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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Second Appeal No.62 of 2015

1.Thailammal

2.Oomaiyan

..Defendants/Appellants/Appellants

Vs.

1.Ramasamy

... Respondent/Respondent

2.The Tahsildar,  
Kallakurichi Taluk,  
Villupuram District

.. Respondents

(R2 impleaded vide Court order dated  
13.11.2017, made in C.M.P.No.14531/2017  
in S.A.No.62/2015)

PRAYER: Second Appeal filed under Section 100 of C.P.C to set aside the judgment and decree dated 12.11.2013 made in A.S.No.12 of 2009 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 22.04.2009 made in O.S.No.605 of 2006 on the file of the Principal District Munsif Court, Kallakurichi.

For Appellants : Mr.N.Ramesh

For R1 : Mr.P.Valliappan

For R2 : M/s.Madhumathi  
Government Pleader (CS)

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

This Second Appeal has been filed to set aside the judgment and decree dated 12.11.2013 made in A.S.No.12 of 2009 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 22.04.2009 made in O.S.No.605 of 2006 on the file of the Principal District Munsif Court, Kallakurichi.

2.The appellants are the defendants, first respondent is the plaintiff in O.S.No.605 of 2006 on the file of the Principal District Munsif Court, Kallakurichi. The first respondent filed



the said suit for permanent injunction restraining the appellants, their men and agents from interfering with his peaceful possession and enjoyment of the suit properties. According to the first respondent, by the deed of sale dated 30.03.1974, he had purchased 1 acre 3 cents in R.S.No.105/2005 of Rayarpalayam Village, Kallakurichi Taluk from one Kaliyammal and her sister. The first respondent sold one acre to first appellant by the deed of sale dated 25.08.1992 and retained 0.03 cents in the north eastern corner described as item No.1. The property was sub-divided and Survey No.105/3-A was given for 0.03 cents and patta No.40 was issued to the first respondent on 17.08.1986. Adjoining to item No.1 is two cents of battai poromboke described as item No.2. The first respondent is in possession and enjoyment of both properties in item Nos.1 and 2 by constructing thatched house and is residing there. The said thatched house was in dilapidated condition. The first respondent is paying Kist to item No.1 and 'B' Memo charges for item No.2. On 26.08.2006, the appellants tried to trespass into item Nos.1 and 2 of the suit properties and the same was prevented by the first respondent and he filed the present suit for the relief stated above.

3.The second appellant filed written statement and the same was adopted by the first appellant. The appellants denied all the averments and contended that Kaliyammal and her sister were in possession of one acre only. By playing fraud, they got assignment in the year 1962 for one acre and three cents. The three cents was enjoyed by Subbura Pitchamutthu Chettiyar of Rayarpalaiyam Village, who sold the said three cents along with other properties to Sivanandham Ammal by the deed of sale dated 04.09.1967. Eight years back to filing of the written statement, the said Sivanandham Ammal handed over the suit item No.1 to the first appellant for cultivation. From that date onwards, the appellants are enjoying both the properties without any interruption. The appellants came to know about the fraud played by Kaliyammal only after filing of the suit. The first respondent and his vendor were not in possession and enjoyment of the first item of the property at any point of time. The first appellant purchased one acre from first respondent by deed of sale dated 25.08.1992. From the date of purchase of one acre, the first appellant is in enjoyment of one acre along with first item of the property by cultivating and constructing a cattle shed. The second appellant by deed of sale dated 07.06.2006, purchased the three cents in the first item of the property from Sivanandham Ammal. The cattle shed put up by the appellants became dilapidated four months earlier to filing written statement. When the appellants tried to construct the cattle shed, the first respondent prevented them. The first respondent is not residing in the suit properties. He is residing in Chinnasalem. The second item of the suit property is Odai Poramboke belonging to the Government. The first respondent was



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never in enjoyment of the suit property. Without Revenue Official being impleaded, the suit is not maintainable. The first respondent, using influence created documents. The sub-division is not maintainable. The appellants are taking steps to set aside the sub-division of the properties.

4. Based on the pleadings, the learned Principal District Munsif, Kallakurichi framed necessary issues. Before the Trial Judge, the respondent examined himself as P.W1 and one Bojan was examined as P.W.2 and marked 13 documents as Exs.A1 to A13. The appellants examined second appellant as D.W.1 and marked 5 documents as Exs.B1 to B5.

5. The Trial Court, considering the pleadings, oral and documentary evidence, decreed the suit holding that the first respondent purchased the property from Kaliyammal and he is in possession of the property. The patta has been issued in his name and he is paying Kist for the suit properties and first respondent proved his residence in the suit properties and property purchased by the second appellant as per Exs.A6 and B3 is not the same property purchased by his vendor by Ex.B1 dated 04.09.1967.

6. Against the said judgment and decree dated 22.04.2009, the appellants filed A.S.No.12 of 2009 before Sub Court, Kallakurichi. The learned Subordinate Judge, Kallakurichi framed necessary points for consideration. The learned First Appellate Judge considering the pleadings, oral and documentary evidence and judgment of the Trial Court, held that the first respondent has proved by oral and documentary evidence the title to the suit properties and his possession. The appellants have also admitted that one acre and three cents was assigned to Kaliyammal and appellants have not substantiated their case that three cents was assigned to Subbura Pitchamutthu Chettiyar.

7. Against the said judgment and decree dated 12.11.2013 made in A.S.No.12 of 2009, the appellants have come out with the present Second Appeal.

8. At the time of admission, this Court framed following Substantial Question of Law:

"1. Whether the plaintiff is entitled for the relief of permanent injunction in respect of water bodies like, "Odai Poramboke" without impleading Government as one of the defendant?

2. Whether poramboke land shall be deemed to be in enjoyment of adjoining land owner of 'larger extent' or 'meager extent'?"

9. The contention of the learned counsel for the appellants is that Kaliyammal was in possession of one acre only and Subbura Pitchamutthu Chettiyar was in possession of three cents.



The Government ought to have assigned only one acre to Kaliyammal. The said Kaliyammal, by playing fraud got assignment for one acre and three cents. In fact only Subbura Pitchamutthu Chettiyar was in possession of three cents and he sold three cents and other properties to Sivanandam Ammal. The said Sivanandam Ammal by Ex.B1, handed over the property to the first appellant and subsequently the second appellant by the deed of sale dated 07.06.2006, marked as Ex.B3, purchased item No.1, three cents from Sivanandam Ammal.

10.The contention of the learned counsel for the appellants is that they are the owner of the item no.2 measuring 2 cents which was never in possession of the first respondent. It is only the Odai poromboke and was in possession of the appellants. The first appellant purchased one acre adjoining to the item No.2 from the first respondent and therefore, he is deemed to be in possession of item No.2, adjoining the property.

11.Per contra, the learned counsel for the first respondent contended that first respondent purchased one acre three cents from Kaliyammal and her sister. He sold one acre to first appellant, retaining three cents. The first respondent has proved his title and possession to item Nos.1 and 2 of the suit properties. There is no error in the concurrent finding of fact and prayed for dismissal of Second Appeal.

12.Heard the learned counsel for the appellants, learned counsel for the first respondent as well as learned Government Pleader for the second respondent and perused the materials available on record.

13.It is pertinent to note that first appellant purchased one acre from first respondent by deed of sale dated 25.08.1992 marked as Ex.A13. In the said sale deed, it has been subsequently mentioned that three cents in the north eastern corner was retained by the first respondent. The first respondent has produced Ex.A2, patta for three cents to prove his possession. The first respondent marked Exs.A3 and A5, Kist receipts which are standing in his name. The appellants have contended that the first respondent is not residing in suit property and is residing in Chinnasalem. The first respondent marked Exs.A3 to A12 to prove that he is in possession and enjoyment of the suit properties. As far as second item of the suit property is concerned, according to the first respondent, it is battai poromboke and Government issued 'B' Memo and he is paying the charges as per the said 'B' Memo. The Revenue Officials are not disputing the possession of the first respondent and now the Tahsildar has been impleaded as second respondent in the Second Appeal. The documents, Exs.B1 to B5 filed and marked by the appellants neither prove their title nor their possession with regard to item Nos.1 and 2 of the suit



properties. The Courts below have considered the above facts and decreed the suit.

14. In the finding of the facts of Courts below, there is no error of law. No question of law much less than the substantial question of law has been raised in this Second Appeal. The Second Appeal is dismissed. The judgment and decree dated 12.11.2013 passed by Subordinate Judge, Kallakurichi in A.S.No.12 of 2009 is confirmed. No costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,  
Kallakurichi.
2. The Principal District Munsif,  
Kallakurichi.
3. The Tahsildar,  
Kallakurichi Taluk,  
Villupuram District.

Copy to:

The Section Officer,  
ER Section,  
High Court, Madras.

+1cc to Mr.P.Valliappan, Advocate sr.no.28504  
+1cc to Mr.N.Ramesh, Advocate sr.no.28971

Second Appeal No.62 of 2015

svi(co)  
nr 06/06/2018