

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.09.2018

PRONOUNCED ON:30.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.118 of 2015

1.Varuthayee

2.Ramasamy

3.Singaravel

4.Pappathi

5.S.Mani

.... Appellants/Plaintiffs

Vs.

1.Sengodan (Deceased)

2.Jayavel

3.Neelawathi

4.S.Selvakumar

5.Parijatham

[RR3 to R5 brought on record as
LR's of the deceased R1 vide
order of Court dated 31.08.2018
made in C.M.P.Nos.1686 to 1688 of 2018
in S.A.No.118 of 2015] Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 29.08.2013 made in A.S.No.4 of 2013 on the file of the Subordinate Court, Tiruchengode confirming the judgment and decree dated 06.12.2010 made in O.S.No.119 of 2000 on the file of the Principal District Munsif Court, Tiruchengode.

For Appellants : Mr.N.Manokaran

For RR2 to R5 : Mr.M.S.Palanisamy

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and Decree dated 29.08.2013 passed in A.S.No.4 of 2013 on the file of the Subordinate Court, Tiruchengode confirming the judgment and decree dated 06.12.2010 passed in O.S.No.119 of 2000 on the file of the Principal District Munsif Court, Tiruchengode.

2. The second appeal has been admitted on the following substantial questions of law.

(i) Whether the lower appellate court was right in denying the decree in respect of "B" schedule property though the lower appellate court has found that the defendants have made construction on the "B" schedule property only during the pendency of the suit, that too, in violation of the orders of the trial court?

(ii) Whether the lower appellate court was right in declining to reverse the findings of the trial court in respect of the "B" schedule property by simply leaving it open for the plaintiff to initiate contempt proceedings against the defendants for having violated the order of injunction? and

(iii) Whether the courts below was right in holding that the plaintiffs have not proved their possession in respect of the 'B' schedule property, though the fact remains that the "B" schedule is the "backyard" of "A" schedule and the same has been proved to be in the possession of the plaintiffs?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The suit has been laid by the plaintiffs/appellants for the reliefs of permanent injunction, possession and mandatory injunction.

5. The suit property admittedly is a Poramboke land belonging to the Government and it is the case of the plaintiffs

that they are in possession and enjoyment of the suit property for more than 30 years by paying necessary penal charges with reference to the same and it is further stated that the defendants attempted to encroached into the suit property which had been prevented by the plaintiffs and also stated that after the plaintiffs had obtained an interim injunction order against the defendants in the Suit in I.A.No.451 of 2000, the defendants had unlawfully trespassed into the suit property as shown in the second item of the plaint schedule properties and accordingly, it is stated that the plaintiffs had been necessitated to seek the reliefs prayed for in the suit against the defendants.

6. The defendants have disputed the claim of possession and enjoyment of the property by the plaintiffs for 30 years as projected in the plaint and on the other hand, it is stated by the defendants that their father Kandhan had been owning lands in survey No.93/4 and accordingly occupied 7 cents of land in survey No.93/3 and enjoying the same along with the abovesaid patta lands and it is further stated that therefore their father had permitted the first plaintiff, his brother to construct a house on the northern portion, and accordingly the first plaintiff constructed the house on the northern portion as permitted, however as the plaintiffs thereafter attempted to snatch the entire 7 cents of land by creating records and when the defendants questioned the action of the plaintiffs with reference to the same, accordingly, it is stated that the plaintiffs have come forward with the suit on false allegations as if the entire suit property as described in the plaint had been in their possession and enjoyment for several years as claimed and accordingly contended that the plaintiffs have no cause of action to institute the suit and prayed for the dismissal of the plaintiffs' suit.

7. The suit property has been described as located in the suit village in survey No.93/3 measuring an extent of 0.03.0 hectares equivalent to approximately 7 cents of land with the tiled house bearing door No.7/133 B and service connection No.742 plus the thatched house. The second item of the suit properties is described as the extent of 4 ½ cents of land in the abovesaid property on the southern side with the tiled house.

8. It is now the case of the plaintiffs that the suit property measuring an extent of 0.03.0 hectares in survey No.93/3 had been in their possession and enjoyment for several years. As rightly found by the Courts below, the only document of possession to evidence that they are in possession and enjoyment of the extent of land in the survey No.93/3 is found to the "B" memo receipt marked as Ex.A1. However, when the abovesaid "B" memo receipt Ex.A1 filed by the plaintiffs do not

point out that the same is pertaining to the entire extent of the suit property as described in the plaint and when the plaintiffs have miserably failed to establish their long possession and enjoyment of the suit property as described in the plaint for several years and when the house tax receipts and E.B bill receipts produced by the plaintiffs marked as Exs.A2 to A13 would not be sufficient and germane to establish that the suit property as described in the plaint had been in their possession and enjoyment for several years, in such view of the matter, it is seen that by way of Ex.A1 "B" memo receipt, we cannot safely conclude that, as determined by the Courts below, the suit property is in the possession and enjoyment of the plaintiffs as claimed by them for several years. Furthermore Ex.A1 is found to be pertaining to the fasli 1407. The defendants have produced the adangal extract Ex.B7 for the faslis 1406 and 1407 with respect to the survey No.93/3 and from the same, it is found the third plaintiff is only in the possession and enjoyment of an extent of 0.01.0 ares out of 0.03.0 ares by constructing a house and accordingly when it is found from Ex.B7, that the plaintiffs are in the possession and enjoyment of an extent only about 2 ½ cents of land by putting up a construction therein and when Ex.A1 "B" memo receipt do not show the extent of the property in respect of which the said "B" memo had been issued, accordingly, it is seen that the plaintiffs have miserably failed to establish that the suit property measuring an extent about 7 ½ cents of land are in their possession and enjoyment for several years as projected by them. Therefore, as rightly determined by the Courts below, there is no material placed on the part of the plaintiffs to evidence that the suit property has been in their possession and enjoyment by placing acceptable and reliable evidence and in such view of the matter, it is seen that the plaintiffs cannot be granted the relief of permanent injunction as prayed for.

9. Now according to the plaintiffs, after the institution of the suit, despite the order of injunction in their favour, the defendants had unlawfully trespassed into the portion of the suit property as shown in the item No.2 of the plaint schedule, therefore, they should be granted the reliefs of possession and mandatory injunction with reference to the same. No doubt, the defendants in the counter filed by them in I.A.No.451/2000 marked as Ex.C3 had admitted that they have dumped the sand and bricks for the construction and thereby as determined by the Courts below, the defendants had put up the construction in the second item of the plaint schedule, only after the institution of the suit. However that by itself would not entitle the plaintiffs to claim the reliefs as prayed for, particularly when the plaintiffs have miserably failed to establish that they had been in the possession and enjoyment of the suit property i.e., 7 cents of land on the date of the suit or prior to the same.

As rightly determined by the first appellate court, there is no material placed by either side as to when actually the defendants had commenced the construction put up in the second item of the suit property and in this matter, neither the plaintiffs nor the defendants had endeavored to take out a commission to inspect the suit property as regards the nature of the construction put up in the suit property to ascertain as to when and from what dates the alleged construction would have been put up thereon. Therefore, as rightly determined by the first appellate court, when the plaintiffs had failed to establish that the defendants had encroached into the portion of the suit property only after the institution of the suit and on the other hand, when as seen from the materials placed on record, the defendants had only pleaded that they had dumped the sand and bricks for the construction after the institution of the suit, that by itself would not be safe to hold that the plaintiffs had been in the possession and enjoyment of the entire extent of the suit property, particularly, the second item of the suit property for several years as claimed by them.

10. In this connection, it is also noted that the plaintiffs have taken independent action against the defendants for violating the order of interim injunction by preferring the necessary application under Order 39 Rule 2-A CPC.

11. In the light of the above discussions, inasmuch as the plaintiffs have failed to establish their possession and enjoyment of the suit property as described in the plaint, particularly, the second item of the plaint schedule properties on the date of the suit or prior to the same, it is seen that the Courts below are justified in granting the relief of permanent injunction in favour of the plaintiffs only in respect of a portion of the first item of the suit properties and rightly dismissed the suit in respect of the reliefs of possession and mandatory injunction as regards the second item of the suit properties and the substantial questions of law formulated in the Second Appeal are accordingly answered against the plaintiffs and in favour of the defendants.

12. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Court,
Tiruchengode.

2.The Principal District Munsif Court,
Tiruchengode.

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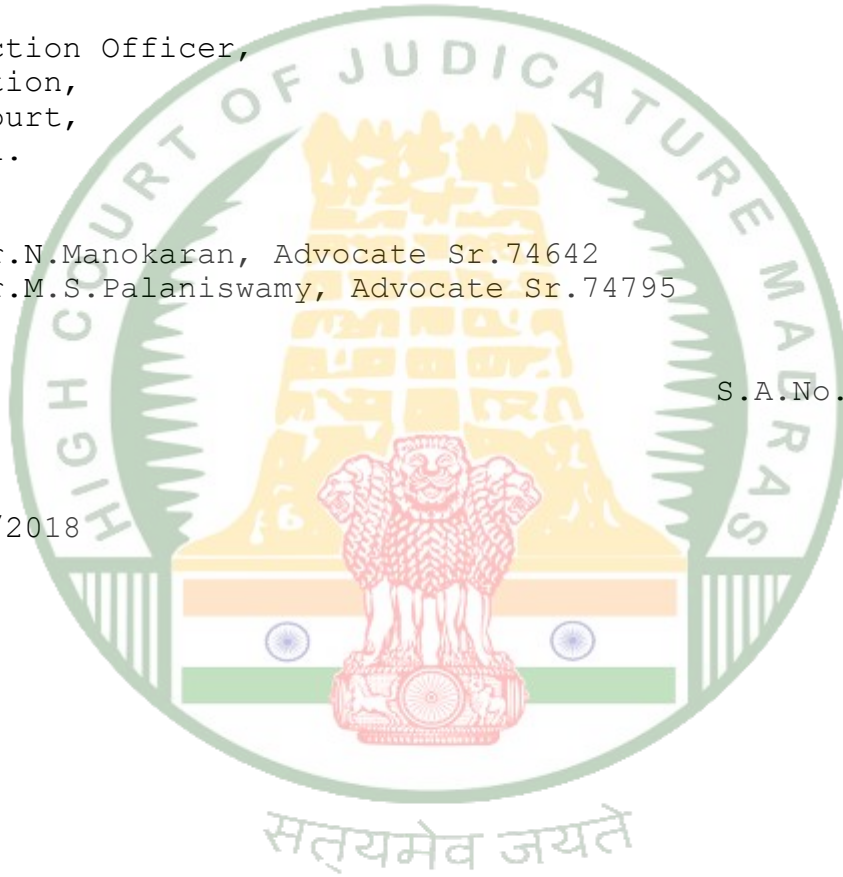
The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.N.Manokaran, Advocate Sr.74642

+1cc to Mr.M.S.Palaniswamy, Advocate Sr.74795

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