

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.585 of 2016

C.G.Radhakrishnan (Died)

1.C.G.Santhanakrishnan

C.G.Rukmani (Died)

2.R.Karpagavalli

R.Balaji (Died)

3.B.Kanchana

4.S.Gowri

5.Thanigainathan

6.Bhuvaneswari

7.T.Devadoss

8.Vijayalakshmi

9.T.Nirmala

10.T.Haridoss

... Appellants/Plaintiff 2nd Lrs of
Plaintiff and Lrs of 3rd Plaintiff

Vs.

1.C.G.Devarajan @ C.D.Rajan

2.Veerasekar

3.Arivalagan

4.Jegadambal (Deceased)

5.Loganathan

6.Raju

7.Chandramma

8.Bagyam

... Respondents/Defendants

(Memo dated 19.07.2018 is recorded, R4 died.

RR5 & 6 are recorded as Lrs of the deceased R4

vide order of Court dated 19.07.2018 in

S.A.No.585/2016)

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 24.03.2010 made in A.S.No.409 of 2006 on the file of the Additional District Judge, Fast Track Court V, Chennai, confirming the judgment and decree dated 17.09.2005 made in O.S.No.2154 of 2002 on the file of the XVI Assistant City Civil Court, Chennai.

For Appellants : Mr.T.P.Manoharan,
(Senior Counsel)
for Mr.Sathiyamoorthy

For RR1 and 7 : No appearance

For RR2 & 3 : Vacated

For RR4 and 8 : Died

For RR5 & 6 : Mr.A.Veerasamy
for Mr.M.Narayanaswamy

Second Appeal is filed against the judgment and decree dated 24.03.2010 made in A.S.No.409 of 2006 on the file of the Additional District Judge, Fast Track Court V, Chennai, confirming the judgment and decree dated 17.09.2005 made in O.S.No.2154 of 2002 on the file of the XVI Assistant City Civil Court, Chennai.

2.The 1st appellant along with C.G.Radhakrishnan and C.G.Rukmani filed suit, O.S.No.2154 of 2002 on the file of the XVI Assistant City Civil Court, Chennai for partition of B Schedule property into four equal shares and separate possession, for declaration that plaintiffs and 1st defendant are owners of huts at Schedules B3 and B4 and for a decree of ejectment against the defendants 4, 5 and 6 and put the 1st plaintiff with vacant possession of hut in Schedule B3, for permanent injunction against the defendants 4 to 8, restraining them from in any manner altering the huts or adding any structure or dealing in any manner affecting the rights of the plaintiffs in Schedule B property and for damages for use and occupation of the hut in Schedule B against the defendants 4 to 6 for a sum of Rs.1,000/- per month against the 7th defendant for her occupation in Schedule B4 for a sum of Rs.1,000/- per month. The parties are referred as arrayed in the suit.

3.According to the plaintiffs, the suit A and B Schedule property was purchased by C.D.Gopalswami Mudaliar, father of the plaintiffs and 1st defendant, by two sale deeds dated 06.05.1958 and 07.05.1958. Thereafter, he died on 03.06.1958, leaving plaintiffs and 1st defendant as his legal heirs. The plaintiffs and 1st defendant are residing in A Schedule property. B Schedule property was vacant land. The plaintiffs and 1st defendant brought servants from the village and put up huts in the B Schedule property and permitted them to reside in the huts. The 4th defendant and her daughter were working as servants in house

of the plaintiffs' and 1st defendant. They were permitted to reside in the hut. The plaintiffs and 1st defendant asked the defendants 4 to 6 to vacate the hut and deliver vacant possession as the daughter of the 4th defendant stopped working as a servant in their house. The plaintiffs and 1st defendant engaged defendants 2 and 3 to construct flats in A Schedule property.

3(a).The defendants 4 to 6 filed O.S.No.3186 of 1997 against the defendants 1 to 3 for permanent injunction. The 1st defendant, in collusion with 4th defendant, without informing the plaintiffs', left the suit to be decreed in favour of the 4th defendant. The defendants 7 and 8 were also permitted to reside in one of the houses in B Schedule property. Only the plaintiffs and 1st defendant are owners of the suit property in B Schedule. The defendants 4 to 8 are in possession of B Schedule property as servants of plaintiffs and 1st defendant. When they were asked to vacate, the defendants 4 to 6 informed the plaintiffs that they have obtained decree of injunction and they cannot vacate. When they gave complaint, no action was taken. Hence, the plaintiffs have come out with the present suit for the relief stated above.

4.The 1st defendant filed written statement and denied that he colluded with the 4th defendant and contended that he was not permitted to give evidence in O.S.No.3186 of 1997 filed by the 4th defendant and decree in said suit will not bind on the plaintiffs.

4(a).The 4th defendant filed written statement and denied all the averments. The 4th defendant contended that plaintiffs suppressed the judgment and decree passed in O.S.No.5642 of 1992 filed by the 1st defendant against the defendants 4 to 6. In the said judgment and decree, it was held that B Schedule property is Government land. B Schedule property was never in possession of the plaintiffs' father or plaintiffs. The 4th defendant denied the averments that 4th defendant's daughter worked as servant in plaintiffs' house and she was permitted to reside in the B Schedule property. The 4th defendant is in possession and enjoyment of the property measuring 22'x100' sq.ft. The 1st defendant/elder brother of the plaintiffs was looking after the family properties at Pennalur. They have constructed a house in A Schedule property which is a Government land. The defendants 2 and 3 encroached the property in possession of 4th defendant and kept construction materials there. The 4th defendant filed suit O.S.No.3186 of 1997 and obtained decree of permanent injunction. The other occupants in B Schedule property filed O.S.No.8646 of 1997 and obtained permanent injunction. The present suit is hit by principles of res-judicata and prayed for dismissal of the suit.

5. Based on the above pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the 1st plaintiff examined himself as P.W.1 and marked 16 documents as Exs.A1 to A16. On behalf of the defendants, defendants 1 and 4 were examined as D.Ws.1 and 2 and marked 14 documents as Exs.B1 to B14.

6. The learned Trial Judge considering the pleadings, oral and documentary evidence, dismissed the suit, holding that B Schedule property is a Government Poramboke land and plaintiffs are not entitled for the decree as prayed for. Against the said judgment and decree dated 17.09.2005, the plaintiffs and legal heirs of the deceased 1st plaintiff/appellants 2 to 4 filed A.S.No.409 of 2006.

6(a). The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge independently considering the materials on record, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the Appeal.

7. Against the said judgment and decree dated 24.03.2010, made in A.S.No.409 of 2006, the appellants have preferred the present Second Appeal.

8. At the time of admission, notice of motion was ordered by this Court. Before the Trial Court, though the defendants 1 to 3 entered appearance, the counsel on behalf of them did not argue the matter. The defendants 7 and 8 remained exparte in the suit. The First Appeal was dismissed against the defendants 7 and 8. No relief is sought against the defendants 2 and 3. In view of the same, notice to the defendants 2 and 3 are dispensed with. 4th defendant died, pending Second Appeal. The learned counsel for the defendants 5 and 6 filed a memo stating that the defendants 5 and 6 are the only legal heirs of the deceased 4th defendant and they are already on record.

9. The learned Senior counsel for the appellants contended that the plaintiffs' father purchased the property by two sale deeds dated 06.05.1958 and 07.05.1958, marked as Exs.A1 and A2. The property purchased by the father of the plaintiffs and 1st defendant comprises both A and B Schedule which are Gramanatham and Ex.A3 is the notice issued under Tamil Nadu Survey and Boundaries Act, 1923 for suit A Schedule property which includes B Schedule property. The 1st defendant, in collusion with 4th defendant, filed O.S.No.5642 of 1990 mentioning the Door No.13/1, without mentioning the Survey number. The said suit was dismissed as the property in Door No.13/1B, in possession of the 4th defendant is different from Door No.13/1. The property in

possession of 4th defendant is of Door No.14. The 1st defendant, in collusion with the 4th defendant filed a suit O.S.No.3186 of 1997 in respect of 2500 sq.ft in T.S.No.74 against the defendants 2 to 3 and the same was allowed. By these collusive decrees, the right of the plaintiffs are denied by the defendants 1 and 4. By the two sale deeds, Exs.A1 and A2 and Ex.A3, notice it is shown that plaintiffs are owners of the suit property and they have proved their possession. The 4th defendant failed to substantiate her case that she is in possession for more than 40 years. She created tax receipts only after getting decrees in collusive suit referred to above.

10.The learned Senior counsel appearing for the appellants in support of his contentions, relied on the following judgments:

(i) (2018) 2 SCC 352 (Kanaklata Das and others Vs. Naba Kumar Das and others):

"14.In the eviction suit, the question of title or the extent of the shares held by the appellants and respondent 1 against each other in the suit premises cannot be decided and nor can be made the subject-matter for its determination.

18.We, however, make it clear that any finding whether directly or indirectly, if recorded by the trial court touching the question of title over the suit property, would not be binding on respondent 1 regardless of the outcome of the suit and respondent 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and separate possession of his share by metes and bounds in all such properties."

(ii) (2010) 5 SCC 382 (State of Andhra Pradesh Vs. Hyderabad Potteries Private Limited and another):

"29.In the light of the same, the majority members of the Special Court came to the conclusion that certain entries in TSLR may not be sufficient proof of possession of the appellant State as owner thereof. Copy of the TSLR has been filed showing the details thereof. In Column 20 "G" is mentioned measuring thereby the Government, but in Column 23 which is remarks column, the possession of Respondent 1, Hyderabad Potteries Pvt. Ltd., is clearly shown which is in consonance with the stand taken by the respondents. It is also pertinent to mention here that "G" was encircled raising doubts about it and then in

Column 23 name of respondent 1 is clearly stated."

11.The learned counsel for the defendants 5 and 6 contended that B Schedule property has been declared as Government Poramboke. In the judgment and decree made in O.S.No.3186 of 1997 filed by the 4th defendant and O.S.No.5642 of 1990 filed by the 1st defendant, it has been held that B Schedule property is in possession of the 4th defendant. The plaintiffs and 1st defendant colluded together to get the relief which was denied in the suit O.S.No.5642 of 1990 filed by the 1st defendant. The 1st defendant/elder brother of the plaintiffs was looking after the family properties. The judgment in the two suits, O.S.Nos.5642 of 1990 and 3186 of 1997 are binding on the plaintiffs. The plaintiffs have not produced any document to prove that they are the owners of B Schedule property and that they are in possession of the B Schedule property. Exs.A1 to A3, relates only to A Schedule property and do not relate to B Schedule property. The evidence let in by the parties and documents filed by the 4th defendant proves that 4th defendant is in possession of the huts in B Schedule property and prayed for dismissal of the Second Appeal.

12.Heard the learned Senior counsel for the appellants as well as the learned counsel for the defendants 5 & 6 and perused the materials available on record. Though notice has been served on the defendants 1 and 7 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

13.The case of the plaintiffs is that, they are the owners of A and B Schedule properties along with the 1st defendant. They subsequently put up huts in B Schedule property and permitted their servants working in their house to be in possession of the huts. Subsequently, the 4th defendant and her daughter were working as servants and therefore, they were also permitted to occupy one of the huts. The plaintiffs asked the 4th defendant to vacate the hut when they stopped working. The plaintiffs have not produced any document to show that they are the owners of the suit property and they were in possession and enjoyment of the same. They also failed to produce any document to show that only servants working in their house was permitted to occupy the suit property. They have also failed to prove that 4th respondent or her daughter worked as servant in their house.

13(a).On the other hand, the 4th defendant has produced Ex.B2, extract of Town Survey Field Register and Ex.B7, judgment dated 22.03.1995 made in O.S.No.5642 of 1990 and contended that suit property is Government Poramboke land and she is possession and enjoyment of the suit property. The 4th defendant also produced Exs.A10 to A14 to prove her possession in B Schedule

property. The Courts below considering these documents filed by the defendants 4 to 6, held that suit B Schedule property is a Government Poramboke land and defendants 4 to 6 are in possession of the same. The Courts below considered Exs.A1 to A3 and held that these documents do not relate to B Schedule property and it relates only to A Schedule property. Further, the learned I Appellate Judge held that plaintiffs have not taken any steps to set aside the entry in the Revenue records with regard to B Schedule property which is recorded as Government property. The learned I Appellate Judge has considered the oral evidence of the 1st plaintiff and 1st defendant and held that they have admitted that the suit B Schedule property is recorded in the Revenue record as Government Poramboke and 4th respondent/defendant has obtained Electricity Board connection in her name. There is no error in the said findings. The concurrent finding of the Courts below are finding of the facts. There is no error of law warranting interference by this Court with the judgment dated 24.03.2010 made in A.S.No.409 of 2006. The judgments relied on by the learned Senior counsel for the appellants do not advance the case of the appellants in the facts and circumstances of the case. Therefore, no Question of Law arose much less than the Substantial Question Law arises for consideration by this Court.

14.In the result, this Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

gsa

To

- 1.The Additional District Judge, Fast Track Court V, Chennai.
- 2.The Judge, XVI Assistant City Civil Court, Chennai.
- 3.The Section Officer, VR Section High Court, Madras.

+1cc to Mr.T.Sathiyamoorthy, Advocate SR.No.49228

+1cc to Mr.M.Narayanaswamy, Advocate SR.No.49183

S.A.No.585 of 2016

GMV(19/09/2018)