

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.210 of 2004
and
C.M.P.No.1113 of 2004

1.Pichakaramooper
2.Molavi Ammal
3.Kolanji

.. Appellants/Respondent 1 to 3/Defendant 1 to 3

/versus/

1.Pazhaniammal
2.Pavadai
3.Duraisamy

... Respondent/Appellant/Plaintiff
... Respondents/Respondent/Defendant 4 & 5

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Subordinate Judge, Kallakurichi, passed in A.S.No.40 of 2001 dated 30.06.2003 reversing the judgment and decree passed by the learned II Additional District Munsif, Kallakurichi in O.S.No.651 of 1996 dated 16.03.2001 praying that the same may kindly be set aside.

For Appellants :Mr.R.Baskaran for
Mr.E.Vijayanad

For Respondents :No appearance

J U D G M E N T

Heard the learned counsel appearing for the appellants.

2. The suit has been filed by the first respondent herein against the appellants and respondents 2 and 3 herein seeking injunction in respect of the suit property measuring 20 acres equal to 50 cents, which is abutting the patta land R.S.No.122 in Periyamampattu, Kallakurichi Taluk. Admittedly, the suit property is a road poromboke owned by the Government. While the plaintiff has traced his enjoyment through Jagadambal

who was in possession of R.S.No.122 and enjoying the adjacent Government poromboke land and for the past two years, he is in possession and enjoyment of the property.

3. The said suit has been contested by the 1st appellant herein as a first defendant claiming title over the property in R.S.No.122 through settlement deed and sale deed was executed in the year 1995 and 1950, which are marked as Exs.B1 and B2. While the plaintiff had relied upon UDR patta issued by the Revenue Authorities, the appellant herein has relied upon the title deeds marked as Exs.B1 and B2. While the trial Court has found that the plaintiff has not proved her case of possession and enjoyment and UDR patta-Ex.A1 does not indicate the possession of the suit property with the plaintiff. On appeal, the lower appellate Court has reversed the finding of the trial Court and allowed the suit granting injunction in favour of the first respondent. The reason given by the lower appellate Court is that in the back of UDR patta-Ex.A1, the sketch of topo has been given, wherein the disputed area has been shown as 'Medu' and it falls on the northern portion of the plaintiff's land. Therefore, the other documents Exs.A4 and A5 though were issued subsequent to the filing of the suit, it indicates that the possession of the property is with the plaintiff.

4. Aggrieved by that, the present Second Appeal is preferred by the first defendant. At the time of admission, this Court has formulated the following Substantial Questions of Law and ordered notice to the respondents.

1. Whether the lower appellate Court is correct in granting the relief of permanent injunction relying upon the documents, which was obtained after the suit?

2. Whether the lower appellate Court is correct in granting the relief of permanent injunction without carefully considering the documents filed by both sides?

3. Whether the lower appellate Court is correct in granting the relief of permanent injunction without noting the material fact that the defendants are the owners of the land abutting the road poromboke?

4. Whether the lower appellate Court is correct in granting the relief of permanent injunction which is admittedly a road poramboke in which the defendants and the other public has common right of access?

5. While the appellants/defendants 1 - 3 contesting the suit, inspite of receiving the notice, the other defendants 4 and 5 remained absent in the suit. It is now reported by the learned counsel appearing for the appellants that respondents 2 and 3, who are the defendants 4 & 5 died. Since they have no stake in the appeal, their death has no consequence to decide the second appeal.

6. On hearing the submissions made by the learned counsel appearing for the appellants and on perusal of the records, this Court finds that the lower appellate Court has grossly erred in granting permanent injunction relying upon Ex.A1 without understanding the evidentiary value of UDR patta issued by the Revenue Authorities and the topo sketch found on the back of the patta.

7. The disputed land is situate on the north of S.No.122/1A. No doubt, under UDR S.No.120/1A (Ex.A1) patta has been given to one Sundararajan and Jagadambal through whom the plaintiff claims title. But it does not indicate that beyond S.No.122/1A more particularly, the northern portion was in possession and enjoyment of the plaintiff. Contrarily, the appellants herein relying upon the documents executed in the year 1950 and 1952, had contended that since then, their predecessors in title are enjoying the patta land and the adjacent government poromboke land, which is on the road margin. In the said circumstances, the lower appellate Court ought not to have relied upon Exs.A4 and A5, which are subsequent to the filing of the suit.

8. The case of the plaintiff/first respondent herein is that the disputed land is a Government Poromboke land on the road margin. Beyond the disputed poromboke land, the patta lands of the parties are located. While so, when the road margin runs through the patta lands of the parties, the plaintiff cannot injunct the defendants from using the Government poromboke land to have access to their respective lands. On that score also, the lower appellate Court is liable to be set aside.

9. As pointed out by the learned counsel appearing for the appellants, granting relief of permanent injunction without noting the material facts that the defendants are owners of the land abutting to the poromboke land upon which the respondents are sought to be restrained is contra to law and therefore, the appeal is liable to be allowed.

10. Accordingly, this Second Appeal is allowed. The judgment and decree of the trial Court viz., II Additional District Munsif Court, Kallakurichi in O.S.No.651 of 1996 dated 16.03.2001 are confirmed and the judgment and decree of the lower appellate Court viz., the Subordiante Court, Kallakurichi in A.S.No.40 of 2001 dated 30.06.2003 are set aside. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge,
The Subordinate Court, Kallakurichi.
2. The Additional District Munsif,
IInd Additional District Munsif Court, Kallakurichi.
3. The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.E.Vijayanad, Advocate sr.no.5828

S.A.No.210 of 2004

rsv(co)
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