



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :31.03.2021

PRONOUNCED ON :15.04.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1720 of 2008

Parameswari
W/o, Jayapal,
Omandur Village,
Tindivanam Taluk,
Villupuram District.

.. Appellant/Plaintiff

Vs.

Nagavalli,
W/o, Selvaraj,
Omandur Village,
Tindivanam Taluk,
Villupuram District.

... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure 1908 as amended by Act 104 of 1976, against the judgment and decree dated 06.11.2008 in A.S.No.52 of 2007 passed by the Principal Subordinate Judge, Tindivanam, reversing the judgment and decree dated 27.07.2007 in O.S.No.25 of 2004 passed by the Additional District Munsif Judge, Tindivanam.

For Appellant : Mr.K.Balakrishnan

For Respondent: Mr.Bharatha Chakravarthy
for M/s. Sai & Bharath

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 06.11.2008 passed in A.S.No.52 of 2007 on the file of the Principal Subordinate Court, Tindivanam, reversing the judgment and decree dated 27.07.2007 passed in O.S.No.25 of 2004 on the file of the Additional District Munsif Court, Tindivanam.

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



3. The second appeal has been admitted on the following substantial question of law:

" Whether the dismissal of the plaintiff's suit by the first appellate court is based upon the proper appreciation of the materials placed on record, both oral and documentary, as well as the principles of law pertaining to the issues involved between the parties as regards the subject matter?"

4. Considering the scope of the issues involved 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.

5. It is not in dispute that the suit property belongs to the Government. Now the plaintiff claims possessory right over the suit property and accordingly it is putforth by the plaintiff that she had occupied the suit property five years prior to the institution of the suit and put up the house therein and enjoying the same by paying house tax and other charges and accordingly had also obtained service connection in the name of her husband and the defendant who is occupying the property adjacent to the suit property without any right, is endeavoring to disturb the plaintiff's possession and enjoyment of the suit property and hence according to the plaintiff she has been necessitated to lay the suit against the defendant for the reliefs of declaration and permanent injunction.

6. The defendant resisted the plaintiff's suit contending that it is she who had occupied the suit property about 25 years ago and put up the house therein and according to the defendant, as the plaintiff requested to permit her to run the shop put up in the suit property, the defendant acceded to her request considering the relationship between the parties and therefore, it is stated that the plaintiff's occupation of the suit property is only under the permission accorded by the defendant and the plaintiff taking advantage of the abovesaid permission, is endeavoring to grab the suit property without any basis and come forward with the false suit and thereby it is putforth by the defendant that it is she who is in the possession and enjoyment of the suit property and not the plaintiff and accordingly sought for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A8 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B7 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions putforth by them, the trial court was pleased to decree the suit in



favour of the plaintiff as prayed for. On appeal by the defendant, the first appellate court, on an appreciation of the materials available on record, both oral and documentary and the submissions made in the matter, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, resultantly dismissed the plaintiff's suit. Challenging the same, the present second appeal has been laid by the plaintiff.

9. It is not in dispute that the suit property belongs to the Government. The parties admit that the suit property is a Natham Poramboke belonging to the Government. Now, according to the plaintiff, she has occupied the suit property five years prior to the institution of the suit and put up a house therein and enjoying the same by paying house tax and other charges etc., To evidence her claim of possession and enjoyment of the suit property, the plaintiff has produced the house tax receipts ranging from 2001 to 2004 as Exs.A1 to A3 and further it is put forth that the service connection had been effected in the name of plaintiff's husband qua the suit property and it is also stated that subsequent to the institution of the suit, the patta has been granted in favour of the plaintiff qua the suit property marked as Ex.A7 and thus it is the case of the plaintiff that it is she who is in the possession and enjoyment of the suit property.

10. Though the defendant would claim that she had occupied the suit property about 25 years ago, however pointing to the same, the defendant has not placed any acceptable and reliable materials other than Exs.B1 to B7. Particularly, as held by the trial court, when according to the plaintiff, she has been in the possession and enjoyment of the suit property for the past five years prior to the institution of the suit and also substantiated her claim by marking Exs.A1 to A3 and A7 as mentioned supra, evidencing her claim of possession and enjoyment of the suit property five years prior to the institution of the suit, absolutely there is no material forthcoming on the part of the defendant. The documents projected by the defendant pertain to the period earlier to 1996. The abovesaid documents are also not shown to be pertaining to the suit property as such, particularly to hold that that the house tax receipts projected by the defendant relate to the house structure put up in the suit property.

11. Be that as it may, considering the averments contained in the written statement, when according to the defendant, she had occupied the suit property about 25 years ago and had permitted the plaintiff to occupy the suit property for running a shop therein, thereby it is evident that as concluded by the trial court, the defendant has clearly admitted the possession



and enjoyment of the suit property by the plaintiff. In the written statement, the defendant has not come forward clearly as to on what date and in whose presence, she had permitted the plaintiff to occupy the suit property and furthermore, the defendant has not come forward in the written statement as to when she again got back the possession of the suit property from the plaintiff by revoking the alleged permission said to have been granted by her to the plaintiff. When the defendant has not placed any acceptable material to hold that the plaintiff is in the occupation of the suit property based on the permission said to have been granted by the defendant, as rightly concluded by the trial court, the suit property being a Natham Poramboke belonging to the Government, to occupy the same, the plaintiff is not required to seek the permission of the defendant and accordingly, it is found that, as held by the trial court, the defendant is unable to substantiate her case that it is she who had granted the permission to the plaintiff to occupy the suit property.

12. When the documents projected on the part of the plaintiff marked as Exs.A1 to A3 clearly pointed out that it is she who is occupying the suit property and paying the house tax etc., and when it is further noted that in recognition of the possession and enjoyment of the plaintiff, it is only the plaintiff who had been granted the patta marked as Ex.A7 and though Ex.A7 is found to have come into existence after the institution of the suit, if really, the plaintiff is in the permissive occupation of the suit property as claimed by the defendant, the patta would not have been issued in favour of the plaintiff independently. The defendant, till date, has not challenged the issuance of the patta in favour of the plaintiff qua the suit property as per law. As above pointed out, the defendant has admitted the plaintiff's possession and enjoyment of the suit property and would only putforth the case that the plaintiff is in the possession and enjoyment based on the alleged permission granted by her, however when as above pointed out, the plea of permission projected by the defendant having not been substantiated with reliable materials, it is evident that the plaintiff is independently occupying the suit property as claimed by her and enjoying the same.

13. The first appellate court seems to have based its reliance upon the evidence of P.W.3, to hold that it is only the defendant who is in the possession and enjoyment of the suit property. However, considering the evidence of P.W.3 in toto, it is seen that P.W.3 has not admitted the defendant's claim of possession and enjoyment of the suit property. When the defendant's herself has admitted that it is only the plaintiff who is in the possession and enjoyment of the suit property, though would plead that it is based on her permission, when the



defendant has not averred that she had subsequently retrieved the possession and enjoyment from the plaintiff as per law, the inevitable conclusion that could be made is that it is only the plaintiff who is in the possession and enjoyment of the suit property and accordingly it is also seen that recognizing the plaintiff's possession and enjoyment, she has been granted the patta marked as Ex.A7.

14. The first appellate court also placed reliance upon the evidence of D.W.2, to come to the conclusion that the patta granted to the defendant has not been recorded in the records maintained in the office of D.W.2. However, considering the evidence of D.W.2 in toto, when it is seen that D.W.2 is unable to clearly come out with the version as to on what basis the patta had been granted to the plaintiff qua the suit property and when he has further admitted that only after seeing the records connected with the issuance of the patta in favour of the plaintiff, one could ascertain whether the patta had been properly granted to the plaintiff or not, in view of the above, merely because, the issuance of the patta in favour of the plaintiff had not been recorded in the records submitted by D.W.2 that cannot be the sole basis for holding that the patta issued in favour of the plaintiff is vitiated or unacceptable.

15. Considering the evidence of the defendant, when she has clearly admitted that she used to reside only in her daughter's house and accordingly the defendant having failed to establish her claim of possession and enjoyment of the suit property as put forth by her and particularly the defendant having failed to establish her case of permission in toto, it is evident that it is only the plaintiff who is in the possession and enjoyment of the suit property belonging to the Government and inasmuch as, the defendant has failed to establish her better claim of possessory title, possession and enjoyment of the suit property on the date of the suit or at any point of time prior to the institution of the suit or subsequent to the suit, and on the other hand, when the plaintiff has clearly established that the suit property has been in her possession and enjoyment on the date of the suit and prior to the institution of the suit and also subsequent to the institution of the suit, in such view of the matter, the plaintiff claiming only possessory title and seeking appropriate relief for injuncting the defendant from disturbing her possession and the Government being the paramount title holder, it is for the Government to take appropriate steps to evict the plaintiff from the suit property as per law, if required. Till then, the plaintiff is entitled to protect her possession and enjoyment of the suit property.

16. In the light of the abovesaid discussions, it is evident that the first appellate court, has failed to appreciate the



materials placed on record, both oral and documentary in the proper perspective as well as the principles of law pertaining to the issues involved between the parties as regards the subject matter correctly and hence the reasonings and conclusions of the first appellate court for nonsuiting the plaintiff could only be termed as perverse, illogical and irrational and therefore liable to be set aside. Consequently, the substantial question of law formulated in the second appeal is accordingly answered in favour of the plaintiff and against the defendant.

17. In conclusion, the judgment and decree dated 06.11.2008 passed in A.S.No.52 of 2007 on the file of the Principal Subordinate Court, Tindivanam are set aside and resultantly the judgment and decree dated 27.07.2007 passed in O.S.No.25 of 2004 on the file of the Additional District Munsif Court, Tindivanam are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Deputy Registrar(spell cell CJ conf)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal Subordinate Judge,
Principal Subordinate Court,
Tindivanam.
2. The Additional District Munsif Judge,
Additional District Munsif Court,
Tindivanam.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.K.Bala Krishnan, Advocate, S.R.No.22724

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.22951

S.A.No.1720 of 2008

SR(CO)
CB(26/10/2021)