

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2018

PRONOUNCED ON : 06 .07.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1926 of 2002

Selvaraju

...Appellant/Defendant

Vs

Harikrishnan

... Respondent/Plaintiff

PRAYER:Second Appeal filed under Section 100 of C.P.C, against the judgment and decree made in A.S.No.23 of 2001 dated 29.12.2001 on the file of the court of Principal Sub-ordinate Judge, Mayiladuthurai in reversing the judgment and decree made in O.S.No.518 of 1997 dated 11.01.2001 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

JUDGMENT

This Second Appeal has been filed by the defendant against the judgment and decree passed by the Principal Sub-ordinate Judge, Mayiladuthurai in A.S.No.23 of 2001 dated 29.12.2001 reversing the judgment and decree passed by the Additional District Munsif, Mayiladuthurai in O.S.No.518 of 1997 dated 11.01.2001.

2. The respondent herein has filed a suit in O.S.No.518 of 1997 on the file of the Additional District Munsif, Mayiladuthurai for permanent injunction to restrain the defendant / appellant herein from interfering with his peaceful possession and enjoyment of the suit property. The learned District Munsif by the judgment dated 11.01.2001 has dismissed the suit. Aggrieved by the same, the respondent herein has filed an appeal in A.S.No.23 of 2001 on the file of the Principal Sub-ordinate Judge, Mayiladuthurai. The learned Principal Sub-ordinate Judge, Mayiladuthurai by the judgment dated 29.12.2001 has allowed the said appeal and reversed the judgment and decree passed by the trial Court and decreed the suit as prayed for. Feeling aggrieved, the defendant has filed the present Second Appeal. For the sake of convenience the parties are referred to as described before the trial Court.

3.The averments made in the plaint are, in brief, as follows:

The suit property is the Government Promboke land and it is measuring about one cent situated in R.S.No.268 of Mayiladuthurai Village. Originally, one Ramu had occupied the suit property and put up a thatched shed and there he was running a salt mundi from 1987. The said Ramu, after receiving a sum of Rs.2,500/- from the plaintiff, allowed him to occupy the said thatched shed for his residence on 10.09.1989. Ever since that date, the plaintiff has been in possession and enjoyment of the suit property and residing there with his family members. The plaintiff has also paid house-tax to the Mayiladuthurai Panchayat Board. The receipt for payment of house-tax from 1990-91 to 1996-97 is also produced. The Village Administrative Officer also has issued a certificate stating that the plaintiff is in possession of the suit property. The defendant who is now the President of the Mayiladuthurai Panchayat Board wanted money from the plaintiff for his occupation of the suit property for which the plaintiff was not willing to pay. Hence, the defendant threatened the plaintiff and attempted to prevent him from carrying out repairs to the thatched house. Further, the defendant has threatened that he will dismantle the house which is situated in the suit property by force. Hence, the suit.

4.The averments made in the written statement are, in brief, as follows:

The very frame of the suit itself is bad. The defendant is the Panchayat President of the suit village. The suit property is a poramboke land vested with the Panchayat Board. The same was originally a vacant site and intended for public use. Originally it was fenced on all sides. The plaintiff herein attempted to trespass into the suit property. The defendant as the President of the Panchayat Board, has objected for the same. Immediately, suppressing everything, the plaintiff has filed the suit against the defendant in his individual name. On that score alone the suit is liable to be dismissed. At no point of time the plaintiff was in possession of the suit property. He is having a pucca house at north street. The documents filed along with the plaint do not relate to the suit property. In fact the plaintiff came into possession only on the strength of the ex-parte injunction order granted in his favour. After getting the order, he has cut the fence and put up a temporary shed and by making use of the fence he has encircled the shed. The plaintiff is a rank trespasser. He has suppressed the material facts. The alleged possession is unlawful and he cannot get any order as against the real owner. Therefore, he prayed to dismiss the above suit.

5. Based on the aforesaid averments, the learned District Munsif has framed necessary issues and tried the suit. During

trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined two more witnesses as P.W.2 and P.W.3. He has marked Ex.A1 to Ex.A22 as exhibits. On the side of the defendant, the defendant examined himself as D.W.1 and he has also examined one more witness as D.W.2. He has marked Ex.B1 to Ex.B6 as exhibits. The report and the sketch filed by the Advocate Commissioner have been marked as Ex.C1 and Ex.C2 respectively.

6. The learned District Munsif, after considering the materials placed before him, came to the conclusion that the plaintiff has occupied the suit property only after getting exparte interim injunction and before that, he was not in possession of the property. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.23 of 2001 on the file of the Principal Sub-ordinate Judge, Mayiladuthurai. The learned Principal Sub-ordinate Judge, Mayiladuthurai has allowed the said appeal and reversed the judgment and decree passed by the trial Court and decreed the suit as prayed for. As against the same the defendant has preferred the present Second Appeal.

7. At the time of admitting this Second Appeal, this Court has formulated the following substantial questions of law:-

"1) Whether the suit is maintainable against the defendant in his personal capacity when the suit property belongs to the Panchayat and the defendant has taken steps to prevent any encroachment to the suit property by the plaintiff?

2) Whether the lower appellate court not erred in law in holding Ex.A17, unregistered sale deed can be looked into for collateral purpose of possession against the judgment of this Court reported in 1998 (1) M.L.J.114?"

8. Heard Mr.A.Muthukumar, learned counsel for the appellant and Mr.S.Sounthar, learned counsel appearing for the respondent.

9.Question Nos. 1 and 2:

The learned counsel for the appellant has submitted that Ex.B5 would clearly establish that the suit property is vested with the Mayiladuthurai Panchayat Board. He further submitted that the plaintiff tried to encroach the suit property and the defendant being the President of the Panchayat Board has questioned the same and hence immediately the plaintiff has filed the above suit with fabricated documents and got ex-parte order of injunction and only thereafter he entered into the possession of the suit property. He further submitted that the trial Court has rightly rejected the plaintiff's suit, but the first Appellate Court without properly appreciating the facts

and evidence, reversed the well considered judgment of the trial Court. He further submitted that the filing of the suit itself is bad because the suit ought not to have been filed against the Panchayat Board, but the plaintiff has filled the suit against the defendant in his individual name. He further submitted that the plaintiff claims right over the suit property based on the unregistered sale deed [Ex.A17] which is inadmissible in evidence and the same cannot be looked into even for collateral purpose. He further submitted that the plaintiff being a trespasser he is not entitled to seek injunction and therefore he prayed to allow the Second Appeal and dismiss the plaintiff's suit.

10. The learned counsel for the respondent / plaintiff, on the contrary, contended that since the suit property is the Government poramboke land, it cannot be conveyed through a registered sale deed and hence the person, who was in occupation of the suit property namely Ramu received Rs.2,500/- and handed over the possession of the suit property to the plaintiff and to evident the same he has executed Ex.A17 document dated 10.09.1989. He further submitted that even though the said document is an unregistered one it can be used for collateral purpose to prove possession of the suit property. He further submitted that Ex.A1 to Ex.A22 would clearly show that the plaintiff is in possession of the suit property from the year 1989. He further submitted that Ex.A1 would show that prior to the plaintiff, his vendor, Ramu was in possession of the suit property. He further submitted that at the time of filing of the suit, the defendant was the President of the Panchayat Board, but subsequently, his term has been expired and as on date he is not at all President to the said Panchayat Board and as such he has no right to contend that only to protect the Panchayat's property he is contesting the litigation. He further submitted that the First Appellate Court after taking into consideration of all the materials placed held that on the date of filing of the suit, the plaintiff was in possession of the suit property and hence it has decreed the suit as prayed for and this Court cannot interfere with the said factual finding and hence he prayed to dismiss the Second Appeal.

11. The Suit property is the Government poramboke land measuring about one cent situated in R.S.No.268, Mayiladuthurai Village. According to the plaintiff, the said property was originally occupied by one Ramu and he has put up a thatched shed and used the same as salt mundi in the year 1987. His further case is that in the year 1989, after receiving a sum of Rs.2,500/- from him the said Ramu handed over the possession of the suit property to him and from that date onwards he has been in possession and enjoyment of the suit property. In support of his case, he has produced Ex.A1 to Ex.A22. Ex.A1 is the House-Tax receipt issued by the Village Munsif in favour of one Ramu

dated 10.09.1987. In the said document it is stated that the said Ramu has occupied the property, which is situated on the south of town station and the said Ramu has been using the said property as salt mundi. According to the plaintiff, the said Ramu has handed over the possession of the said property to the plaintiff in the year 1989. So, it is clear that even before filing of the suit the plaintiff was in possession of the suit property.

12. In the Advocate Commissioner's Report, it is stated that the said shed was a new one and the walls were in wet condition and appeared to be new one. Based on the abovesaid observation made by the Advocate Commissioner, the learned counsel for the appellant / defendant has submitted that the Commissioner's Report would show that the plaintiff has trespassed into the suit property after getting ex-parte order of injunction from the Court and put up a shed. The plaintiff has stated in his plaint itself that the defendant demanded money and for that he has not agreed and enraged by the same, the defendant threatened him and attempted to prevent him from carrying out repairs to the thatched house. The aforesaid averments would show that even before filing of the suit the thatched shed became damaged and the same required repair. Further, the Advocate Commissioner also stated in his report that when he was inspecting the suit property there was rain. So, since the thatched shed was in the damaged condition, due to the rain, the walls would have become wet. Therefore merely because the Commissioner has stated in his report that the walls were in wet condition, it cannot be presumed that only after filing of the suit, the plaintiff has trespassed into the suit property and put up the thatched shed.

13. It is an admitted fact that the suit property is the Government promboke land and that being so it cannot be conveyed through a registered document. Hence, it appears that the person, who has occupied the suit property namely Ramu has handed over the possession of the suit property to the plaintiff, after getting some amount and also executed Ex.A17 to evident the same. Even though Ex.A17 is an unregistered document, it can be looked into for limited purpose that is to show the possession of the suit property.

14. It is also to be pointed out that already the term of the office of the Panchayat President of the defendant expired and thereafter he cannot contend that he is contesting the litigation only to protect the interest of the Panchayat Board. It is also to be pointed out that the Appellate Court by its judgment has categorically observed that if any injunction is granted against the defendant that it would not bind the Panchayat Board. It has also observed that it is always open to the Panchayat Board to evict the plaintiff under due process of law. The Appellate Court has passed the judgment on

10.12.2001, but so far the Panchayat Board has not taken any steps to evict the plaintiff. As on date the defendant is in no way connected with the suit property and as such he has no right at all to question the possession of the suit property by the plaintiff. Therefore this Second Appeal is liable to be dismissed. Accordingly the questions of law are answered.

15. In the result, the Second Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

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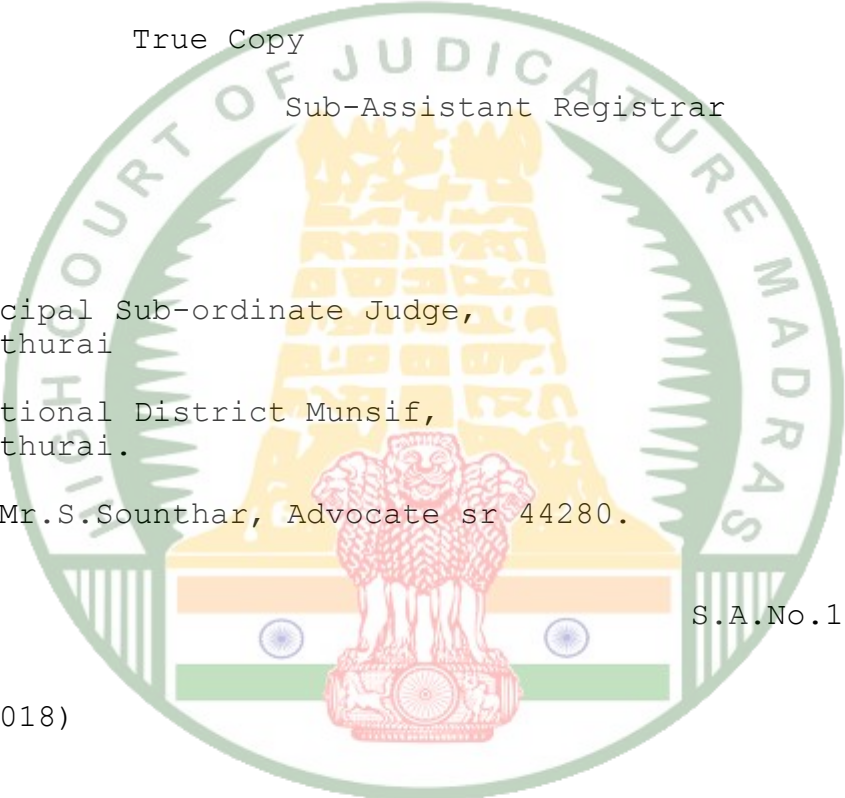
1.The Principal Sub-ordinate Judge,
Mayiladuthurai

2.The Additional District Munsif,
Mayiladuthurai.

+1 CC to Mr.S.Sounthar, Advocate sr 44280.

S.A.No.1926 of 2002

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