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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1451 of 2008

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C.M.P.No.24501 of 2019

- 1.Arumugham (Died)
- 2.Chinnaiyan (Died)
- 3.Ayyammal
- 4.Kamala
- 5.Manimegalai
- 6.Malliga
- 7.Ranjitham
- 8.A.Murugan
- 9.A.Krishnasamy
- 10.Kandasamy
- 11.C.Rajamani
- 12.S.Saranya

... Appellants/Appellants/Defendants

Vs

T.Nallappan

... Respondent/Respondent/Plaintiff

(Appellants 3 to 10 brought on record as LR's of the deceased 1<sup>st</sup> appellant viz., Arumugham vide order of the Court dated 06.08.2019 made in M.P.No.1 to 3 of 2013 in S.A.No.1451 of 2008).

(Appellants 11 and 12 brought on record as LR's of the deceased 2<sup>nd</sup> appellant viz., Chinnaiyan, vide order of the Court dated 05.02.2021 made in C.M.P.No.5516 of 2020 in S.A.No.1451 of 2008).



Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.147 of 2007 dated 23.08.2007 on the file of the Principal Subordinate Court, Salem confirming the Judgement and Decree passed in O.S.No.380 of 1999 dated 11.02.2004 on the file of the District Munsif, Mettur.

For Appellants : Mr.M.V.Venkataseshan

For Respondent : Mr.D.Shivakumaran

#### J U D G E M E N T

The defendants are the appellants before this Court. The appeal is filed challenging the concurrent Judgement and Decree of the Courts below granting a decree for injunction in favour of the plaintiff / respondent herein.

2. The suit property comprised in Veerakalpudur Village, Mettur Taluk, Salem District is an extent measuring 1.25 acres in S.No.100/3A1 which is a portion of 6.90 acres in S.No.100/3A1 and 100/3A3 which was the remaining lands after the acquisition within the following boundaries:

East by : Lands acquired in S.No.100/3A1  
North by : Arumugham's land, house and palmyrah tree  
West by : Chinnaiya Gounder's land and boulder (Parai)  
South by : Eri Vaikal measuring 2 acres.

Also the lands in S.No.100/3A bounded on the;  
East by : Lands acquired for housing sites for backward classes.  
North by : Eri Vaikal  
West by : Eri Vaikal  
South by : Mettur to Nanga Valli road.

3. Brief facts that has culminated in the filing of the above Second Appeal are as follows. The parties are referred to in the same array as in the suit.

4. The plaintiff had filed a suit in O.S.No.380 of 1999 on the file of the District Munsif Court, Mettur for a bare injunction in respect of the suit property which was an extent of 1.25 acres comprised in Survey No.100/3A1 and an extent of 2 acres in Survey No.100/3A3 in Veerakkalpudur Village, Mettur Taluk, Salem.



5. The plaintiff's case was that in the year 1940 his father has taken on lease an extent of 9.16 acres which was part of the larger extent of 11.44 acres originally comprised in Survey No.100/3 of Veerakkalpudur Village from one T.Ramasamy Iyer. In the year 1968, the plaintiff had obtained the lease muchalika from T.Ramasamy Iyer and was in possession of the same and rents were being paid to the said Ramasamy Iyer. After his demise, the rents were being paid to his two wives, Seethalakshmi and Lakshmi Ammal and his son Sivakumar. In the year 1972, the plaintiff was recorded as a cultivating tenant in the Tenancy Records maintained by the Tenancy Records Officer. This order came to be passed after due enquiry.

6. Between the years 1975 to 1990, portions of the property comprised in Survey No.100/3 was acquired. In the year 1975, an extent of 1.71 acres was acquired for the formation of house sites for Arunthathiars. Thereafter, in the year 1980 an extent of 0.35 acres was acquired followed by acquisition of an extent of 2.03 acres in the year 1989, once again for the purpose of providing house sites to Arunthathiars. Finally, in the year 1990, an extent of 3.04 acres was acquired.

7. It is also the case of the plaintiff that in the acquisition proceedings of the year 1980 he had received 50% compensation along with his owner Sivakumar. The plaintiff had challenged the acquisition of the year 1989 by filing a Writ Petition in W.P.No.10731 of 1989 and the acquisition proceedings of the year 1990 by filing Writ Petition in W.P.No.3896 of 1991. Both the petitions were ultimately dismissed holding that a tenant cannot question the acquisition proceedings.

8. The case of the plaintiff is that after the acquisition he was left with the suit property, wherein, he has been raising Corn (Cholam) and Horse gram (Kollu). The defendants who owned lands near the suit property attempted to trespass into the property on 03.11.1999. This attempt was successfully thwarted by the plaintiff. However, the defendants have threatened and that they somehow enter into the suit property. Therefore, left with no other alternative the plaintiff was constrained to file the suit in question.

9. The suit was resisted by the defendants inter alia contending that the lands comprised in Survey No.100/3A measuring an extent of 11.44 acres belonged to five brothers and the defendants 1 to 4 who are their children would claim under them. They would also contend that the said Ramasamy Iyer was a Poosari in the temple and was in the possession of the lands. Along with the ancestors of the defendants joint patta had been granted to him. His son Sivakumar had not cultivated the lands for over 10 years and was also not doing poojas. Therefore, on



29.09.1999 the defendants have terminated the license (In the written statement there is nothing to show when the license was granted and for what purpose the license was granted).

10. They would contend that the defendants and their co-owners are in possession of the lands comprised in 100/3A3A, 3B and 4 barring the portions given to Ramasamy Iyer. It is their contention that they are in possession of the suit properties. They would further contend that after the acquisition, the claim of the plaintiff that he was in possession of 3.25 acres is totally false. According to them, there is no cause of action for filing the above suit and therefore sought for the dismissal of the same.

11. The plaintiff has examined himself as P.W.1 and one Swamiappan as P.W.2 and had marked 27 documents i.e., Ex.A.1 to Ex.A.27 to prove his case. On the side of the defendants, the 3<sup>rd</sup> defendant, Chinnaiyan was examined as D.W.1 and one Arthanari as D.W.2. Ex.B.1 to Ex.B.15 were marked by the defendants.

12. The learned District Munsif, Mettur after elaborately considering the evidence both oral and documentary came to the conclusion that the plaintiff was in possession of the suit property, which is evident from the counter filed by the Government in the Writ Petition filed by the plaintiff and which is marked as Ex.A.24. The learned Judge has also relied upon the admission of D.W.1 in his cross examination that in the acquisition proceedings no compensation was received by them which would clearly prove that the defendants had nothing to do with the suit property.

13. The learned Judge has also considered Ex.A.4, Ex.A.5 and Ex.A.11 to Ex.A.16, which are the receipts for the payment of the lease amount to hold that the plaintiff had established his possession of the suit property. Therefore, considering the possession of the plaintiff in the suit property the learned Judge had decreed the suit as prayed for .

14. This Judgement and Decree was taken up on appeal by the defendants in A.S.No.147 of 2007 on the file of the Principal Subordinate Court, Salem. The learned Subordinate Judge, Salem after detailed enquiry held that the defendants through their documents have clearly proved that they are not in possession of the suit property and that their documents relate to some other property. On the other hand the plaintiff has produced documents to show that he was in possession of the suit property. The suit being one for bare injunction the learned Appellate Court confirmed the Judgement and Decree of the Trial Court.



16. When the matter came up for admission on 20.11.2008, this Court had ordered notice to the plaintiff / respondent herein returnable by 4 weeks and the Second Appeal is yet to be admitted.

18. He would draw the attention of the Court to the admission of P.W.1, the plaintiff that he would not be in a position to specify the subdivision of Survey No.103, in which the extent of 9.16 acres allotted to Ramasamy Iyer lies. Likewise, the ancestors of the defendants are entitled to the balance 2.28 acres in S.No.103. The crux of the submission of the learned counsel for the defendants was that if the total extent acquired was to be taken into account and after adjusting that extent to which the plaintiff was entitled to and in possession then the plaintiff would not be able to claim any right to the entirety of the suit property.

20. He would draw the attention of the Court to Ex.A.8, which is the counter filed by the Joint Secretary to the Government, Adi Dravidar and Tribal Welfare Department, wherein, the Joint Secretary has stated that the plaintiff was cultivating the land for many years and that he has been registered as cultivating tenant for the land under acquisition. The Joint Secretary would further contend that since Porambokku lands were not available they had to enter the patta lands like in the instant case.



21. The learned counsel would further submit that the documents that have been filed on the side of the defendants, namely, Ex.B.2, Ex.B.3 and Ex.B.4 are subsequent to the filing of the suit. He would further submit that the Courts below have clearly found the plaintiff to be in possession of the suit property. He would submit that since both the Courts below have elaborately analysed the evidence and pronounced Judgement, this Court hearing the Second Appeal cannot re-appreciate the evidence.

22. Heard the learned counsels and perused the papers.

23. The entire dispute hinges upon the extent that is now available after the acquisition proceedings so as to enable the plaintiff to claim his share. The counter filed by the Joint Secretary in the acquisition proceedings would prove that the plaintiff was in possession of the suit property and that the plaintiff has been recorded as a cultivating tenant in respect of the larger extent of the said lands. The total extent acquired and the total extent originally held clearly confirms that the plaintiff is now in possession of the suit property.

24. The plaintiff has provided enough proof to show his possession of the suit property. The suit being one for bare injunction the Court is only concerned with the possession of the suit property. The Courts below have in detail analysed the evidence and come to the conclusion that it is the plaintiff who is in the possession of the suit property. The entire case of the defendants rest on the measurement of the property originally held, the property acquired and the property now in the possession of the defendants. This is purely a question of fact which has already been elaborately analysed and conclusion arrived at by the Courts below.

25. In these circumstances, this Court does not find any ground to interfere with the Judgement and Decree in A.S.No.147 of 2007 dated 23.08.2007. The defendants have not made out any question of law much less a substantial question of law. In fine, the Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. There shall be no order as to costs.

Sd/-  
Assistant Registrar(JJ Act)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,  
Salem.

2. The District Munsif,  
Mettur.

+2ccs to Mr.A.Rajesh Kanna, Advocate, S.R.No.25794

+1cc to Mr.D,Shivakumaran, Advocate, S.R.No.25899

S.A.No.1451 of 2008

NR(CO)  
SU(11/11/2021)