

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2018

PRONOUNCED ON : 12.04.2018n

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.135 of 2004

1. C.Manivannan  
2. M.Muthulakshmi (Deceased)  
3. M.Periasamy  
4. M.Krishnasamy  
5. M.Karuppiyah  
6. M.Asha  
7. P.Poongodi ... Appellants/Plaintiffs  
(Appellants 3 to 7 brought on record  
as LR's of the deceased 2<sup>nd</sup> appellant  
vide Order of Court dated 29.01.2015  
made in CMP.Nos.370 to 372/2014)

Vs.

1. The State of Tamil Nadu  
rep. by the District Collector,  
Tiruchirappalli.  
2. The Tahsildar of  
Ariyalur. .... Respondents/defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC  
against the Judgement and Decree dated 28.11.2002 passed in  
A.S.No.216 of 1996 on the file of the Subordinate Court,  
Ariyalur, reversing the Judgment and Decree dated 13.11.1996  
passed in O.S.No.415 of 1993 on the file of the District Munsif  
Court, Ariyalur.

For Appellants : Mr.M.Vijaykumar

For Respondents : Mrs.A.Madhumathi  
Additional Govt. Pleader (CS)

JUDGMENT

Challenge in this second appeal is made to the Judgement and  
Decree dated 28.11.2002 passed in A.S.No.216 of 1996 on the file  
of the Subordinate Court, Ariyalur, reversing the Judgment and  
Decree dated 13.11.1996 passed in O.S.No.415 of 1993 on the file  
of the District Munsif Court, Ariyalur.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. The case of the plaintiffs, in brief, is that the first plaintiff is the husband of the second plaintiff and they are living jointly and the second plaintiff is having a Small Scale Industrial Unit in the suit property with 2 one HP electric motor one Welding Plant along with a manual Blacksmithy and carpentry Unit etc., with all other manual mechanical units and the abovesaid unit was started in the year 1981 with non-electrical blacksmithy and carpentry unit employing two relative boys of the plaintiffs and the abovesaid unit is housed in the land, which is a poramboke land and for the occupation of the suit land, both the Revenue department and the Village Panchayat had given consent and accordingly, the first defendant has been assessed to house tax for the building in the suit property and the plaintiffs have also obtained drinking water connections for the house in the suit property and the second defendant had been assessed to B memo and he has been paying the tax. The house electric connection stands in the name of the first plaintiff, while three phase line for industrial purpose stands in the name of the second plaintiff and the industrial installation was approved by the Commissioner, Panahcyat Union Council, Ariyalur and the Highways department has also given no objection certificate for the abovesaid unit and the second plaintiff has been paying the licence fees to the Village Panchayat and also paying professional tax and the plaintiffs have incurred a heavy amount nearing Rs.1,00,000/- for putting up a house shed in the property as well as incurred expenses to the value of Rs.50,000/- and more for installing the machineries, tools, fittings etc., for the business and the industrial unit has been approved by the Industries Commissioner and Director of Industries and Commerce. While so, the residents of the villagers have become jealous of the plaintiffs' developments and also the plaintiffs belonging to the minority community, thereby, pressurised the defendants to evict the plaintiffs from the suit property and in tune with the same, the defendants also started giving threat to the plaintiffs to evict them from the suit property and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The suit property is a pathway poramboke in S.F.No.118 at Eruthukkarampatti Village and the State of Tamil Nadu is the absolute owner of the suit property and the plaintiffs have no title over the suit property in any manner and the relief of

permanent injunction sought for by the plaintiffs cannot be granted as against the true owners. The alleged permission said to have been granted to the plaintiffs by the Panchayat Union is incorrect and the said permission, even if, granted, is against law, justice and against the general interest of the public and the Commissioner, Panchayat Union, Ariyalur, has no power to grant any such permission to the plaintiffs and the plaintiffs are only the encroachers into the Government land and it is false to state that the plaintiffs are running a Small Scale Industry Unit in the suit property by obtaining the electric service connection, permission from the necessary authority etc., and running the unit from 1981 onwards. It is false to state that permission had been granted by the revenue department for the plaintiffs to reside in the suit property and thereby, the plaintiffs had obtained water connection to the house portion and electric service connection to the Unit and it is false to state that the second plaintiff had been assessed by way of B memo and paying necessary charges to the Government, the tax receipts produced do not relate to the suit property and it is false to state that the Highways department had given no objection for the Unit run by the plaintiffs and the second plaintiff is paying necessary charges to the Panchayat Union and it is false to state that the plaintiffs have incurred heavy expenses for the construction of the house and running the unit in the suit property. The plaintiffs have suppressed the material facts and ought to have installed the relevant machineries only in his patta land, if any. The plaintiffs are not entitled to raise any construction or unit in the poramboke land belonging to the Government and it is false to state that the defendants are endeavouring to evict the plaintiffs from the suit property at the instigation of the suit villagers and the suit property i.e. pathway poramboke is intended for the use of the entire villagers and the public are going through the suit land for agricultural operations and the entire villagers are taking their cart, cattle through the poramboke land and accordingly, objection had been raised to the encroachment put forth by the plaintiffs and the first plaintiff is employed in the southern railway and the defendants, by resorting to the legal process as directed by law, issued notices to the plaintiffs to evict them from the suit property and as the plaintiffs refused to receive the same, the notices were affixed in the plaintiffs' house and despite the same, the plaintiffs failed to appear before the authorities concerned to place any objection with reference to the notices issued by the defendants and hence, the plaintiffs cannot be allowed to remain in the possession of the suit property as per law and hence, the suit laid by the plaintiffs, without any cause of action, is liable to be dismissed.

6. In support of the plaintiffs' case, PW1 was examined and Exs.A1 to A135 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B16 were marked. Exs.C1 and C2 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, the first appellate Court, on an appreciation of the materials placed on record, set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiffs. 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:

"(1). Whether or not the lower appellate Court is justified in reversing the well considered judgment and decree of the trial Court?

(2). Whether or not the plaintiff's possession and enjoyment of the land in question under permissive possession of the respondents can now be interfered with by the respondents themselves?

(3). Whether or not the action initiated by the respondents under the Tamil Nadu Land Encroachment Act pursuant to filing of this suit is legally sustainable?

(4). In any event, whether or not the issuance of notices under the Land Encroachment Act pursuant to filing of this suit is malafide and intentional one, mainly to deprive the plaintiffs of their permissive possession of the suit land?

(5). Whether or not the interference of the respondents over the plaintiffs land in possession is sustainable when especially the plaintiffs have been put in possession after the consent from various Departments of the respondents?

(6). In any event, whether or not the respondents are empowered to interfere

with the plaintiffs residential house situated in the poramboke i.e. the land in question under the Land Encroachment Act?".

9. Even as per the pleadings set out in the plaint, it is found that the suit property is a poramboke land belonging to the Government. Accordingly, it is noted and also as rightly determined by the first appellate Court, the suit property in Survey No.118, Eruthukkarampatti Village is classified as pathway poramboke and it is thus found that only the Government of Tamil Nadu is the owner of the suit property and as regards the above position, as above seen, the plaintiffs themselves have admitted the nature of the suit property as being a poramboku land and belonging to the Government and it is thus seen that it is only the State of Tamil Nadu, who is the title holder of the suit property.

10. On the side of the plaintiffs, the first plaintiff has been examined as PW1. PW1 is the husband of the second plaintiff. It is not in dispute that PW1 is employed in the railway department and from the evidence adduced by him, it is found that as an employee of the railways, he has been allotted quarters for his stay, however, PW1 would state that he has been residing in the suit property by putting up a house construction alongwith his wife for several years by obtaining water connection, service connection etc., and according to the plaintiffs' case, the second plaintiff has started a small unit for the carpentry work in the suit property and also obtained necessary permission from the concerned authorities and been paying necessary charges in tune with the same and thus, according to the plaintiffs, inasmuch as they had been in possession and enjoyment of the suit property both by way of putting up house construction as well as running a small industrial unit, after getting necessary permission from the concerned authorities, they cannot be evicted from the suit property in any manner and inasmuch as the defendants attempted to evict them from the suit property unlawfully, it is their case that they had been constrained to levy the suit against the defendants for appropriate reliefs.

11. According to the defendants, the plaintiffs are encroachers into the suit property and the suit property belongs to the State of Tamil Nadu classified as Pathway Poramboke and further, according to them, the suit property is intended only for the general use of the Villagers for taking their cart, cattle to carry out their agricultural operations and the plaintiffs are not entitled to encroach into the suit property and thereby, putting up the house structure, industrial unit etc., in the suit property and hence, the plaintiffs' alleged

possession and enjoyment of the suit property for several years cannot be accord any legal sanctity as such and as the State of Tamil Nadu is the title holder of the suit property, which fact remains indisputable and accordingly, the plaintiffs are not entitled to seek the relief of permanent injunction as regards the true owner and as the defendants being the servants of the State of Tamil Nadu, took only legal steps to evict the plaintiffs from the suit property as per law, the present suit laid by the plaintiffs is liable to be thrown out as devoid of merits sans any valid cause of action.

12. The plaintiffs in their pleadings are only harping upon the fact that the Panchayat Union had granted them permission to put up the house construction, starting the industrial unit etc., and also pleaded that the permission had been also obtained from the allied authorities for the purpose of running the industrial unit. On a perusal of the plaint averments, it is found that when the plaintiffs themselves have admitted that it is only the State of Tamil Nadu, who is the owner of the suit property as regards their alleged possession and occupation of the suit property, if at all, the plaintiffs' possession and occupation is lawful right from the inception, as rightly argued, the plaintiffs would have endeavoured at the earliest, to obtain necessary patta from the Government with reference to their alleged occupation and enjoyment of the suit property. However, the plaint averments do not disclose about the plaintiffs obtaining any patta from the government in respect of the suit property, it is thus found that till date, no patta has been granted by the Government in favour of the plaintiffs in respect of the suit property.

13. Even as per the plaint averments, when it is found that the second plaintiff has been assessed by way of B memos and paying the necessary charges to the Government, no doubt, the defendants have disputed the alleged receipts produced by the plaintiffs for the payment of the B memo charges as not relating to the suit property, be that as it may, by way of the abovesaid pleadings, it is found that the plaintiffs have acknowledged the title of the Government in respect of the suit property and thereby, submitting to the title of the Government, paying the necessary charges for their possession and enjoyment of the suit property and in such view of the matter, when the Government has not divested of its title in respect of the suit property in favour of the plaintiffs, the plaintiffs cannot lay any claim of valid title and possession of the suit property, particularly, as against the true owner viz., the Government of Tamil Nadu.

14. As rightly put forth by the defendants, materials placed on record go to show that at the inception, the plaintiffs seem

to have encroached into a small portion of the Government land situated nearby the suit property and thereafter, extended their encroachment slowly and steadily and it is now found that the plaintiffs have encroached into the suit property and also by obtaining some sanction from the Panchayat Union and other departments seems to have put up service connection, water connection in the structure put up in the suit property and when the plaintiffs have not placed any material as such to hold that all the abovesaid connections etc., had been obtained by them with the approval and sanction of the government and accordingly, when it is found that the alleged sanction given by the Panchayat union does not stand scrutiny in the eyes of law and when such approval or permission said to have been granted by the Panchayat Union and other allied departments are not shown to be issued in accordance with law and to the knowledge of the Government, it is found that by way of obtaining water connection, service connection etc., by itself, could not be construed that the plaintiffs' possession and occupation of the suit property is lawful and unimpeachable.

15. The first plaintiff examined as PW1 has admitted that he has been granted the quarters for stay by the railways department. It has not been explained, as to why he is not staying in the railways quarters. According to him, he is living in the house put up in the suit property along with his wife and being a Government servant, it appears and also found that he has started an industrial unit in the name of his wife and been running the same as such. The allegation of the Government is that the first plaintiff has rented out his quarters to the third parties unlawfully and instead, suppressing the same, put up the house construction in the suit property unlawfully and thereafter, extended his encroachment and continued to squat in the suit property without any sanction of law and it is thus found that accordingly, when the plaintiffs' occupation of the suit property is found to be subject to the sanction of the real owner viz., the Government and when the alleged facilities said to have been obtained by the plaintiffs in respect of the suit property are not shown to be obtained with the consent of the Government, it is found that the plaintiffs cannot be allowed to maintain the suit for the relief of permanent injunction as against the true owner viz., the Government of Tamil Nadu.

16. The argument put forth by the plaintiffs' counsel that the plaintiffs, being found to have established to be in the possession and enjoyment of the suit property by obtaining various facilities, like, water connection, service connection etc., from the authorities concerned, the plaintiffs should be determined to be in lawful possession and therefore, the defendants are not entitled to evict the plaintiffs from the suit property, as such, cannot be countenanced. Merely because,

the plaintiffs had obtained some facilities, like water connection and service connection etc., from the various other authorities and by way of obtaining the same, the plaintiffs' alleged title to the suit property as such cannot be upheld and as above seen, when the abovesaid facilities are not shown to be obtained by the plaintiffs, after intimating duly to the true owner and further, when the materials placed on record go to show that as determined by the first appellate Court, the plaintiffs had encroached into a small portion of the Government property and thereafter, extended their encroachment inch by inch gradually and as of now seem to have been put up certain structures and running small scale unit as projected by them and with reference to the same, as no sanction had been obtained from the Government, merely because, the same had been given nod by the Panchayat Union and other allied corporations that by itself would not entitle the plaintiffs to contend that they can forever remain in the possession of the suit property and enjoy the same. Even as per the evidence tendered by the first plaintiff examined as PW1, it is found that though he would state that necessary permission had been obtained from the Government, however, later would admit that he is not aware from whom, the permission had been obtained and in such view of the matter, when the suit property, as described in the plaint, is admittedly belonging to the Government and when the plaintiffs are not shown to be in the possession and enjoyment of the suit property, after obtaining their due sanction or their possession and enjoyment had been acknowledged by the Government in any manner and the alleged B memos projected by the plaintiffs are also not shown to be covering the entire suit property as such and as above seen, the plaintiffs had slowly and gradually extended their unlawful encroachment day by day and in such view of the matter, it is found that the Government being the owner of the suit property, the plaintiffs cannot resist the Government from initiating necessary action against them for obtaining the possession of the suit property as per law.

17. That apart, there is no material placed on record by the plaintiffs to hold that the defendants had resorted to any illegal methods to dispossess the plaintiffs from the suit property and on the other hand, the materials placed on record go to show that the defendants had taken the legal recourse to evict the plaintiffs from the suit property as per the procedures sanctioned by law and when the steps taken by the defendants with reference to the same, could not even be challenged by the plaintiffs as such and when according to the defendants, the plaintiffs being aware of the same deliberately are avoiding to receive the notices issued by the Government for the purpose of squatting in the property endlessly, the contention put forth by the plaintiffs that the defendants are attempting to evict them from the suit property illegally or the

contention put forth by the plaintiffs that they cannot be evicted from the suit property in any manner and thereby entitled to relief of permanent injunction as against the true owner is found to be untenable and can not be countenanced.

18. In this connection, the plaintiffs' counsel contended that based upon the materials placed by the plaintiffs, the possession and enjoyment of the suit property by the plaintiffs should be construed as settled possession and in such view of the matter, it is argued by him that when the plaintiffs are in settled possession of the suit property, the defendants are not entitled to evict them from the suit property and in this connection, he placed reliance upon the decision of the apex Court reported in 2004-3-L.W.143 (Rame Gowda (D) by Lrs. Vs. M/Varadappa Naidu (D) by Lrs. & Anr.). Insofar as this case is concerned, admittedly the suit property belongs to the Government, as above seen, there is no material placed by the plaintiffs to hold that all the so-called developments made by them and put up in the suit property are not shown to be done with the approval and sanction of the Government. It is thus found that the plaintiffs are only encroachers in respect of the suit property and illegally trespassed into the same gradually and therefore, it is found that the plaintiffs are not entitled to seek the protection from the true owner. That apart, the plaintiffs have not placed any materials to hold that the defendants are resorting to any illegal methods to evict the plaintiffs from the suit property. Such being the position, it is found that the plaintiffs have no cause action at all to lay the suit against the defendants and in such view of the matter, the abovesaid authority, in my considered opinion, would not be applicable to the facts at hand. In the decision relied upon by the plaintiffs' counsel above referred to, there has been a dispute with reference to the title as regards the property involved in that matter and accordingly, on facts, the Court finding that the plaintiffs are in possession of the concerned property, held that they are not to be disturbed, as the defendants had also not established, prima facie, their title to the disputed property. But, as far as this case is concerned, as already noted, there is no dispute as regards the title of the defendants in respect of the suit property. Accordingly, when it is found that the plaintiffs are only trespassers into the suit property without any legal authority and also cannot seek any legal entitlement to remain in the suit property forever and when it is further seen that the defendants had only resorted to the legal steps to dispossess the plaintiffs from the suit property, it is found that the suit laid by the plaintiffs for the relief of permanent injunction as against the true owner is unsustainable in the eyes of law and accordingly, this Court does not find any reason to interfere with the judgment and decree of the first appellate Court in any

manner. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiffs.

19. On considering the facts and circumstances of the case at hand, particularly, the inch by inch encroachment made by the plaintiffs into the suit property and the dubious benefits thereby, they had obtained in respect of the same as above discussed, this Court is reminded of the anecdote/phrase "like the Camel getting its nose into the tent". The above phrase emerges from a story where a man seeking shelter from a sandstorm puts up a tent but leaves his camel outside. The camel asks his permission to put its nose inside the tent and the man sympathetically gives consent to the same. The camel then progresses and seeks permission to put more and more of its body inside the tent and finally, the man has to leave the tent, because the camel has taken all the space of the tent.

19. The above story reminds us of the moral that "Do not allow even small malpractices because they will grow big eventually" and it also leads us to the position that what has been happening in a small measure, if not stopped at the inception, the same would grow in enormous shape which later could not be prevented or stopped. Accordingly, it is found that the plaintiffs started encroaching into a small portion of the Government land and gradually, inch by inch, extended their encroachment and now, it is found that they are in occupation of the suit property and the Government should have taken the steps at the earliest to nip the encroachment made by the plaintiffs in the bud and this case is a classic example that if small transgressions are not addressed at the earliest point of time, they would grow into massive problems that are difficult, if not impossible, to deal with. The Government should also sensitize its servants to take appropriate action as provided under law against such unauthorised invasions into the government property at the earliest point of time.

20. If really, the plaintiffs had been in possession and enjoyment of the suit property with the approval and sanction of the Government as projected by them and accordingly, they had also exercised hostile ownership of the suit property as against the Government, they would have endeavoured to claim title to the suit property on the plea of adverse possession as against the true owner i.e the Government. However, it is found that the plaintiffs have not taken the plea of adverse possession for claiming title, possession and enjoyment of the suit property. Thus it is found that the Government has not given up its valid title over the suit property and accordingly, exercising control over the same. However, it is found that the plaintiffs were able to progress day by day encroaching into the suit property

and obtained some facilities with reference to the same, however, as above discussed, that by itself would not lend a valid claim of title to the plaintiffs' illegal possession the suit property.

21. In the light of the above discussions, when it is found that the plaintiffs have not established their entitlement to remain the suit property as per law, particularly as against the true owner and when it is further noted that the true owner viz., the defendants had not resorted to any illegal methods to dispossess the plaintiffs from the suit property and on the other hand, initiated only legal methods to evict them from the suit property and in such view of the matter, it is found that the first appellate Court, on a correct appreciation of the materials placed on record in the right perspective, dismissed the suit laid by the plaintiffs and in such view of the matter, no reason is made out to interfere with the judgment and decree of the first appellate Court.

At the end, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Subordinate Judge, Ariyalur.
2. The District Munsif, Ariyalur.

Copy To

The Section Officer, V.R.Section,  
High Court, Madras.

+1cc to Mr.M.Vijaykumar, Advocate, S.R.No.26999  
+1cc to the Special Government Pleader, S.R.No.27324

S.A.No.135 of 2004

SSI (CO)  
CS/12/06/18