IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2021

PRONOUNCD ON : 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1207 of 2008

and

M.P.No.1 of 2008

Ramasamy (died)

1. Balaguru
   S/o. Ramasamy

2. Ravi @ Ravichandran
   S/o. Jagannathan

3. Balasubramanian
   S/o. Ramasamy

4. Balachandran
   S/o. Ramasamy

...Appellants/Defendants

Vs.

Pushpalatha
W/o. Sithiravelu

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree passed in A.S. No.9 of 2007 dated 31.03.2008 on the file of the Subordinate Judge, Chidambaram, reversing judgment and decree passed on 29.11.2006 by the learned District Munsif-cum-Judicial Magistrate, Parangipettai in O.S. No.30 of 2000.

For Appellants : Mr. M. Munian

For Respondent : No appearance set exparte

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.03.2008, passed in A.S. No.9 of 2007, on the file of the Subordinate Court, Chidambaram, reversing the judgment and decree dated 29.11.2006 passed in O.S. No.30 of

2000, on the file of the District Munsif-cum-Judicial Magistrate Court, Parangipettai.

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

3. The defendants in OS.No.30 of 2000 are the appellants in the Second Appeal.

4.Suit for permanent injunction.

5. The plaintiff has laid the suit seeking for the relief of permanent injunction in respect of three items of the suit properties. As regards the item Nos. 1 and 2 are concerned, it is found that the plaintiff had been granted the relief by the trial court. However, the trial court had dismissed the plaintiff's suit qua the third item, which admittedly is the Government tarisu land in R.S.No.92/1A measuring about 0.25 cents. Now, according to the plaintiff, her father and her father's elder brother had been enjoying the suit properties including the third item in dispute and further put forth the case that though the third item is the tarisu land belonging to the Government, it is stated that the third item lying adjacent to the items 1 and 2 had been enjoyed by the plaintiff's father and his brother along with item Nos.1 and 2 and furthermore put forth the case that her father and his brother had sold item Nos.1 and 2 to Danapal Chettiar on 30.06.1982 and delivered the possession of the same along with the third item and Danapal Chettiar after enjoying the suit properties alienated the same in favour of the plaintiff on 06.10.1994 and pursuant to the same, the plaintiff had been in the possession and enjoyment of the suit properties as one block by putting up the fence and raising cashew nut trees and inasmuch as the defendants, without any entitlement or right, attempted to disturb the plaintiff's possession and enjoyment of the suit properties, particularly, the third item, according to the plaintiff, the suit has been laid by her.

6. The defendants resisted the plaintiff's suit contending that the third item belonging to the Government is not in the possession and enjoyment of the plaintiff or her predecessors in interest at any point of time and the plaintiff's suit is bad for non joinder of Government as the party in the proceedings and further contended that the third item belonging to the Government, has been used as the cart track by the public to reach their respective lands and even in the village map, the third item has been described only as the cart track. Therefore, the claim of the plaintiff that she is in the possession and enjoyment of the third item along with the patta lands by raising cashew nut trees is totally false and liable to

be rejected and further, the claim of the plaintiff that she is enjoying the third item along with the patta lands as one block by putting up the fence, etc., is also totally false and the plaint plan is also misleading and also incorrect created for the purpose of the case and therefore, according to the defendants, inasmuch as the third item belonging to the Government is not in the possession and enjoyment of the plaintiff at any point of time, the suit is liable to be dismissed.

7. In support of the plaintiff's case P.Ws.1 to 4 were examined and Exs. A1 to A11 were marked. On the side of the defendants' D.Ws.1 and 2 were examined and Ex.B1 was marked. C.W.1 was examined and Exs.C1 to C3 were marked. M.Os.1 and 2 were marked.

8. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the trial court was pleased to grant the relief of permanent injunction in favour of the plaintiff as prayed for in respect of the items 1 and 2 of the suit properties and dismissed the suit in respect of the third item of the suit properties. Impugning the judgment and decree of the trial court declining the relief of permanent injunction qua the third item of the suit properties, the plaintiff has preferred the first appeal. The first appellate court on an appreciation of the materials placed, entertained the appeal preferred by the plaintiff and by way of the same, reversed the judgment and decree of the trial court in respect of the third item of the suit properties and resultantly granted the relief of permanent injunction in favour of the plaintiff even in respect of the third item of the suit properties. Challenging the judgment and decree of the first appellate court, the defendants have preferred the second appeal.

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

1) Whether the finding of the lower appellate court that the plaintiff is in possession of item No.3 of the suit properties is not supported by evidence on record and liable to be set aside.
2) Whether the lower appellate court has failed to appreciate that the plaintiff has not proved her possession to item No.3 of the suit properties by referring to any revenue record and the judgment is vitiated."

10. Inasmuch as the grant of relief of permanent injunction in favour of the plaintiff in respect of the item Nos. 1 and 2 is concerned, as the defendants have not challenged the same, it

is evident that the abovesaid relief granted in favour of the plaintiff qua the item Nos.1 and 2 of the suit properties by the trial court has become final.

11. Now the parties are at issue only with reference to the third item of the suit properties. It is not in dispute that the third item of the suit properties is the Government tarisu land. Now, according to the plaintiff, she and her predecessors in interest had been enjoying the third item of the suit properties along with the item Nos.1 and 2 as one block by putting up the fence, raising Eucalyptus and cashew nut trees. The same has been vehemently challenged by the defendants. According to the defendants, the third item of the suit properties has never been in the possession and enjoyment of the plaintiff and her predecessors in interest at any point of time as claimed by the plaintiff and on the other hand, according to them, the third item of the suit properties, being the tarisu land, has been used only as a cart track by the public and therefore, contended that the plaintiff is not entitled to seek the relief of permanent injunction, particularly, in respect of the third item of the properties.

12. To sustain that the third item of the suit properties is in the possession and enjoyment of the plaintiff and her predecessors in interest, as claimed by her, prior to her purchase on 06.10.1994, absolutely, there is no material projected on the part of the plaintiff. The documents projected by the plaintiff and marked as Ex.A1 to A8 do not relate to the third item of the suit properties. The plaintiff has marked Exs.A9 and A10 stating to be the penal tax receipts and according to her, based on the abovesaid documents, the courts should hold that she is in the possession and enjoyment of the third item on the date of the suit. The suit has been laid by the plaintiff on 12.06.2000. The penal receipt marked as Ex.A9 is dated 08.12.2004 i.e. four years after the institution of the suit and the penal tax receipt marked as Ex.A10 is dated 12.09.2006 i.e. 6 years after the institution of the suit. Therefore, it is obvious that Exs.A9 and A10 have come into existence after the institution of the suit. In such view of the matter, Exs.A9 and A10 would be of no use to sustain the case of the plaintiff that she was in the possession and enjoyment of the third item along with her patta lands on the date of the suit or prior to the institution of the suit or subsequent to the institution of the suit or that her predecessors in interest were enjoying the suit property prior to her purchase on 06.10.1994. The Village Administrative Officer examined as P.W.3 would depose that he had issued the penal tax receipts marked as Exs.A9 and A10 for 6 faslis in favour of the plaintiff. However, as rightly concluded by the trial court, the said documents do not indicate that the same

had been issued in favour of the plaintiff for enjoying the tarisu land as B-memos. In such view of the matter, as rightly concluded by the trial court, no material, whatsoever, has been placed by the plaintiff to hold that she or her predecessors in interest has been in the possession and enjoyment of the third item on the date of the suit or prior to the institution of the suit or subsequent to the laying of the suit. In such view of the matter, the documents marked as Exs.A9 and A10 which had come into existence 4 years and 6 years after the institution of the suit would be of no use to sustain the claim of the plaintiff to seek the relief of permanent injunction. As rightly determined by the trial court, if the plaintiff and her predecessors in interest had been enjoying the third item belonging to the Government along with the patta lands as one block, the plaintiff should have endeavoured to produce the chitta and Adangal extracts pertaining to the third item to evidence that the third item has been in her possession and enjoyment as claimed by her. However, the plaintiff has not endeavoured to produce the chitta and adangal extracts pertaining to the third item and therefore, the claim of the plaintiff that she has been in the possession and enjoyment of the third item along with her patta lands as one block cannot at all be believed and acceptable in any manner.

13. According to the defendants, the third item has been used as the cart tract by the general public for having access to their respective lands. No doubt the defendants have not produced the village map to sustain their abovesaid defence version. The Village Administrative Officer examined as P.W.3 during the course of Chief Examination would depose that no cart tract is in existence in the third item. However, during the course of cross examination, has admitted that the third item has been used as the cart track by the public and the same has been used as the cart track by the land owners whose lands are located on the western side of the third item. However, the commissioner who had inspected the suit properties, in his report marked as Ex.C1 and also in his deposition examined as C.W.1, would state that no cart track was noted by him during his inspection and according to him, if there had been any existence of the cart track in the third item, he would have noted the same in his report. The commissioner during the course of his inspection had noted that Eucalyptus trees and cashew nut trees were cut and put in the third item.

14. The abovesaid materials are only available on record and in such view of the matter, the trial court after holding that the plaintiff has failed to establish her possession and enjoyment of the suit properties as claimed by her and also not come forward to place the chitta and adangal extracts qua the third item and considering the admission during the evidence as

adduced by P.W.3, the VAO, proceeded to hold that the plaintiff has failed to establish her claim of possession and enjoyment of the third item and thereby dismissed the plaintiff's suit qua the third item.

15. However, the first appellate court has relied upon the commissioner's report and further holding that the defendants have failed to establish that the cart track is in existence in the third item by placing the village maop and the other revenue record and by further holding that the evidence of P.W.3 as adduced by him during the course of cross examination cannot be accepted in toto, proceeded to reverse the judgment and decree of the trial court and granted the relief of permanent injunction in favour of the plaintiff even in respect of the third item of the suit properties.

16. As rightly contended by the counsel appearing for the defendants, when the plaintiff has failed to establish that the third item of the suit properties belonging to the Government is in her possession and enjoyment on the date of the suit or prior to the institution of the suit as claimed by her from the days of her predecessors in interest and when the documents projected by the plaintiff with reference to the same marked as Exs.A9 and A10 having come into existence 4 years and 6 years after the institution of the suit, it is found that no safe reliance could be placed upon the said documents to uphold the plaintiff's case, particularly, with reference to the claim of her possession and enjoyment of the third item of the suit properties. The first appellate court has failed to consider that the plaintiff has not endeavoured to establish her claim of possession and enjoyment of the third item by producing the chitta and adangal extracts pertaining to the said property. No doubt the defendants have not placed any material to hold that the cart track is in existence in the third item. Even the commissioner's report does not advance the defence version. However, the VAO examined by the plaintiff though would support the plaintiff's case in the chief examination and on the other hand would admit the existence of the cart track for the usage of the public during the course of cross examination. When the abovesaid materials are only available on record and the plaintiff having come forward with the suit seeking for the relief of permanent injunction on the footing that the third item is in her possession and enjoyment over a long period of time and when the abovesaid case of the plaintiff is totally challenged by the defendants and despite the same, the plaintiff has failed to establish her case by placing acceptable and reliable materials. In such view of the matter, the only course that is available to the courts below is to dismiss the plaintiff's suit, particularly with reference to the third item of the suit properties. On the other hand, the first appellate

court, without any basis, particularly when the plaintiff has not placed any material/evidence on record to show that the third item of the suit properties has been in her possession and enjoyment and not even endeavoured to place any revenue records to sustain her case and when admittedly the third item is the tarisu land belonging to the Government, the first appellate court has erred in upholding the plaintiff's case on the weakness of the defence version. As contended by the defendants' counsel, the plaintiff has to stand or fall on the strength of her own case and cannot be allowed to pick the loopholes in the defence version to sustain her case . Merely because the defendants have failed to establish the existence of the cart track in the third item ipso facto the same would not lead to the conclusion that the third item in dispute is in the possession and enjoyment of the plaintiff as claimed by her.

17. In the light of the abovesaid factors, the third item of the suit properties not having been established to be in the possession and enjoyment of the plaintiff by placing acceptable and reliable materials, the first appellate court is found to be not justified in granting the relief of permanent injunction in favour of the plaintiff qua the third item of the suit properties. The reasonings and conclusions of the first appellate court for upholding the plaintiff's case even in respect of the third item of the suit properties are found to be totally unacceptable, perverse and illogical and cannot be sustained in the eyes of law and in such view of the matter, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendants and against the plaintiff.

18. For the reasons aforestated, the judgment and decree dated 31.03.2008, passed in A.S. No.9 of 2007, on the file of the Subordinate Court, Chidambaram, are set aside and resultantly, the judgment and decree dated 29.11.2006 passed in O.S. No.30 of 2000, on the file of the District Munsif-cum-Judicial Magistrate Court, Parangipettai, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Court, Chidambaram,
2. The District Munsif-cum-Judicial Magistrate, Parangipettai,
3.The Section Officer, VR Section, High Court, Madras

+1 CC to Mr.M. Munian, Advocate sr 4500.

S.A.No.1207 2008

RP(CO)
SP(09/02/2021)