

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2019

PRONOUNCED ON : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.975 of 2005

Dhasarathan ...Appellant / Appellant/Plaintiff

Vs.

1. The District Forest Officer,
Government Gardens,
Thirupathur Town.
2. The Forest Settlement Officer,
Pudupet Road, Thirupathur,
Vellore District. ...Respondents 1 and 2 /
Respondents 2 and 3 / Defendants
3. Kannan
4. Thavamani ...Respondents 3 and 4 /
Respondents 3 and 4 /
Plaintiff 2 and 4

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 18.08.2004 passed in A.S.No.76 of 2002 on the file of the Additional District and Sessions Judge (FTC), Thirupathur, Vellore District confirming the judgement and decree dated 18.08.2000 passed in O.S.No.292 of 1984 on the file of the Principal District Munsif Court, Thirupathur.

For Appellant : Mr.J.Saravana Vel

For Respondent : Mr.S.V.Vijay Prashanth
Nos. 1 & 2 Spl.Govt.Pleader (Forest)

For Respondent : Given up
Nos.3 & 4

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 18.08.2004 passed in A.S.No.76 of 2002 on the file of the Additional District and Sessions Judge (FTC),

Thirupathur, Vellore District confirming the judgement and decree dated 18.08.2000 passed in O.S.No.292 of 1984 on the file of the Principal District Munsif Court, Thirupathur.

2.The second appeal has been admitted on the following substantial questions of law:

" 1.Whether the mandatory notice under Section 6 of the Tamil Nadu Forest Act need not be served on the person in possession of the property if the person in possession did not explain the nature of his possession.

2.Whether the legal representatives of a person in possession could not make any claim to continue in possession under Section 7 of the Tamil Nadu Forest Act".

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.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.The suit has been laid by the plaintiffs against the defendants for the relief of permanent injunction seeking to restrain the defendants their men, agents and subordinates from permanently interfering in any manner in their possession and enjoyment of the suit properties.

6.The suit has been originally laid by the four plaintiffs jointly and as could be seen from the available materials on record, the first plaintiff had died during the pendency of the proceedings and her legal heirs had not been brought on record. Based on the materials placed on record, it is found that the trial Court had dismissed the suit laid by the plaintiffs. As against the judgment and decree of the trial Court, the plaintiffs 1, 2 & 4, particularly, the plaintiffs 2 & 4 have not preferred any appeal challenging the same. Only, the third plaintiff, as such, had preferred the first appeal. Therefore, as rightly found by the first appellate Court, the judgment and decree passed by the trial Court in the matter as regards the plaintiffs 1, 2 & 4 has become final. The third plaintiff cannot contend that he has laid the suit on behalf of the other plaintiffs and as such entitled to continue the suit on behalf of the other plaintiffs also. Claiming the relief of permanent injunction against the defendants, the plaintiffs are found to

have laid the suit and accordingly, the plaintiffs have prayed for the abovesaid relief in respect of the properties in their respective possession and enjoyment and on a reading of the plaint, it is found that the plaintiffs have given different extent of the properties within the specific boundaries in their respective possession and enjoyment and seeking the relief of permanent injunction against the defendants not to disturb their possession and enjoyment of their respective properties, the plaintiffs have come forward with the suit. In such view of the matter, when as against the judgment and decree of the trial Court, except the third plaintiff, the other plaintiffs having not thrown any challenge to the same, it is unnecessary to consider the case projected by the other plaintiffs with reference to the properties alleged to be in their possession and enjoyment and the mode of the claim of right of the other plaintiffs to their respective properties in the present second appeal.

7.The suit has been laid by the plaintiffs jointly alleging that the suit properties as described in the plaint had been in their possession and enjoyment from the time of their ancestors and it is they and their ancestors, who had reclaimed their respective properties by spending huge amount of hard labour and money and thereby, they had made them fit for cultivation and accordingly, it is also stated that they had removed the bushes, unwanted trees and plants from the suit properties and levelled the ground and planted several trees by putting up fence etc., and also dug a Well and paying kist etc., and also claimed that they had buried their deceased ancestors in their respective properties out of love and affection and sentimental feelings and accordingly, claimed to be in possession and enjoyment of their respective properties from time immemorial and thereby also claimed that they have perfected title to the suit properties by way of adverse possession on account of their long and continuous possession and enjoyment of the same and accordingly, put forth the case that the defendants are not entitled to disturb their possession and enjoyment without following the due process of law and inasmuch as the defendants had thrown a challenge to their possession and enjoyment of their respective suit properties, according to them, they had been necessitated to lay the suit for the relief of permanent injunction.

8.The defendants resisted the plaintiffs' suit denying that the suit properties had been in the possession and enjoyment of the plaintiffs and their ancestors from time immemorial and that the plaintiffs had spent huge amount of hard labour and money for reclaiming the suit properties and made it fit for cultivation by removing the bushes thorns etc., and enjoying the same by paying kists etc., and also buried the dead bodies of

their ancestors in the suit properties as put forth by them and that, they had prescribed title to the suit properties by way of adverse possession on account of their long and continuous possession and enjoyment of the same and contended that the plaintiffs are not in the possession and enjoyment of the suit properties as described in the plaint. According to the defendants, some other persons had been in the possession and enjoyment of the suit properties without any manner of title or right and on that premise, the plaintiffs cannot be allowed to contend that it is they, who are in the possession and enjoyment of the suit properties and further, according to the defendants, the suit properties had been required for the public purpose of constituting the forest block and accordingly, the defendants, after due compliance of the provisions of law, had issued the necessary notifications with reference to the abovesaid object and therefore, the plaintiffs, without establishing their claim of possession and enjoyment of the suit properties one way or the other, are not entitled to maintain the suit for the relief of permanent injunction and as regards the case of the third plaintiff, the defendants would put forth that the third item of the suit properties is coming under the new survey No.283/6 and enjoyed by one Manicka gounder unauthorisedly and Manicka gounder made a claim to the same and the same was rejected on 30.07.1981 after due enquiry by the Forest Settlement Officer and the third plaintiff was never in the possession and enjoyment of the said properties and he is barred to succeed to his father's property as per law and not having locus standi to lay the present suit against the defendants and thereby, the defendants would also put forth the case that they are taking appropriate legal steps to bring the suit properties under the Revenue Forest Area and when the actual enjoyers of the suit properties have failed to prefer the appeal before the appropriate authority as per the Tamil Nadu Forest Act, 1882, contended that the plaintiffs in the guise of the alleged possession cannot seek the relief prayed for and the suit laid by the plaintiffs is barred under Section 7 of the Tamil Nadu Forest Act and furthermore, it is also contended that the civil Court has no jurisdiction to entertain the suit as the same is barred by virtue of Section 5 of the Tamil Nadu Forest Act, 1882 and accordingly, putting forth the case that the plaintiffs have no cause of action to lay the suit and prayed for dismissal of the same.

9.In support of the plaintiffs' case, PWs 1 to 3 were examined and no document was marked. On the side of the defendants, DW1 was examined and Exs.B1 & B2 were marked.

10.On a consideration of the materials placed on record by both the parties, the trial Court was pleased to dismiss the plaintiffs' suit. Impugning the same, only the third plaintiff

had preferred the first appeal and the first appellate Court also, on a consideration of the materials placed on record, was pleased to dismiss the appeal preferred by the third plaintiff and thereby confirmed the judgment and decree of the trial Court. Impugning the same, the present second appeal has been preferred.

11.The suit has been laid by the plaintiffs jointly claiming the relief of permanent injunction against the defendants to restrain them from disturbing their possession and enjoyment of the suit properties in any manner and according to the plaintiffs, they are in the possession and enjoyment of the respective suit properties from the days of their ancestors from time immemorial and accordingly, by spending huge amount of hard labour and money, they had made the suit properties fit for cultivation and accordingly, been enjoying the suit properties by paying kist etc., and even buried the dead bodies of their ancestors in the suit properties and in such view of the matter, the suit properties being in their possession and enjoyment, the defendants are not entitled to interfere with their possession and enjoyment and hence, laid the suit seeking for the relief of permanent injunction.

12.In the written statement, on a reading of the same wholly, it is evident that the defendants have not admitted the claim of the plaintiffs to be in the possession and enjoyment of the suit properties as described in the plaint. In toto, the defendants have denied the case of the plaintiffs that they and their ancestors had been in the possession and enjoyment of the suit properties from time immemorial as projected by them in the plaint.

13.According to the defendants, the suit properties had been endeavoured to be earmarked under the Forest Area and with reference to the same, the defendants are taking appropriate steps as per law and only with a view to thwart the abovesaid action of the defendants one way or the other, the suit has come to be laid by the plaintiffs on false allegations as if they are in the possession and enjoyment of the same from the days of their ancestors and accordingly, prayed for the dismissal of the plaintiffs' suit.

14.In the light of the abovesaid defence projected by the defendants, in toto, disputing the claim of the plaintiffs' possession and enjoyment of the suit properties as described in the plaint and as in the present matter, we are only concerned with the case of the third plaintiff and not concerned with the case of the other plaintiffs, in such view of the matter, when the third plaintiff has also not tendered evidence on behalf of the other plaintiffs as such, it is for the third plaintiff to

establish that as claimed in the plaint, the third item of the suit properties has been in his possession and enjoyment from the days of his ancestors as put forth in the plaint. Though the third plaintiff along with the other plaintiffs would claim that they had been in the possession and enjoyment of the respective suit properties from the days of their ancestors by carrying on several works with reference to the same as detailed in the plaint and also would claim that they had been paying kist in recognition of their possession and enjoyment and also would further claim that they had prescribed title to the suit properties by way of adverse possession, if there is any semblance of truth in the above case, which had been projected by the plaintiffs, even to a little extent, one would have expected the plaintiffs or in the matter, the third plaintiff to place acceptable and reliable materials evidencing his claim of possession and enjoyment of the suit property claimed to be in his possession and enjoyment from the days of his ancestors. When there is no material placed on record by the third plaintiff as such for safely holding that the third item of the suit properties as described in the plaint is in his possession and enjoyment from the days of his ancestors, it does not stand to reason as to how the third plaintiff has come forward with the suit claiming that the third item of the suit properties as described in the plaint within the specific boundaries and extent is in his possession and enjoyment and if really with reference to the enjoyment of the said item of the suit properties, the third plaintiff or his ancestors as the case may be had been paying any kist or expending any amount towards the reclamation of the same one way or the other, evidencing the same, some reliable materials would have been projected by the third plaintiff to sustain his case one way or the other. On the other hand, other than the interested and Ipsi dixit testimony of the third plaintiff examined as PW1, we have no other documentary evidence projected on the part of the third plaintiff to buttress his case. No reason had been adduced by the third plaintiff as to why not a single scrap of paper has been placed on his part to sustain his alleged claim of possession and enjoyment from the days of his ancestors and from time immemorial as pleaded in the plaint.

15.No doubt, the third plaintiff has also examined two witnesses on his side. PW2 would state during the chief examination that the third plaintiff has been in the possession and enjoyment of the suit properties by reclaiming the same, planting trees, paying kist to the then Zamindars etc. During the course of cross examination, he would state that he does not know as to how the plaintiffs are entitled to the suit properties and also would state that he does not know as to how the plaintiffs are entitled to Mariammen Temple lying in the suit properties and also would state that he does not know

whether the plaintiffs are the trespasser in respect of the suit properties declared as the forest lands and also pleaded ignorance that he does not know whether the plaintiffs have been cultivating the suit properties for 50 years and also would plead ignorance that he does not know whether the suit properties belonged to the Government and that, the plaintiffs have no right or interest in respect of the same. The abovesaid evidence of PW2 cannot at all be relied upon for upholding the plaintiffs' case in any manner and his evidence has to be totally eschewed from the picture. PW3 would claim to be a retired Maniyakarar and he would state during the course of chief examination that the plaintiffs had been in the possession and enjoyment of the suit properties from the days of Zamin and would state that there is no temple in the suit properties and also would state that he does not know whether the plaintiffs had buried the dead bodies of their ancestors in the suit properties. Therefore, PW3 during the course of chief examination itself has not in whole supported the possession and enjoyment of the suit properties as projected by the plaintiffs in the plaint. During the course of his cross examination, he would state that the suit properties had been taken by the Government and however, would state that he had been collecting the penal tax from the plaintiffs for occupying the suit properties as trespassers and also would state that he is aware of the notification issued by the Government declaring the suit properties as the Forest Area on 29.01.1997. Such being the evidence of PW3, if really, he had been collecting the penal charges from the plaintiffs or their ancestors for the enjoyment of the same one way or the other, necessary documents pointing to the same would have been placed by the plaintiffs to sustain their case. However, very coolly, the third plaintiff examined as PW1 would state that the defendants in the guise of promising that they would issue a fresh patta in respect of the suit properties, had taken all the documents available in his possession and the above is the reason projected by PW1 for not placing any documentary evidence to establish his claim of possession and enjoyment of the suit property. however, when with reference to the abovesaid case projected by the third plaintiff, during the course of his evidence, when the same has not even been averred in the plaint in any manner, to say that the defendants had taken the documents available in the custody of the plaintiffs and only on account of the same, the plaintiffs are unable to place any documentary evidence to establish their possession and enjoyment, as such, cannot be accepted straightaway. In the light of the abovesaid factual matrix, as rightly determined by the Courts below, there is no proof worth acceptance to hold that the third plaintiff in particular is in the possession and enjoyment of the third item of the suit properties for entitling him to seek and obtain the relief prayed for in the suit.

16. Very vaguely, the plaintiffs would claim that the suit properties had been in their possession and enjoyment from the days of their ancestors and from time immemorial and have not come forward as to which of their ancestors had been in the possession and enjoyment of the suit properties and during what period, they had been in the possession and enjoyment of the suit properties and in what manner, they had obtained the suit properties and when there is no plea made by the plaintiffs with reference to the same other than baldly stating that the suit properties had been in their possession from the days of their ancestors. When as per law, the plaintiffs are expected to put forth their case in a clear and consistent manner and the law also enjoins upon the plaintiffs to place necessary materials in support of their case, when the plaintiffs have failed to make out a clear and consistent case as to from which ancestors they had derived the possession and enjoyment of the suit properties and through what documents, they had derived the possession and enjoyment of the suit properties and when the plaintiffs have also put forth the claim of title to the suit properties on the plea of adverse possession, they should also aver and state as to from which ancestors and period they had been claiming adverse title in respect of the properties and with reference to the said case projected by the plaintiffs, other than the nebulous pleas, no proof has been placed for establishing the same whatsoever and when as above discussed, the evidence of PWs 1 to 3 are not sufficient and convincing to sustain their claim, resultantly it is found that the 3rd plaintiff is not entitled to seek and obtain the equitable and discretionary relief of permanent injunction from the Court.

17. As abovenoted, the defendants, in the written statement in toto, challenged the claim of the possession and enjoyment of the third plaintiff in respect of the suit properties. The defendants, in the written statement as regards the case of third plaintiff, would only state that one Manickam Gounder was in the possession of the third item of the suit properties unauthorisedly and also made a claim to the same with the Forest Officials, however, the same come to be rejected on 30.07.1981 after due enquiry by the Forest Settlement Officer and contended that the abovesaid third item of the suit properties has never been in the possession and enjoyment of the third plaintiff at any point of time and that he is not entitled to succeed to the property from his father as per law and hence claimed that the third plaintiff's suit should fail.

18. In the plaint, the third plaintiff has not averred that he traces the possession of the third item of the suit properties through his father and as abovestated, very vaguely the plaintiffs together have put forth the case that they had

acquired the possession and enjoyment of the respective suit properties from their ancestors without naming as to who are their ancestors. In particular, in this connection, the defendants have come forward with the case that Manicka Gounder, the father of the 3rd plaintiff, was in the possession of the suit properties unauthorisedly and that he had put forth the claim to the same and the same got rejected. If the abovesaid defence version of the defendants is unsustainable, the third plaintiff at least during the course of evidence should have denied the abovesaid case of the defendants in toto. On the other hand, the third plaintiff examined as PW1 during the course of cross examination has only pleaded ignorance about whether the claim of possession and enjoyment of the ancestors had been rejected by the Forest Officials and on a reading of the entire evidence of PW1, he has in specific not stated that he has claimed the possession and enjoyment of the third item of the suit properties through his father Manicka Gounder and further more, he has not also even challenged the case projected by the defendants in the written statement that his father's claim of possession and enjoyment had been rejected by the Forest Settlement Officer. Even DW1 examined on behalf of the defendants would only dispute the claim of possession and enjoyment, particularly, in respect of the third item of the suit properties on the part of the third plaintiff and despite the cross examination, nothing has been culled out from him in favour of the plaintiffs' case. During the course of cross examination, he would only state that prior to 1957, the plaintiffs' ancestors were in the possession of the suit properties and would assert that thereafter neither the plaintiffs nor their ancestors had been in the possession and enjoyment of the suit properties. In such view of the matter, without any basis whatsoever, the third plaintiff, in particular, cannot be held to be in the possession and enjoyment of the third item of the suit properties as put forth by him and only on the establishment of the possession and enjoyment of the third item of the suit properties on the part of the third plaintiff in specific as rightly determined by the Courts below, when the claim of the third plaintiff's father with reference to the same relief had been rejected by the Forest Officials and when the same had not been controverted by the third plaintiff during the course of his evidence or in any other manner by placing reliable materials and when the duty is incumbent upon the third plaintiff to establish his possession and enjoyment of the suit properties and when from the materials placed on record, it is found that necessary endeavours had been made by the defendants to declare the suit properties as the forest area and in this connection, notifications have also come to be issued by them, which fact, has also been admitted by PW3 examined on behalf of the plaintiffs, in such view of the matter, the third plaintiff having failed to establish his claim

of possession and enjoyment of the third item of the suit properties in any manner and his case having been in toto challenged by the defendants, in such view of the matter, without establishing the primary requirement of the possession and enjoyment of the third item of the suit properties, in my considered view and as determined by the Courts below, the third plaintiff is not entitled to seek and obtain equitable and discretionary relief and on that score alone, the second appeal is liable to be dismissed confirming the judgment and decree of the Courts below.

19. Though the Courts below had gone into the question of jurisdiction of the civil Court to entertain the suit one way or the other under the Tamil Nadu Forest Act, 1882, in my considered opinion, such question does not arise for consideration as such, particularly, when the very factum of the possession and enjoyment of the third item of the suit properties has been failed to be establish by the third plaintiff in any manner and in such view of the matter, when the cause of action projected by the plaintiffs for laying the suit, as such, not having been made out, nothing more requires to be determined in the lis further and in such view of the matter, the dismissal of the plaintiffs suit as ordered by the Courts below does not warrant any interference.

20. In the light of the above discussions, in my considered opinion, no substantial question of law is found to be involved in the second appeal. Furthermore, when as above discussed, the third plaintiff has failed to establish his claim of possession and enjoyment of the third item of the suit properties as well as the claim of possession and enjoyment of the third item of the suit properties through his ancestors and on the other hand, would plead ignorance about the enjoyment of the third item of the suit properties by his father and others, in such view of the matter, the substantial questions of law formulated in the second appeal are found to be not germane and not required to be answered for disposing the second appeal.

For the reasons aforesaid, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Additional District and Sessions Judge (FTC),
Thirupathur, Vellore District.

2. The Principal Disrict Munsif Court, Thirupathur.

Copy to: The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to Mr.J.Saravana Vel, Advocate, S.R.No.36387

+1 cc to the Spl. Govt. Pleader, Advocate, S.R.No.35972

S.A.No.975 of 2005

KJ(CO)
SSM(05/07/2019)



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