

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2018

PRONOUNCED ON : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1774 of 2004

1. Valliammai
2. Elumalai

...
Vs.

Appellants

1. Chakrapani
2. Arumugam
3. Elumalai
4. Aaramuthu

...

Respondents

(The 4th respondent is given up as he remained exparte)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.06.2003 passed in A.S.No.105 of 2002 on the file of the Principal District Court, Villupuram, reversing the Judgment and Decree dated 05.03.2002 passed in O.S.No.185 of 2001 on the file of the II Additional District Munsif, Ulundurpet.

For Appellants : Mr.A.Nilapher
for M/s.R.Subramanian

For Respondents : Mr.N.Suresh

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 27.06.2003 passed in A.S.No.105 of 2002 on the file of the Principal District Court, Villupuram, reversing the Judgment and Decree dated 05.03.2002 passed in O.S.No.185 of 2001 on the file of the II Additional District Munsif Court, Ulundurpet.

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

" (i) Whether in law, the lower appellate Court erred in dismissing the suit in spite of the clear admissions of DW1 regarding his not having any contention to the suit property?

(ii) Whether in law the lower appellate Court is right in dismissing the suit instead of moulding the relief based on its findings and limiting the decree at least to the extent found in favour of the plaintiffs?"

3. The suit has been laid simplicitor for the relief of permanent injunction by the plaintiffs

4. It is not in dispute that the suit property belongs to the Government. Now, according to the plaintiffs, they had been in the possession and enjoyment of the suit property since the days of their predecessor in interest i.e. Thulasi, who is the husband of the first plaintiff and the father of the second plaintiff from 1960 onwards and accordingly, it is their contention that B Memos had been issued in their favour in respect of the suit property and they have been paying penal charges and thus, according to them, the Government has recognised their possession

and enjoyment of the suit property and it is stated that on account of enmity, the defendants, without any authority, attempted to interfere with their possession and enjoyment in respect of the suit property and hence, it is their case that they had been necessitated to lay the suit for appropriate reliefs.

5. Per contra, it is the case of the defendants that they are in the possession and enjoyment of 9 cents in the suit survey number in toto and further, according to them, the plaintiffs are not in the possession and enjoyment of the suit property as described and claimed in the plaint and they had also denied the plaintiffs' case that the defendants attempted to interfere with their alleged possession and enjoyment of the suit property and hence, prayed for dismissal of the suit.

6. As per the description of the plaint schedule property, it is stated to be located in survey No.13 at Vellore Village, Ulundurpet Taluk, measuring an extent of 0.50 cents within the specific boundaries. Thus, it is the case of the plaintiffs that they are in the possession and enjoyment of 50 cents of land in the suit survey number. Materials placed on record go to show that the survey No.13, which is Odai Tharisu belonging to the Government, covers a total extent of 1.15 acres. It is thus found that out of the abovesaid total extent, the plaintiffs claim to be in the possession and enjoyment of 50 cents of land, which fact has been

stoutly challenged by the defendants. Though the defendants would admit that the plaintiffs are in the possession and enjoyment of some extent in the said survey number, however, the contention of the plaintiffs that they are in the possession and enjoyment of the suit property i.e. 50 cents within the specific boundaries as putforth by them is being challenged.

7. In the light of the defence projected by the defendants as abovestated, to seek the equitable relief of permanent injunction, it is for the plaintiffs to establish that they are in the possession and enjoyment of the suit property as projected by them by adduceing acceptable evidence. Insofar as their claim of possession and enjoyment of the suit property, it is found that the plaintiffs have marked as Exs.A1 to A5 and examined 2 witnesses. On the side of the defendants, Exs.B1 & B2 have come to be marked and they have also examined two witnesses. As rightly found by the first appellate Court from the documents marked as Exs.A1 to A5, it is found that the documents only depict that the plaintiffs each are in possession of 0.01.0 ares in the suit survey number and nothing more than that. That apart, Exs.A2 to A4 have come into existence, after the institution of the suit. Be that as it may, when the documents projected by the plaintiffs do not show that they are in the possession and enjoyment of the suit property measuring an extent of 0.50 cents as described in the plaint and the documents go to show that

they are in the possession of only 0.01.0 ares each, as rightly found by the first appellate Court on the basis of the abovesaid documents projected by the plaintiffs, the plaintiffs cannot be granted the relief of permanent injunction as prayed for. Similarly, as held by the first appellate Court on the basis of the evidence of PW2, we cannot safely conclude that the plaintiffs are in the possession and enjoyment of the suit property as put forth by them.

8. In this matter, the VAO has been examined on the side of the defendants as DW2 and according to DW2, the plaintiffs are in the possession and enjoyment of 5 cents in the suit survey number and he has clearly stated that they are in possession and enjoyment of 5 cents alone. Thus, it is found that from the evidence of the concerned VAO, the plaintiffs are in possession and enjoyment of only 5 cents of land as depicted in their documents marked as Exs.A1 to A5. Such being the position, it is found that the plaintiffs have miserably failed to establish that they are in possession and enjoyment of the suit property as claimed by them.

9. Admitting the abovesaid factual position, in this second appeal, the counsel for the appellants has made the submission that once it is found that the plaintiffs are in possession and enjoyment of a lesser extent, on the above score, it is her contention that the first appellate

Court should have appropriately moulded the relief sought for and disposed of the suit in favour of the plaintiffs and on the other hand, inasmuch as the first appellate Court had, by setting aside the judgment and decree of the trial Court, dismissed the plaintiffs', and it is her further contention that the judgement and decree of the first appellate Court need reversal. However, the abovesaid argument, in my considered opinion, does not merit acceptance. The suit has been laid by the plaintiffs barely for permanent injunction. The plaintiffs had laid the suit claiming that they are in possession and enjoyment of 0.50 cents of land in the suit property. That fact has not been established. No doubt, the materials placed on record go to intimate that the plaintiffs are in the possession and enjoyment of 5 cents of land. However, when the suit survey number is found to be consisting of a total extent of 1.15 acres, it is for the plaintiffs to establish as to where exactly the 5 cents, which is alleged to be in their possession, is located. With reference to the abovesaid position, there is no material forthcoming on the part of the plaintiffs. Merely because, the facts disclosed that the plaintiffs are in possession and enjoyment of 5 cents of land in the suit survey number, on that basis, we cannot grant the relief in favour of the plaintiffs by moulding the prayer sought for by the plaintiffs. As rightly determined by the first appellate Court, when the location of the 5 cents in the suit survey number has not been identified or ascertained by the plaintiffs by placing acceptable and reliable materials particularly as to within which

boundaries the abovesaid 5 cents is located, it is found that the relief of permanent injunction cannot be extended in favour of the plaintiffs without any material to hold that in respect of which property the plaintiffs are claiming the said relief. Accordingly, it is found that the plaintiffs having failed to establish that they are in possession and enjoyment of the suit property and also having failed to establish the identity and location of the 5 cents of land in their possession and enjoyment in the said survey number, the equitable relief of permanent injunction cannot be granted in their favour even by moulding the relief as putforth by the plaintiffs' counsel.

10. The fact that the defendants have failed to establish their case or their claim of possession of the extent of the land as putforth by them not established could not in any manner be construed that otherwise the plaintiffs have established their case and that they should be granted the relief sought for. When the plaintiffs have come forward with the suit seeking a particular relief, it is for the plaintiffs to establish the same and they cannot be allowed to pick holes in the defence version and thereby, endeavour to succeed in their case without any materials in support of the same.

11. In the light of the above discussions, it is found that the first appellate Court is justified in dismissing the plaintiffs' suit by setting aside

the judgement and decree of the trial Court on the basis of the correct appreciation of the materials placed on record. Equally, the first appellate Court is right in dismissing the suit laid by the plaintiffs in entirety and considering the facts and circumstances of the case, particularly, when the plaintiffs have failed to establish by placing acceptable and reliable materials to ascertain and identify the property i.e. 5 cents of land in their possession, the plaintiffs cannot be given the relief prayed for by moulding the same and accordingly, it is found that no interference is called for in the judgment and decree of the first appellate Court. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs.

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

Index : Yes / No

Internet : Yes / No
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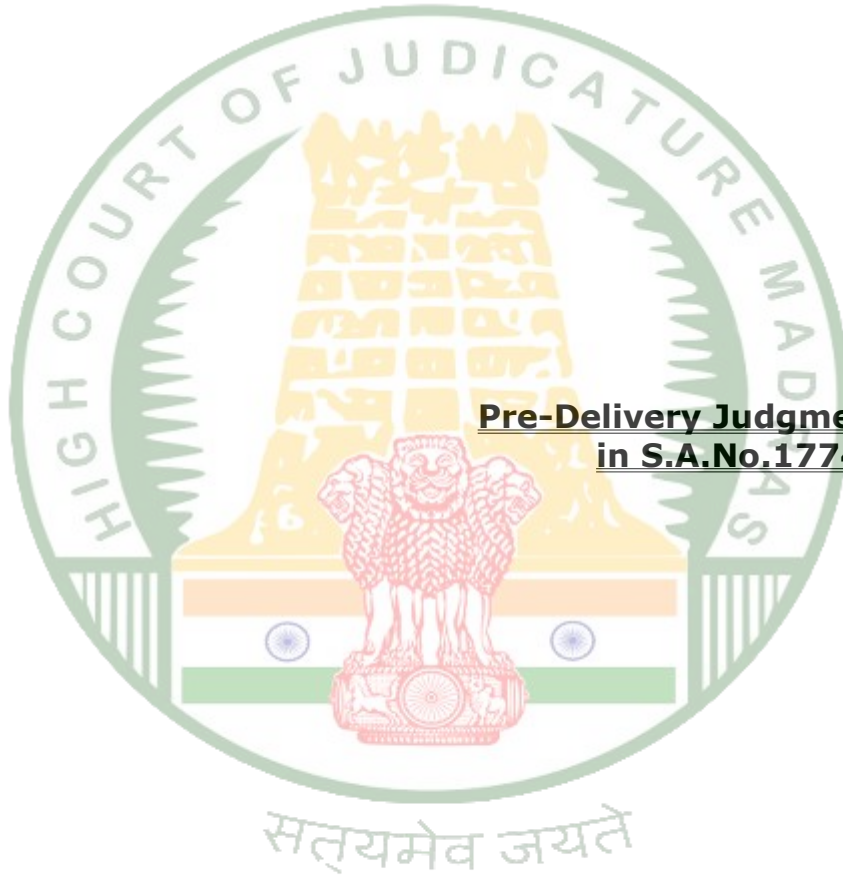
22.06.2018

To

1. The Principal District Court, Villupuram.
2. The II Additional District Munsif, Ulundurpet
3. The Section Officer, V.R.Section, High Court, Madras.

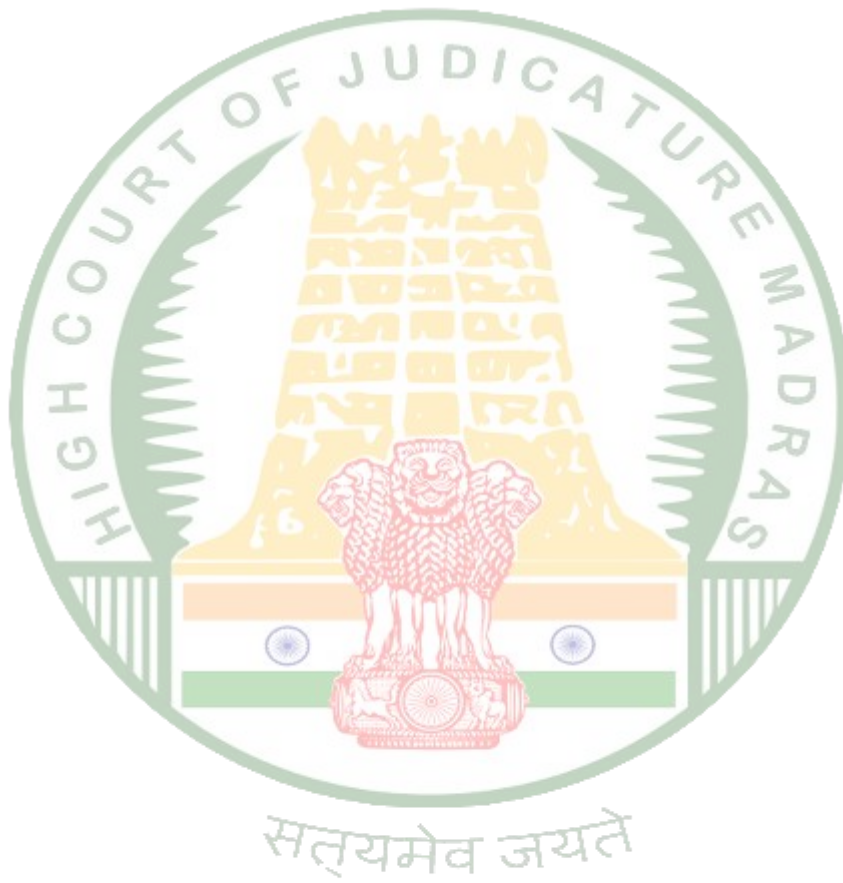
T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1774 of 2004**

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