

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2019

DATED: 30.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
S.A. No. 1563 of 2000

1. A.Muthusamy (died)
 2. M.Saroja
 3. M.Tamil Selvi
 4. M.Anbu
 - 5.M.Sivasubramnian
- ... Appellants/Plaintiffs

(Appellants 2 too 5 brought as Record as
LRS of the deceased sole Appellant vide as per
Order of this Court ,Dated 30.12.2002
made in CMP.NO.3248/02)

Vs.

1. K.Fransis
 2. R.Krishnan
- ... Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 23.02.1996 and made in A.S.No. 58 of 1993 on the file of Sub Court Namakkal confirming the Judgment and Decree dated 31.10.1991 and made in O.S.No. 655 of 1987 on the file of District Munsif Court, Rasipuram.

For Appellants : Mr.V.R.Rajasekaran
For Respondents : Mr.I.Abra Md. Abdullah

JUDGMENT

The plaintiff in O.S.No. 655 of 1987 on the file of the District Munsif Court, Rasipuram is the appellant herein.

2. O.S.No. 655 of 1987 had been filed by the plaintiff A.Muthusamy against two defendants K.Francis and R.Krishnan, seeking a Judgment and Decree for recovery of possession of the suit property and for costs.

3. The suit property was Government poramboke land measuring 3 acres together with well and shed in Mangalapuram Village, Rasipuram, Salem District. This suit was dismissed by the learned District Munsif, Rasipuram by Judgment dated 31.10.1991. The plaintiff then filed A.S.No. 58 of 1993 on the file of the Sub Court, Namakkal. By Judgment and Decree dated 23.02.1996, the appeal was also dismissed. Thereafter, the plaintiff had filed the present Second Appeal.

4. The Second Appeal had been admitted on the following substantial question of law:-

"Whether the Courts below are right in not considering the Ex.A-3 and A-5 though they are Judgments not inter parties still the same are admissible in evidence to prove the case of the appellant herein?".

Pending the Appeal, the appellant/plaintiff died and his legal representatives were brought on record as appellants 2 to 5.

O.S.No. 655 of 1987 - District Munsif Court, Rasipuram:

5. The plaintiff A.Muthusamy claimed that the suit property and its adjoining property were unsurveyed Government poramboke land in Mangalapuram Village. He claimed that he has been in possession for past 20 years before the institution of the suit. He has also paying tax. He had also dug a well and had put a shed. He claimed to be residing in the land. The first defendant K.Francis had filed O.S.No. 2254 of 1972 seeking a permanent injunction. That suit was decreed. Thereafter an appeal in A.S.No. 413 of 1975 was filed in the District Court, Salem and the Judgment and Decree in O.S.No. 2254 of 1972 was set aside and the suit was dismissed. The plaintiff claimed that consequently his possession has been recognised. However, he stated that the first defendant had forcibly taken possession of the suit property on 05.01.1980. The plaintiff had therefore filed the suit for recovery of possession. The first defendant did not participate in the trial proceedings and was set ex-parte.

6. The second defendant had filed the written statement denying the allegations raised in the plaint. It was specifically stated by the second defendant that the plaintiff cannot claim possessory right in respect of unsurveyed Government poromboke land. It was specifically denied that possession was taken forcibly. It was stated that the defendant was always in possession. It was stated that the suit should be dismissed.

7. On the basis of the above pleadings, the learned District Munsif, Rasipuram, framed the following issues for trial:-

(i) Whether the plaintiff is entitled for recovery of possession?;

(ii) Whether the plaintiff has possessory right over the suit property;

(iii) Whether the suit has any cause of action?;

(iv) Whether the suit is barred by limitation?;

(v) Whether the suit is bad for misjoinder of unnecessary parties?; and

(vi) To what relief is the plaintiff entitled to?

8. During trial, the plaintiff examined himself as PW-1 and examined two other witnesses Vamalai and Poomalai Udaiyar as PW-2 and PW-3. The second defendant examined himself as DW-1. He also examined Periyasamy, Perumal @ Chinnu and Muthusamy as DW-2 to DW-4. The plaintiff marked Exs. A-1 to A-11 dated 25.09.1975. Exs. A-2 and A-3 are the Judgment and Decree copy in O.S.No. 2254 of 1972 on the file of the District Munsif Court, Namakkal; Ex.A-4 and A-5 are the Judgement and Decree copy in A.S.No. 413 of 1975 dated 28.10.1976 on the file of the District Court, Salem; Ex.A-1 was the tax receipt for fasli 1387 - 1389. On the side of the defendants Ex.B-1 series was marked which were also tax receipts. On the basis of the oral and documentary evidence, the learned District Munsif, Rasipuram, found that the property in question was unsurveyed Government Poromboke land and also found that the plaintiff cannot claim possessory title over the said suit property. It was specifically found that the Government was the competent authority to grant possession. It was also found that Ex.A-1 tax receipt do not correlate to the suit property description. It was also found that the Judgment and

Decree in O.S.No. 2254 of 1972 on the file of the District Munsif Court, Namakkal and the Judgment and Decree in A.S.No. 413 of 1975 on the file of the District Court, Salem were not binding on the second defendant since he was not a party to the said judicial proceedings. Finally, the District Munsif, Rasipuram, dismissed the suit.

A.S.No. 58 of 1993 - Sub Court, Namakkal:-

9. The plaintiff A.Muthusamy then filed the said First Appeal. The First Appeal came up for consideration before the Sub Court, Namakkal, on 23.02.1996. The learned Sub Judge framed the following points for consideration:-

(i) Whether the trial Court had correctly decided that the plaintiff is not entitled for possessory right over the suit property and for recovery of possession?; and

(ii) Whether the grounds have been raised to interfere with the Judgment and Decree of the trial Court?

10. The learned Sub Judge on analysis of the oral and documentary evidence specifically found that the plaintiff had not proved that Ex.A-1 tax receipts for fasli 1387 - 1389 related to the suit property. It was also not mentioned in Ex.A-1 that the tax was paid for occupation of the suit property. It was also found that the Judgment and Decree in O.S.No. 2254 of 1972 on the file of the District Munsif Court, Namakkal and the Judgment and Decree in A.S.No. 413 of 1975 on the file of the District Judge, Salem, were both not binding on the second defendant, since he was not a party to the said suit and appeal. It was also found by the learned Special Judge that the suit property was unsurveyed Government Pormaboكة land and consequently in the absence of the Government being a party, a Judgment cannot be granted for possessory right and therefore, dismissed the Appeal.

S.A.No. 1563 of 2000:-

11. The plaintiff then filed the present Second Appeal.

12. The Second Appeal had been admitted on the following substantial question of law:-

"Whether the Courts below are right in not considering the Ex.A-3 and A-5

though they are Judgments not inter parties still the same are admissible in evidence to prove the case of the appellant herein?".

13. Pending the appeal, the appellant/plaintiff died and his legal representatives were brought on record as appellants 2 to 5.

14. For the sake of convenience, the parties will be referred as plaintiffs and as defendants.

15. The suit property is unsurveyed Government poromboke land. It had been described in the plaint as land measuring 3 acres together with well and shed in Mangalapuram Village, Rasipuram, Salem District. The plaintiff had sought a direction from the Court to grant him possession of Government poromboke land.

16. The substantial question of law which had been raised was whether the Courts below had properly considered an earlier litigation in O.S.No. 2254 of 1972 on the file of the District Munsif Court, Namakkal and the Appeal in that suit in A.S.No. 413 of 1975 on the file of the District Court, Salem.

17. A.S.No. 413 of 1975 had been filed by the first defendant in O.S.No. 2254 of 1972, A.Muthusamy the appellant herein. In O.S.No. 2254 of 1972, A. Fransis, who was the first defendant herein was the plaintiff. He had filed the suit against three defendants, namely, Muthusamy, Santhapa Padaiyachi and Rajamanickam. He had filed the suit seeking permanent injunction restraining the defendants from interfering with his peaceful possession. That suit was decreed by Judgment and Decree dated 25.09.1975 by the Additional District Munsif, Namakkal. The property involved in that suit was a larger extent of 12 acres.

18. It is claimed by the plaintiffs herein that the property in this suit formed part of the said 12 acres and measured 3 acres. In A.S.No. 413 of 1979, it had been held that the 12 acres of land was the Government poromboke land and the parties to the suit had agreed to divide the land among themselves and then apply for patta from the Government. It was found that the agreement was a collusive agreement. In the appeal, the possession of the plaintiff therein was found not to have been proved and since he was not in possession it was held that he cannot claim the relief of permanent injunction. That

Judgement will have no bearing on the issues raised in the pleadings in this case.

19. The present Second Appeal arises from a suit seeking recovery of possession. The Court cannot grant recovery of possession of Government property. The Government should have been made a party to the proceedings. The revenue department controls the Government poromboke land. It is also seen that the suit schedule property is unsurveyed Government poromboke land. Both the Courts below have consistently found that Ex.A-1 which is relied on by the plaintiffs, namely tax receipts for the fasli 1387-1389 do not relate to the suit property. It was also specifically found by both the Courts below that the plaintiff had not established the fact that he was dispossessed from the suit property by the second defendant. It was also found that Exs. A-7 and A-11, namely, a complaint given to the police and notices of the Tahsildar, Rasipuram, do not show that the plaintiff was entitled for recovery of possession. It was found that the plaintiff had not established either possessory right or right to recovery possession of the Government property. With respect to the substantial question of law, I hold that both the Courts below have correctly held that Ex.A-3 and A-5 are not binding on the parties particularly the second defendant to the suit since he was not a party to the said suit or appeal. Moreover that suit was a suit seeking permanent injunction by the first defendant herein and it was specifically found that the first respondent had not established possession and consequently injunction was refused by the First Appellate Court. The issue of title was not examined in the said suit.

20. In the present case, the plaintiff has to prove that he is entitled to recover possession. He must first establish title. He has failed to do so. Accordingly, I hold with respect to the substantial question of law that the Courts below have correctly held that Exs.A-3 and A-5 have no relevance so far as the present suit and appeal is concerned.

21. In view of the discussion above, I hold that the Second Appeal has to fail and accordingly it is dismissed with costs. The Judgment and Decree in O.S.No. 655 of 1987 on the file of the District Munsif Court, Rasipuram dated 31.10.1991 and of the Sub Court, Namakkal in A.S.No. 58 of 1993 dated 23.02.1996 are both confirmed.

Sd/-

Assistant Registrar(CS viii)

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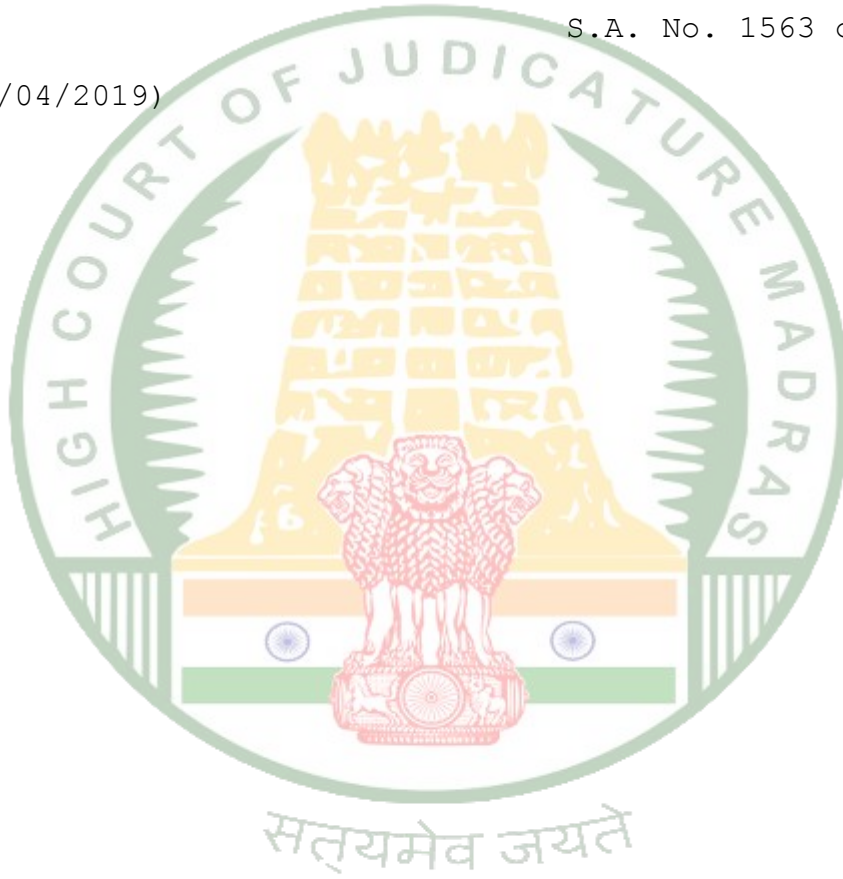
Sub Assistant Registrar

To

1. The Sub Court,
Namakkal.
2. The District Munsif Court,
Rasipuram.
3. The section officer,
VR Section, High Court, Madras.

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PA (CO)
A.SK(24/04/2019)



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