

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 30.01.2018**

**PRONOUNCED ON : 12.02.2018**

**CORAM**

**THE HONOURABLE MR. JUSTICE T.RAVINDRAN**

**S. A.No.1037 of 2003**

|              |     |            |
|--------------|-----|------------|
| 1. Subramani |     |            |
| 2. Rajamani  | ... | Appellants |
|              | Vs. |            |
| Janaki       | ... | Respondent |

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 27.02.1998 passed in A.S.No.25 of 1997 on the file of the Subordinate Court, Uthagamandalam, The Nilgiris, reversing the judgment and decree dated 03.04.1997 passed in O.S.No.458 of 1994 on the file of the District Munsiff, Uthagamandalam, The Nilgiris.

|                |   |                      |
|----------------|---|----------------------|
| For Appellants | : | Mr.T.R.Sathiya Mohan |
| For Respondent | : | Mr.A.Bobblie         |

**JUDGMENT**

Challenge in this second appeal is made to the Judgment and decree dated 27.02.1998 passed in A.S.No.25 of 1997 on the file of the Subordinate Court, Uthagamandalam, The Nilgiris, reversing the judgment and decree dated 03.04.1997 passed in O.S.No.458 of 1994 on the file of the District Munsiff Court, Uthagamandalam, The Nilgiris.

2. 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 land measuring an extent of 1 acre comprised in S.No.314 of Bickatty Village is a Government Revenue Land and the plaintiff had encroached the same, which is described as the plaint schedule property and been in physical possession and enjoyment of the suit property for more than 12 years by paying necessary encroachment fee to the Government and accordingly, 'B' memos had been issued in favour of the plaintiff for the fasli years 1393, 1399, 1400 and the other 'B' memo receipts had been lost and the Village Administrative Officer had also issued the enjoyment certificate in favour of the plaintiff in respect of the suit property and the plaintiff had also sought loan from the Government through her husband and been directed to approach the Harijan Welfare Board and the Tea Board for loan and the plaintiff has also made request to the Collector of The Nilgiris for the grant of patta and accordingly, the suit property, which is in the possession of the plaintiff, had been demarcated and coloured red in the plan issued by

the Village Administrative Officer and the defendants, who are husband and wife, encroached a portion of the Government land, which is lying adjacent to the suit property and with a view to grab the suit property in the possession of the plaintiff, are attempting to disturb the plaintiff's possession, to which, they are not entitled to and hence, the suit for Permanent Injunction.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that the plaintiff had encroached the suit property and on the other hand, the plaintiff had encroached only to an extent less than 1 acre of land and the second defendant had encroached an extent of 1 acre situated in R.S.No.314 of Bcikatty Village as early as in the year 1985 and the same had been recognised by the Government by issuing necessary 'B' memos in favour of the second defendant and accordingly, the same is in possession and enjoyment of the defendants and the second defendant was also constrained to lay a suit against the Village Administrative Officer in O.S.No.290 of 1991 on the file of the District Munsif Court, Ootacamund and the Court had also held that the defendant is in possession of 1 acre of land in R.S.No.314 of Bikatty Village. The plaintiff is in possession and enjoyment of only of an

extent of 0.40 acres and accordingly, attempted to grab the property in the possession of the defendants, obtained the encroachment certificate by hook or crook from the Village Administrative Officer, as if, she is in possession of 1 acre of land by misrepresentation and the plaintiff has not come to the Court with clean hands and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A7 were marked. On the side of the defendants, Dws 1 to 3 were examined and no document has been 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 dismiss the suit laid by the plaintiff, however, granted liberty to the plaintiff to institute the suit as against the defendants for the reasons assigned by it. The first appellate Court, on an appreciation of the materials placed, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

***" (i) Whether the lower Appellate Court is correct in holding that Ex.P6 can be accepted as a documentary evidence, because the appellants have not objected to it at the time of its marking, even though the author of the same was not examined.***

***(ii) Whether the lower appellate Court is right in coming to the conclusion without there being any evidence at all that the appellants are in possession of only forty (40) cents of land instead of one acre."***

9. The suit property is stated to be an extent of 1 acre situated in the registration District of The Nilgiris and registration Sub District of Uthagamandalam in Uthagamandalak Taluk and in Bickatty Village, in survey No.314, bounded on the north, south and west by the Government land and on the East by Veppaya Gowder's patta land. It is admitted that the property comprised in survey No.314 is a government Revenue land. Now, according to the plaintiff, she had

encroached the suit property and accordingly, the same is in her possession and enjoyment and further, according to the plaintiff, with reference to her possession and enjoyment of the suit property, she had been issued the necessary 'B' memos by the Government and further, she would claim that the Village Administrative Officer had issued the enjoyment certificate in respect of the suit property in her favour and the property in her possession and enjoyment had been demarcated by the Village Administrative Officer in the plan issued by him and according to the plaintiff, inasmuch as the defendants, who had also occupied by encroaching a portion of the property situated in survey No.314, attempted to interfere with her possession and enjoyment of the suit property and hence, according to her, she had been necessitated to lay the suit for permanent injunction.

10. Per contra, it is the case of the defendants that they had encroached an extent of 1 acre of land in survey No.314 of Beikatty village and accordingly, they had been issued the necessary 'B' memos by the Government with reference to the same and further, according to them, the plaintiff had encroached only to an extent of 0.40 acres of land in the said survey number and with a view to grab the property in the possession and enjoyment of the defendants, by

misrepresentation, obtained a false certificate from the Village Administrative Officer and thereby, laid the suit falsely and the plaintiff is not in possession and enjoyment of the suit property as described in the plaint and hence, the suit is liable to be dismissed.

11. In support of the plaintiff's case, the plaintiff has marked the kist receipts as Exs.A1 to 3 and from Exs.A1 to 3, it cannot be inferred that the plaintiff is in possession and enjoyment of the suit property as described in the plaint. Exs.A1 to 3 do not refer to the extent in respect of which, the kist mentioned therein had been paid and also do not describe the property as narrated in the plaint. Such being the position, it is found that Exs.A1 to 3 would not serve any purpose for upholding the plaintiff's case that the suit property as described in the plaint is in her possession and enjoyment. As rightly determined by the Courts below, Exs.A4 & 5 would not, in any manner, be useful to sustain the plaintiff's case as they are not found to be or shown to be related to the suit property and from the said documents, it would not be appropriate to hold that the suit property as described in the plaint is in the possession and enjoyment of the plaintiff.

12. The first appellate Court seems to have placed reliance upon the plan marked as Ex.A6 and based upon the portion shown in Red colour, as if the same denotes the property in the possession and enjoyment of the plaintiff, the first appellate Court proceeded to uphold the plaintiff's case. However, as rightly put forth by the defendants' counsel, when Ex.A6 has been stoutly challenged by the defendants that it had been created by the plaintiff and when the author of the said document has not been examined by the plaintiff, singularly, from the said plan and the red colour portion in the same, we cannot safely conclude that the plaintiff is in possession and enjoyment of an extent of 1 acre of land in the suit survey number as described in the plaint. Therefore, it is found that the first appellate Court, without any basis, particularly, when Ex.A6 plan is seriously impugned by the defendants as a fabricated document, erred in placing reliance upon the same, sans any proof pointing to its authenticity, particularly, by examining the author of the said document. In such view of the matter, as rightly put forth by the defendants' counsel, Ex.A6 plan would be of no use to accept the plaintiff's case for determining that the suit property as described in the plaint is in her possession and enjoyment.

13. Ex.A7 is the copy of the judgment passed in O.S.No.290 of 1991 and the same is only in respect of the suit laid by the second defendant against the Village Administrative Officer as regards the property in her possession and enjoyment in the suit survey number. It is found that in the said suit, the second defendant has been found to be in possession and enjoyment of only 40 cents of land and that apart, on a reading of the said judgment, it is found that accordingly, with reference to the said 40 cents of land in her possession and enjoyment, the Village Administrative Officer had been restrained from disturbing her possession and enjoyment except in accordance with due process of law. Similarly, it is found that by way of Ex.A7, the defendants are found to be in possession and enjoyment of only 40 cents of land in the suit property and not 1 acre of land as claimed by them. Be that as it may, the mere failure of the defendants to establish that they are in possession and enjoyment of 1 acre of land as claimed by them or as determined in the suit proceedings found in Ex.A7, it cannot be inferred or concluded that the plaintiff is in possession and enjoyment of the suit property as described in the plant. The plaintiff having come forward with the suit seeking the equitable relief of permanent injunction asserting that the suit property as described in the plaint is in her possession and enjoyment for

several years and the said case of the plaintiff is repudiated stoutly by the defendants contending that she is in possession and enjoyment of only a lesser extent of land in the said survey number and not an extent of 1 acre as described in the plaint and when the documents produced by the plaintiff do not vouchsafe the case of the plaintiff as pleaded, as rightly put forth by the defendants' counsel, merely on the weakness of the defendants' case, we cannot hold that the plaintiff has established her case of the possession and enjoyment of the plaint schedule property without any basis. It is found that the first appellate Court on the footing that the defendants had failed to establish that they are in possession and enjoyment of 1 acre of land in the suit survey number as projected by them proceeded to uphold the plaintiff's case merely on Ex.A6 plan and when Ex.A6 plan has been impugned by the defendants in toto, challenging its authenticity, sans proof of the same by examining the author of the same, it is found that the first appellate Court has fallen into error in upholding the plaintiff's case merely on the basis of Ex.A6 plan and the weakness of the defence version. In such view of the matter, it is found that as rightly put forth by the defendants' counsel, the plaintiff has miserably failed to establish that she is in possession and enjoyment of the suit property as described in the plaint.

14. The reasonings of the first appellate Court that Ex.A6 plan has not been impugned by the defendants are found to be baseless, considering the fact that while cross examining the plaintiff's husband, who was examined as PW1, the defendants have suggested to him that Ex.A6 has been fabricated for the purpose of the case, though PW1 has denied the said suggestion, it is found that the defendants have not accepted the genuineness of Ex.A6 plan and in such view of the matter, the first appellate Court has erred in holding that the defendants have not objected to the marking of Ex.A6 document and not challenged its authenticity. Similarly, it is found that the first appellate Court has erred in upholding the plaintiff's case merely on the footing that the defendants are only in possession of 40 cents of land. The defendants' weakness would not be the factor for upholding the plaintiff's case and on the other hand, the plaintiff being the suitor, should establish her case without any doubt and when the documents produced by the plaintiff do not point out that the suit property as described in the plaint is in her possession and enjoyment, it is found that the first appellate Court has totally erred in decreeing the suit as prayed for. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

In conclusion, the Judgment and decree dated 27.02.1998 passed in A.S.No.25 of 1997 on the file of the Subordinate Court, Uthagamandalam, The Nilgiris are set aside and similarly, the liberty granted by the trial Court by its judgment and decree dated 03.04.1997 passed in O.S.No.458 of 1994 to the plaintiff to institute appropriate civil action against the defendants for recovery of land for the reasons stated by it is also set aside and the dismissal of the plaintiff's suit by the trial court is hereby confirmed. The second appeal is accordingly, allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

12.02.2018

Index : Yes/No

Internet : Yes/No  
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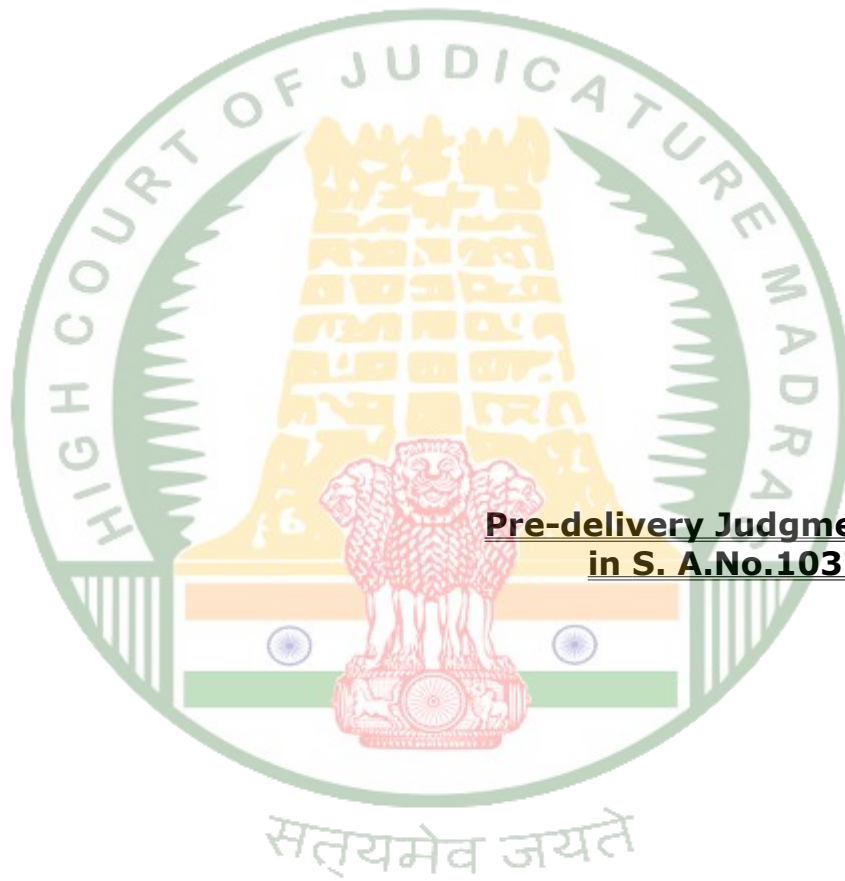
To

1. The Subordinate Court, Uthagamandalam,  
The Nilgiris.
2. The District Munsiff, Uthagamandalam, The Nilgiris.

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**T.RAVINDRAN,J.**

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**Pre-delivery Judgment made  
in S. A.No.1037 of 2003**

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**12.02.2018**