

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1549 of 2008

Panappakkam Town Panchayat
Rep.by its Executive Officer,
Panapakkam, Arakkonam Taluk.

... Appellant/Defendant/
Respondent

.Vs.

1.Manoharan
2.Kokilambal
3.Kuppan
4.Parvathi
5.Selvi

... Respondents/Appellants/
Plaintiffs

Prayer :-

Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.12.2004 passed in A.S.No.36 of 2002 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, Vellore District, reversing the Judgment and Decree dated 30.11.1993 passed in O.S.No.358 of 1986 on the file of the District Munsif Court, Arakkonam.

For Appellant : Mr.P.Dinesh Kumar
for Mr.R.Vijay Kumar

For Respondents : Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the the Judgement and Decree dated 31.12.2004 passed in A.S.No.36 of 2002 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, Vellore District, reversing the Judgment and Decree dated 30.11.1993 passed in O.S.No.358 of 1986 on the file of the District Munsif Court, Arakkonam.

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

3.The defendant in O.S.No.358 of 1986 is the appellant in the second appeal.

4.Suit for permanent injunction.

5.The case of the plaintiffs, in brief, is that the land comprised in survey No.37 Ac.2.60 is classified as Mayanam Poromboke in the Village accounts of Panapakkam and no longer in use for the said purpose and the plaintiffs encroached upon the said land during 1970 and put up thatched sheds in an extent of about 0.4 cents and running the business called Thattudadais as petty vendors and the income earned from the business is the only livelihood of the plaintiffs and they are carrying on the said business for more than 15 years without any interruption and their possession had not been disturbed. Recently, the defendant had proposed to auction the land in the possession of the plaintiffs to the third parties and allowed them to collect Sungam and when the plaintiffs refused to the abovesaid act of the defendant, the defendant threatened the plaintiffs that they would be removed from the suit property. The defendant has got no right or control over the suit property and not entitled to collect any Sungam by way of the auction in favour of the third parties. The suit property belongs to the Government and the plaintiffs had been paying "B" memo charges to the Government for their occupation of the suit property and the revenue authorities had directed the plaintiffs not to pay any amount to the defendant qua the suit property and also agreed to recommend the plaintiffs' name for the grant of assignment in their favour. However, the defendant had been endeavouring to disturb the possession of the plaintiffs and hence, the need for the suit for appropriate relief.

6.The defendant resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts and admitted that S.No.37, 1.39 acres is the Mayanam Poromboke and disputed that the plaintiffs had encroached into the suit property measuring about 4 cents and put up thatched sheds and running the business etc., as claimed in the plaint and according to the defendant, Mayanam Poromboke vests with the defendant panchayat as per the provisions of the Panchayat Act and as per the rules framed thereunder, the defendant is entitled to regulate the usage of the Mayanam Poromboke and the defendant is entitled to sell the right to collect the fees from those persons, who had encroached in the Mayanam Poromboke in public auction held annually and the highest bidder in the public auction held every year used to collect the fees from the encroachers inclusive of the

plaintiffs, who had encroached and put up the sheds in the Mayanam Poromboke about 5 years ago and not 15 years ago as claimed in the plaint. The fees collected by the defendant from the encroachers by way of the Sungam, who had occupied the Mayanam Poromboke, are spent for the benefit of the panchayat and therefore, the contention of the plaintiffs that the defendant panchayat is not entitled to collect Sungam by way of the auction of the suit property to the third parties is not legally sustainable and the defendant has passed the resolution dated 08.07.1983 to construct 10 shops in the suit property and let out the shops for rent and the proposals are pending with reference to the same and sensing the same, the plaintiffs have come forward with the false suit on unsustainable grounds. The plaintiffs are not entitled to question the lawful auction initiated by the defendant for regulating the usage of the suit property. The defendant has also moved the revenue authorities seeking for the removal of the encroachments from the Mayanam Poromboke as per the rules and the Thasildar, Arakkonam had also issued orders to the V.A.O. not to issue any "B" memo to the encroachers and submit the proposals for the eviction of the encroachers vide the order dated 27.07.1984 and therefore, merely because the plaintiffs had been paying "B" memo charges for the encroachment committed by them that would not enable the plaintiffs to squat in the suit property endlessly and therefore, according to the defendant, there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiffs' case, PWs 1 & 2 were examined and Exs. A1 to A15 were marked. On the side of the defendant, DW1 was examined and Exs. B1 to B3 were marked.

8. On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the trial Court was pleased to dismiss the plaintiffs' suit. On appeal by the plaintiffs, the first appellate Court, on a consideration of the materials available on record both oral and documentary and the arguments put forth by the respective parties, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiffs, granted the relief of permanent injunction in favour of the plaintiffs, however, permitting the defendant's official to take action only in accordance with the law in the event of eviction process. Challenging the same, the present second appeal has been laid.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"a. Whether the Lower Appellate Court is correct in reversing the judgment and decree of the trial Court?

b. Whether the Lower Appellate Court is wrong in holding that the plaintiffs are to be evicted only by due process of law, when the appellant admittedly claims to auction the right to collect the rents in respect of the suit property?

c. Whether the Lower Appellate Court is correct in decreeing the suit in favour of the plaintiffs in the absence of a cause of action?"

10. It is not in dispute that the suit property comprised in Survey No.37 of Panapakkam Village, Arakkonam Taluk, has been classified as Mayanam Poromboke. Though the plaintiffs would claim that they are in the possession and enjoyment of the suit property by putting up sheds, running petty business etc., for several years as averred in the plaint, however, considering the pleas put forth in the written statement, though the plaintiffs have failed to establish that they are in the possession and enjoyment of the suit property for several years as claimed by them, the fact remains that the plaintiffs are in the possession and enjoyment of the suit property.

11. The suit property admittedly have been classified as Mayanam Poromboke, as rightly contended by the defendant's counsel, considering the provisions of the Tamil Nadu Panchayats Act, 1994, Poromboku viz., grazing grounds, threshing floors, burning and burial-grounds, cattle-stands, cart-stands and topes shall vest in the Village Panchayat, and the Village Panchayat shall have power, subject to such restrictions and control as may be prescribed, to regulate the use of such proambokes, provided the porambokes are at the disposal of the Government. Thus, it is found that as per the abovesaid provisions contained in the Tamil Nadu Panchayats Act, 1994, the suit property being Mayanam Poromboke, the same vests only with the defendant's Panchayat and as admittedly, the Porombokes are at the disposal of the Government and vesting with the Panchayat, it is found that the defendant's panchayat is entitled to regulate the usage of the Poromboke vesting with them. Accordingly, it is found that as per Section 131 of the Tamil Nadu Panchayats Act, 1994, the defendant's panchayat is entitled to impose conditions for the occupation and the usage of the poromboke vested with it and also entitled to evict the encroachers, who had failed to comply with the order of the Panchayat caused for the maintenance of

the poramboke properties. Section 131 of the Tamil Nadu Panchayats Act reads as follows:

"(I) No person shall, except as permitted by rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such rules-

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council):

(b) make any hole or deposit any matter (in or upon any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council):

(c) work a quarry in or remove stone, earth or other material from any place within twenty metres of a public road or of other immovable property vesting in or belonging to a village panchayat or panchayat union council, provided that nothing in this clause shall be deemed to apply to any work which, in the opinion of the Inspector, is done in connection with a bona fide agricultural operation;

(d) erect any building over any drain or any part thereof;

(e) plant any tree on any public road or other property vesting in or belonging to a village panchayat or a panchayat union council; or

(f) fell, remove, destroy, lop or strip bark, leaves, or fruits from, or otherwise damage, any tree which is growing on any such public road or other property or on any poramboke land, the use of which is regulated by a village panchayat under section 134 or section 135 and the right to which has not been established by such

person as vesting in or belonging to him.

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in village panchayats or panchayat union councils to the executive authority or the commissioner concerned and to the officer of the Revenue Department, and (it shall be the duty of the executive authority or the commissioner concerned either suo motu or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act) and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal."

Section 131 of the Tamil Nadu Panchayats Act, 1994 corresponds of Section 82 of the Madras Panchayats Act, 1958.

12.It is thus found that though the plaintiffs are found to be paying "B" memo charges qua the encroachment committed by them in the suit property, however, when it is noted that the suit property being Mayanam Poromboke vests with the defendant's panchayat, accordingly, the defendant's panchayat is entitled to regulate the usage of the same and from the materials placed on record, it is found that the defendant had been annually auctioning the Poromboke properties vested with them to the third parties for the purpose of collecting Sungam charges from the encroachers of the Porombokku lands and accordingly, it is found that the defendant had also endeavoured to collect the Sungam charges from the plaintiffs in respect of the encroachment committed by the plaintiffs in the suit property. Though the plaintiffs would contend that the defendants are not entitled to collect the Sungam charges by auctioning the suit property to the third parties, however, the abovesaid pleas of the plaintiffs do not merit acceptance in any manner, particularly, when the defendant's panchayat is entitled to regulate the usage of Poromboke vested with it as per the provisions of the Tamil Nadu Panchayats Act, 1994 and the rules framed thereunder. Even the first appellate Court has held that the defendant's panchayat is

entitled to collect Sungam charges and penalties from the encroachers of the Poromboke lands vested with the panchayat.

13.As above noted, when from the materials placed on record, it is noted that the defendant's panchayat had been auctioning the Poromboke lands vested with it to the third parties for the purpose of collecting Sungam charges from the encroachers, accordingly, in the event of the encroachers failing to pay the Sungam charges, as rightly concluded by the trial Court the defendant panchayat is entitled to evict the encroachers in accordance with the law and the same cannot be questioned by the plaintiffs. The only argument put forth by the plaintiffs is that as they had been paying the "B" memo charges to the Government, it is only the Government, being the paramount title holder, who would be entitled to evict them from the suit property. However, when admittedly, the suit property vests with the defendant's panchayat only and when it is further noted that the defendant's panchayat is annually auctioning the suit property for the purpose of collecting Sungam charges to the third parties and as the plaintiffs are objecting the abovesaid acts of the defendant panchayat one way or the other, it is found that based on the petition submitted by the panchayat to the revenue authorities, the revenue authorities had also directed the V.A.O not to collect the "B" memo charges from the plaintiffs qua the occupation of the suit properties and furthermore, directed the V.A.O. to initiate the process of eviction of the encroachers vide his order dated 27.07.1984, which could be gathered from the documents marked as Exs.B1 & B2. Therefore, the mere fact that the plaintiffs had been allowed to pay the "B" memo charges at one point of time for their occupation of the suit property, the plaintiffs cannot be allowed to squat in the suit property endlessly without paying the necessary charges to the defendant's panchayat by way of Sungam as demanded by the defendant and therefore, it is found that as rightly contended by the defendant's counsel, the plaintiffs by way of the present suit are endeavouring to squat in the suit property endlessly without paying any charges to the defendant's panchayat.

14.Accordingly, it is noted that when the defendant has also endeavoured to put up the shops in the suit property and lease out them, sensing the abovesaid initiatives of the defendant's panchayat, it is found that the plaintiffs had come forward with the suit to prevent the defendant from regulating the usage of the suit property one way or the other and also with a view to prevent the defendant's panchayat from evicting them from the suit property.

15.In the decision relied upon by the defendant's counsel reported in 2021 (1) MWN 113 (A.Sheik Dawood Vs. Executive Officer, Town Panchayat and Ors.) the Division Bench of our High

Court, after considering the provisions of Section 131 of the Tamil Nadu Panchayats Act, 1994, has held that a duty is cast upon the Executive Authority of the Panchayat to institute proceedings with regard to the encroachments and secure the removal of the encroachments and further held that if any person erects any building over any property vested in panchayat, whether permanent or temporary, it shall be duty of the Executive Authority of the Panchayat to institute the proceedings under the Act and secure the removal of the encroachment and accordingly, held that the panchayat is empowered to take action for removing the encroachment.

16. In the light of the abovesaid determination of the Division Bench qua the entitlement of the panchayat over the Mayanam Poromboke lands vested with the panchayat, accordingly, the defendant having taken necessary action to regulate the usage of the poromboke lands vested with it as per law and when the abovesaid acts of the defendant cannot be termed as unlawful in any manner and in such view of the matter, the trial Court is found to be justified in holding that the plaintiffs are not entitled to injunct the defendant from regulating the usage of the suit property vested with it by way of the present suit for permanent injunction and accordingly if the plaintiffs are entitled to get assignment from the revenue authorities qua the suit property on account of their occupation, it is for them to move the appropriate authorities with reference to the same as per law and on the other hand, they would not be entitled to prevent or injunct the defendant from regulating the usage of the suit property as permitted under law.

17. The first appellate Court has erred in holding that the defendant's panchayat by way of regulating the usage of the suit property vested with it, is endeavouring to summarily evict the plaintiffs from the suit property. However, when pointing to the same, there is no material worth acceptance having been placed by the plaintiffs and when the plaintiffs would only come forward with the suit as if the defendant panchayat is endeavouring to collect Sungam charges from them by way of auctioning the suit properties, which according to the plaintiffs is unlawful and on the other hand, when as above pointed out, the defendant's panchayat is entitled to regulate the usage of the suit property by auctioning the same to the third parties for the purpose of collecting necessary charges as per law, as rightly contended by the defendant's counsel only with the sole aim of squatting in the suit property endlessly, the suit has come to be laid by the plaintiffs without any cause of action and the relief of permanent injunction being an equitable and discretionary relief, considering the facts and circumstances of the case, in my considered opinion, there is no cause of action for the plaintiffs to lay the suit against the defendant and resultantly,

the substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendant and against the plaintiffs.

18.In conclusion, the Judgement and Decree dated 31.12.2004 passed in A.S.No.36 of 2002 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, Vellore District are reversed and consequently, the Judgment and Decree dated 30.11.1993 passed in O.S.No.358 of 1986 on the file of the District Munsif Court, Arakkonam, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Deputy Registrar(AD III)

//True Copy//

Sub Assistant Registrar

sms

To:

1. The Additional District and Sessions Judge,
Fast Track Court No.II, Ranipet, Vellore District.
2. The District Munsif Court, Arakkonam.
3. The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.19813

S.A.No.1549 of 2008

RGN(CO)
CS/08/11/2021