cc to M/s.AG.Rajan, Advocate SR.No.88771

+1cc to M/s.S.Saravanakumar, Advocate SR.No.89085

S.A.No.796 of 2007

RK(CO)  
GMY(15/02/2019)