

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.09.2020

Pronounced on: 17.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1381 of 2010
& M.P.No.1 of 2010

Rukmaniammal,
W/o.Late.Govindaraj Padayachi,
Perumangalam Village,
Kodavasal Taluk,
Thiruvarur District. ... Appellant/ Appellant/Plaintiff

/versus/

1. The District Collector,
Thiruvarur.
2. The Tashildar,
Kodavasal,
Thiruvarur District.
3. The Village Administrative Officer,
Perumangalam Village,
Kodavasal Taluk,
Thiruvarur District. Respondents/ Respondents/ Defendants

Prayer: Second Appeal is filed under Section 100 of C.P.C, praying against the judgment and decree dated 14.07.2010 made in A.S.No.3 of 2010 passed by the Subordinate Judge, Thiruvarur, Thiruvarur District confirming the judgment and decree dated 30.01.2010 made in O.S.No.66 of 2008 passed by the District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur District.

For Appellant : Mr.S.Senthilnathan

For R1 & R2 : Mr.N.Manikandan,
Special Government Pleader (CS)

For R3 : Dismissed vide Court order
dated 23.09.2011

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and the Learned Government Advocate for the respondents.

2. The plaintiff in the suit is the Appellant. The suit for injunction in respect of two items of the property at Perumangalam Village, Kodavasal Taluk. The relief sought by the Appellant was considered by the Trial Court and granted injunction granted against the respondent herein in respect of 10 cents of land, for which the plaintiff was able to prove title through sale deed marked as Ex.A.1 and possession through the Tax receipts. Whereas, in respect of i.e., 2-2/3 cents, which is adjacent to the item No.1 of the property was held to be a Poramboke land and therefore, the trial Court, after observing that the appellant herein though in possession of 2-2/3 cents, however, not entitled for injunction since the title is not with her. Further, it also observed that as far as item No.2 of the property (2-2/3 cents) is concerned, the respondents herein shall not evict her without following due process of law.

3. On appeal preferred by the Appellant/plaintiff in respect of the disallowed portion, the Appellate Court re-appreciated the evidence and held that as far as item No.1 of the property i.e., 10 cents of land, there is no dispute regarding the title and possession, hence, the Trial Court decree in respect of 10 cents of the land was confirmed.

4. However in respect of item No.2 of the property which is 2-2/3 cents, the Lower Appellate Court held that, the sale agreement entered between the plaintiff and one Thiru.Muniyadi was not valid. The vendor Mr.Muniyadi who was examined as P.W.2 not able to prove his right over the property to alienate it to the plaintiff. Since the vendor himself had no right over the property, the plaintiff claims over 2-2/3 cents of land as agreement holder was rejected. The Lower Appellate Court held that without relief of declaration of title regarding 2-2/3 cents of land, the relief of injunction cannot be granted.

5. The Learned Counsel appearing for the appellant would submit that the Courts below erred in not granting injunction in respect of item No.2 of the property though it has concurrently held that the possession with the appellant/plaintiff.

6. The Learned Counsel appearing for the appellant referring the observation made by the Trial Court regarding the possession and the decree protecting the possessory right of the plaintiff by direction to the respondents that they should not evict the plaintiff without due process of law would submit that the Lower Appellate Court has erred in not accepting Ex.A.10, an unregistered sale deed entered between the plaintiff and one Mr.Muniyadi who was examined as P.W.2.

7. The Learned Government Advocate appearing for the respondents would submit that the plaintiff had no cause of

action to lay the suit, when the respondents wanted to establish an "Anganvadi" in the Government Poramboke land, which is adjacent to the property of the plaintiff. To prevent establishing Anganvadi, false case for injunction has been filed without any title or possession in respect of 2-2/3 cents of land, which is classified as Government Poramboke. Neither the plaintiff nor Mr.Muniyadi, the so called vendor under Ex.B.10, had right over this piece of land. The Trial Court based on the ocular evidence of interested witness, observed that the land is in possession of the plaintiff. Whereas, the Lower Appellate Court has rightly held that the plaintiff was never in possession of 2-2/3 cents of land. Hence, there is no substantial questions of law involved in this case.

8. The specific case of the plaintiff is that, 10 cents of land in S.No.70/5 was purchased by her from one Thiru.Govindasamy Pillai, on 02.01.1996. To prove this fact, the registered sale deed was marked as Ex.A.1. As far as, the 2-2/3 cents of land, the plaintiff has relied upon the sale agreement dated 05.05.1997 marked as Ex.A.10. The vendor Mr.Muniyadi, deposed in favour of the plaintiff as P.W.2. However, the plaintiff could not establish through these documents that her vendor Mr.Muniyadi, had alienate right over the said piece of land.

9. Regarding the possession and enjoyment of that land, the Lower Appellate Court has accepted the plea of the respondents that initially the entire 01.77.50 Hectares of land in S.No.70/5 was classified as Government Poramboke. On 30.06.1997, the Government issued proceedings in favour of 31 persons, issuing Patta to portion of the land. The plaintiff was granted patta for 0.03.37 Hectares in the said proceedings. As far as, 2-2/3 cents of land in S.No.70/5 always remains with the state and therefore, held that the plaintiff has failed to prove possession in respect of 2-2/3 cents of land.

10. It is an admitted case of the plaintiff that as far as 2-2/3 cents of land in S.No.70/5 is in her possession, based on sale agreement dated 05.05.1997 marked as Ex.A.10. Her vendor Mr.Muniyadi was examined in support of her case. He could not explain how he acquired title over the said extent of land. The suit is filed on 08.07.2008. There is no documents to show these piece of land was in possession and enjoyment of Mr.Muniyadi or with the plaintiff. Therefore, this Court finds that the finding of the Lower Appellate Court regarding 2-2/3 cents of land is correct and has to be upheld.

11. There is no substantial questions of law involved in this case since the land is a vacant land, possession goes with title. The Revenue records indicates that the said piece of

land is classified as Government Poramboke. Hence, relief of injunction in respect of 2-2/3 cents of land has been rightly rejected by the Courts below. In the result, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The Subordinate Judge, Thiruvarur, Thiruvarur District.

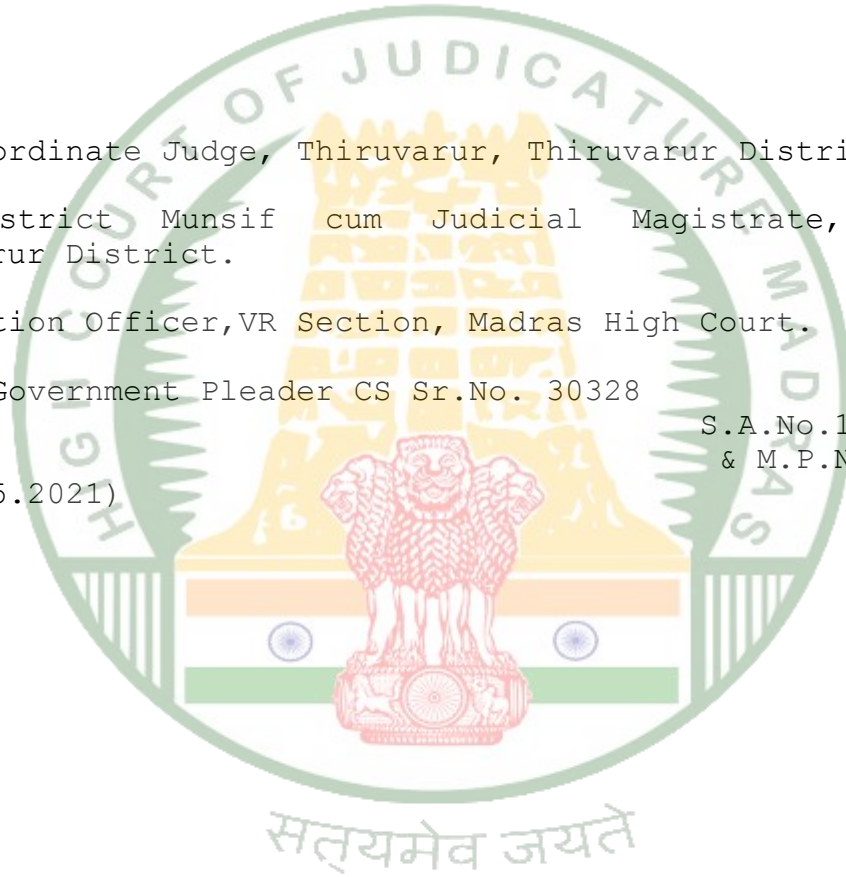
2.The District Munsif cum Judicial Magistrate, Nannilam, Thiruvarur District.

3.The Section Officer,VR Section, Madras High Court.

+1 cc to Government Pleader CS Sr.No. 30328

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A.SK(20.05.2021)



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