

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2019

PRONOUNCED ON : 20.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.989 of 2006

1.Elumalai
2.Pandurangan

... Appellants/Defendants 1 & 2

Vs.

1.Jayabal
2.Gopal

... Respondents/Plaintiff
3rd Respondent.

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.01.2006 passed in A.S.No.20 of 2005 on the file of the Principal Subordinate Court, Villupuram, partly reversing the Judgment and Decree dated 21.06.2004 passed in O.S.No.63 of 2003 on the file of the Additional District Munsif, Villupuram.

For Appellants : Mr.D.Rajasekar

Respondents : No representation/No appearance
set exparte vide order
dated 12.02.2019.

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.01.2006 passed in A.S.No.20 of 2005 on the file of the Principal Subordinate Court, Villupuram, partly reversing the Judgment and Decree dated 21.06.2004 passed in O.S.No.63 of 2003 on the file of the Additional District Munsif Court, Villupuram.

2.The Second appeal has been admitted on the following substantial question of law:

" Whether the lower appellate Court below is correct in reversing the trial Court Judgement on the basis of Ex.A7, which is only the receipt of giving a police complaint, which is no way connected with alleged possession of the suit property by

the plaintiff prior to the date of filing of the suit."

3.Considering the scope of the issues involved in the second appeal between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.Parties are referred to as per their rankings in the trial Court.

5.The suit has been laid by the plaintiff for the reliefs of declaration and permanent injunction.

6.Admittedly, the suit property is a Government Porambokku land. Now, the plaintiff claims that he is in the possession and enjoyment of the suit property for more than 40 years originally by putting up a house construction therein and subsequently, shifted his house in the opposite direction and using the suit property for Kitchen, bathroom and also put up a cow shed and for storing fire wood and accordingly, he is in the possession of the same by paying penal tax in favour of the Government and enjoying the house on the opposite direction by obtaining service connection, paying service charges, house tax etc., and further, according to the plaintiff, the defendants, without any authority, attempted to interfere with his possession and enjoyment of the suit property, which had been thwarted by the plaintiff and despite the same, as the defendants continue to persist in their endeavours to disturb the plaintiff's possession and enjoyment of the suit property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

7.The defendants resisted the plaintiff's suit contending that the plaintiff is not in the possession and enjoyment of the suit property at any point of time as put forth in the plaint and also not enjoyed the same as set out in the plaint and further contended that the documents projected by the plaintiff are not related to the suit property and claimed that the suit property is in the possession and enjoyment of the defendants and hence, the plaintiff is not entitled to obtain the reliefs sought for.

8.Based on the materials placed on record by the respective parties and the appreciation of the same, as regards the relief of declaration sought for by the plaintiff with reference to his possessary title in respect of the suit property, the same had been negatived by the Courts below. As against the said determination, the plaintiff has not preferred any appeal. The

trial Court in toto dismissed the plaintiff's suit and challenging the same, the plaintiff has preferred the first appeal and the first appellate Court confirmed the refusal of the relief of declaration sought for by the plaintiff and however, holding that the plaintiff has established his possession and enjoyment of the suit property, on that basis, granted the relief of permanent injunction in favour of the plaintiff. Impugning the same, the present second appeal has been preferred by the defendants 1 & 2.

9.As abovenoted, the suit property is a government porambokku land. As determined by the trial Court, on a perusal of the kist receipts marked as Exs.A1 & A2 by the plaintiff, when there is nothing contained therein to indicate that the same relate to the suit property in any manner, absolutely no reliance at all could be placed upon the abovesaid documents for accepting the plaintiff's claim of possession and enjoyment of the suit property.

10.Even as per the plaint averments, the plaintiff would claim that though he had put up a house construction in the suit property and residing therein, admitted that thereafter, he had shifted his residence in the opposite direction and using the suit property only for kitchen purpose, bath room, cow shed and for storing firewood and accordingly, it is seen that on the date of the suit or immediately prior to the same, the plaintiff has not been using the suit property for the purpose of residence. Furthermore, the plaintiff has also admitted that only in respect of the house construction put up by him in the opposite direction, he had obtained the service connection and enjoying the said portion by paying house tax, service charges, etc., The suit property is found to be described as porambokku survey No.263/7 comprising of an extent of 0.02 cents approximately out of 107.51 within the specific boundaries and it is noted that as per the description of the suit property, the plaintiff's house is lying on the western side of the suit property. It is thus noted that only in respect of the abovesaid house portion, the plaintiff has putforth the case that he has obtained the service connection and enjoying the same by paying house tax, service charges etc., Furthermore, the third defendant's property shown to be located to the South of the suit property. Inasmuch as the declinment of the relief of declaration of possessory title sought for by the plaintiff has become final, as rightly contended by the counsel for the defendants, it is for the plaintiff to establish that he is in the possession and enjoyment of the suit property as claimed by him. When even as per the case of the plaintiff, he is not using the suit property for residence purpose and residing in the opposite direction and when there is no indication that the

house tax receipt marked as Ex.A3 and the EB Bills marked as Exs.A4 to A6 pertain to the suit property and furthermore, when the plaintiff has not described the suit property as consisting of any house construction and only described the same as a vacant site and admittedly, the plaintiff has claimed to be residing in the opposite direction and enjoying the said house portion by paying house tax, service charges etc., as rightly put forth and as rightly determined by the trial Court, the abovesaid documents marked as Exs.A3 to A6 clearly do not pertain to the suit property and accordingly, no reliance could be placed upon the said documents for holding that the suit property is in the possession and enjoyment of the plaintiff as claimed by him.

11.As aboveseen, the suit property being a Government poramboku land, it is for the plaintiff to establish his claim of possession and enjoyment of the same by placing acceptable and reliable materials. When the documents projected by the plaintiff marked as Exs.A3 to A6 as above discussed are not shown to be pertaining to the suit property, it does not stand to reason as to how the first appellate Court has proceeded to uphold the case of the plaintiff that he is in the possession and enjoyment of the suit property. As rightly put forth by the appellants' counsel, on a reading of the Judgement of the first appellate Court, it is found that the first appellate Court has proceeded to determine that the plaintiff is in the possession and enjoyment of the suit property solely on the basis of the document marked as Ex.A7. Ex.A7 is found to be a receipt issued by the police in connection with the complaint lodged by the plaintiff as against the defendants. According to his case, inasmuch as the defendants attempted to interfere with his possession and enjoyment of the suit property, he had lodged a police complaint against them and with reference to the same, the receipt marked as Ex.A7 has been issued in his favour. As rightly put forth by the defendants' counsel, it does not stand to reason as to how on the basis of Ex.A7, the appellate Court has proceeded to uphold the plaintiff's claim of possession and enjoyment of the suit property. Thus, it is seen that the reasonings of the first appellate Court that the plaintiff has established his possession and enjoyment of the suit property based on Ex.A7 receipt issued by the police authority is found to be totally perverse, illogical and irrational and in such view of the matter, the grant of the relief of permanent injunction in favour of the plaintiff by the first appellate Court based on Ex.A7 police receipt is found to be unsustainable in the eyes of law. Furthermore, as put forth by the defendants' counsel, even as per the plaint averments, it has been stated by the plaintiff that the defendants had encroached into the suit property and removed the thatched structure put up by him therein and endeavoured to put up a new construction in the suit

property, however the plaintiff would claim that the abovesaid action of the defendants had been prevented at the instance of the police and village elders. Therefore, when as per the case of the plaintiff, as averred in the plaint, the defendants had already encroached into the suit property and removed the alleged construction put up by him therein, it does not stand to reason as to how the plaintiff would claim that he still continues to be in the possession and enjoyment of the suit property and with reference to his claim that he had secured the possession of the suit property from the defendants thereafter at the intervention of the police and village elders, to evidence the same, there is no proof placed by the plaintiff worth acceptance. In all, it is found that the plaintiff is not in the possession and enjoyment of the suit property and accordingly, is unable to sustain the abovesaid case by placing acceptable and reliable materials.

12.No doubt, the documents projected by the defendants also do not sustain their claim of possession and enjoyment of the suit property and the same had been rightly disbelieved by the Courts below, but that cannot be the basis for upholding the plaintiff's claim of possession and enjoyment of the suit property belonging to the Government. When with reference to the claim of the possessory title sought for by the plaintiff has been negatived by the Courts below and when the plaintiff has failed to establish his alleged possession and enjoyment of the suit property by placing any material whatsoever as above discussed and Ex.A7 police receipt would not be the basis for upholding the plaintiff's case in any manner, in all, it is found that the first appellate Court has totally erred in reversing the Judgement and decree of the trial Court and granting the relief of permanent injunction in favour of the plaintiff based on Ex.A7 police receipt, which no way would be useful to sustain the alleged case of the possession and enjoyment of the suit property by the plaintiff, in particular, prior to the date of the filing of the suit. In the light of the above position, the Judgement and decree of the first appellate Court granting the relief of permanent injunction are liable to be set aside.

13.For the reasons aforestated, the substantial question of law formulated in the second appeal is accordingly answered in favour of the defendants/appellants and against the plaintiff.

In conclusion, the Judgement and Decree dated 31.01.2006 passed in A.S.No.20 of 2005 on the file of the Principal Subordinate Court, Villupuram, granting the relief of permanent injunction in favour of the plaintiff are alone setaside and resultantly, the Judgment and Decree dated 21.06.2004 passed in O.S.No.63 of 2003 on the file of the Additional District Munsif

Court, Villupuram, are restored. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar(CSVIII)

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Sub-Assistant Registrar

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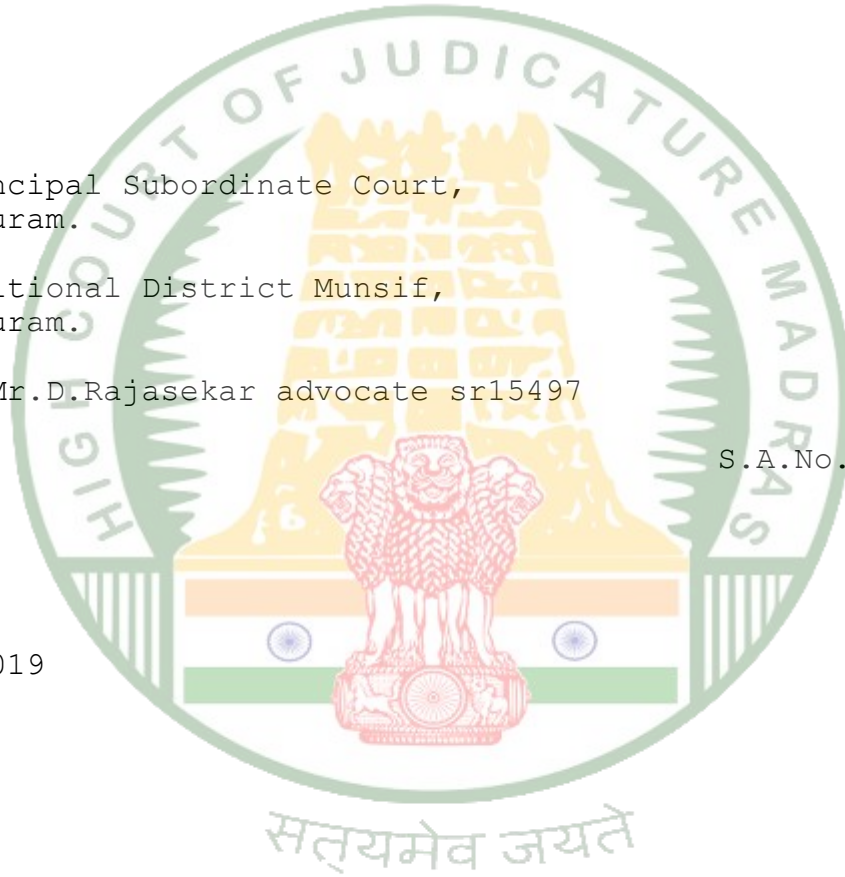
1.The Principal Subordinate Court,
Villupuram.

2.The Additional District Munsif,
Villupuram.

+1 cc to Mr.D.Rajasekar advocate sr15497

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