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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2021

PRONOUNCED ON : 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.954 of 2008

- 1.Perumal
- 2.Chittan @ K.Balakrishnan (died)
- 3.Annamalai
- 4.Thangavelu
- 5.Gunasekaran
- 6.Manoharan
- 7.Palani
- 8.Mani

... Appellants/Defendants

(Appellant 2 viz., Chittan @
K.Balakrishnan died. Recorded
as per the memo Sr.3017 dated 29.1.21
giving up 2nd appellant vide order
of Court dt.11.02.21)

Vs.

- 1.Tamizhchelvan

... 1st Respondent/Plaintiff

- 2.N.Ramachandra Nadar
(R2-Givenup)

... 2nd Respondent/1st Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.02.2008 passed in A.S.No.27 of 2006 on the file of the Additional District-cum-Sessions Judge, Fast Track Court No.II, Ranipet, reversing the Judgment and Decree dated 10.10.2002 passed in O.S.No.5 of 2001 on the file of the District Munsif Court, Ranipet, Vellore District.

For Appellants : Mr.T.N.Sugesh

For Respondents : Mr.G.P.Arivuchudar

fro R1

R2-Givenup



JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.02.2008 passed in A.S.No.27 of 2006 on the file of the Additional District-cum-Sessions Judge, Fast Track Court No.II, Ranipet, confirming the Judgment and Decree dated 10.10.2002 passed in O.S.No.5 of 2001 on the file of the District Munsif Court, Ranipet, Vellore District.

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

3.The defendants in O.S.No.5 of 2001 are the appellants in the second appeal.

4.Suit for permanent injunction.

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

"1.Whether the First Respondent/Plaintiff is entitled to the relief of injunction in respect of a Government Poramboke land restraining its use by the Public?

2.Whether claiming possession through a "B' Memo would entitle the First Respondent /Plaintiff to claim the relief of injunction?

3.When the trial Court found that as per Ex.A6 the plaintiff is in possession of only 6 1/4 cents, whether the Lower Appellate Court was right in granting injunction in respect of the entire extent of the Suit property, which is about 41.37 cents?"

6.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow campus, it is unnecessary to dwell into the facts of the case in detail.

7.Considering the pleas and the materials placed on record by the respective parties, the suit property is found to be the Government Poramboke land. The plaintiff claims to be in the possession and enjoyment of the suit property. Per contra, the defendants claiming that the suit property being the Government Poramboke land, situated adjacent to the Amman Temple, according to them, the devotees and the local villagers used to gather in



large members along with their families at the time of Pongal festival for offering the prayers and for the common celebrations in the suit property and therefore, according to them, the plaintiff is not entitled to restrain them from enjoying the suit property for the abovesaid purposes and further, put forth the case that the plaintiff has no legal right or title over the suit property and also not in the possession and enjoyment of the suit property and therefore, prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiff's case, PWS1 to 3 were examined and Exs.A1 to A7 were marked. On the side of the defendants, DWS1 to 3 were examined and Exs.B1 to B9 were marked. Exs.X1 to X4 were marked and Exs.C1 to C2 were also marked.

9. As above pointed out, the parties have not disputed that the suit property is the Government Poramboke Land and the same could also be noted from the documents marked as Exs.X1 to X4 being the "A" register and FMB Sketch. From the abovesaid documents, it is evident that the suit property has been classified as Malaimedu and admittedly, belongs to the Government.

10. From the materials placed on record, it is found that the total extent of the suit property is 41.37 cents. The suit property being the Government Poramboke land, the plaintiff would claim that he had been paying the penal charges to the Government and also put up the house structure in the suit property and enjoying the same and it is only the defendants, who are interfering with the possession and enjoyment of the plaintiff and hence, according to him, the suit has come to be laid against the defendants for the relief of permanent injunction.

11. As regards the payment of the penal charges, we have only Ex.A6 said to have been issued by the Thasildar to the plaintiff demanding the payment of the penal charges. As rightly concluded by the trial Court, it is evident that the extent mentioned in Ex.A6 is only 6 1/4 cents and the plaintiff marked Ex.A2 series as evidencing the payment of the penal charges and the other documents projected by the plaintiff do not show that the plaintiff is in the occupation and enjoyment of the total extent of 41.37 cents of the suit property and on the other hand, from Ex.A6, as rightly concluded by the trial Court, the plaintiff is in the occupation of only 6 1/4 cents and had put up the superstructure therein and using the remaining portion as Kalam and apart from the abovesaid extent of 6 1/4 cents, when there is no material on the part of the plaintiff to hold that the remaining extent of the suit property



is in his possession and enjoyment, in such view of the matter, the trial Court is found to be justified in granting the relief of permanent injunction in favour of the plaintiff only in respect of the portion of the suit property in the occupation of the plaintiff, where he put up the tiled house and Kalam. However, the first appellate Court, on appeal preferred by the plaintiff, granted the relief of permanent injunction in favour of the plaintiff for the entire suit property.

12.The parties are vying with each other in respect of the property belonging to the Government and thereby, the plaintiff is claiming only the possessory right and not the absolute right over the suit property, as such and as above pointed out, when the plaintiff is able to sustain his claim of possession of only 6 1/4 cents in the suit property and with reference to the remaining extent, no proof evidencing his possession is forthcoming and on the other hand, from the documents marked on the side of the defendants and also considering the commissioner's report and plan, when it is found that the suit property being the Government Poramboke land, the remaining portion of the suit property situated adjacent to the Amman Temple, accordingly, from the documents projected by the defendants, it could be gathered that the local people used to gather in the suit property for celebrating the temple festival and other religious functions as put forth by the defendants and further more, when it is noted that there is a battai running to a width 4 or 5 ft in the suit property and accordingly, when the plaintiff would be able to access to his house portion through the said battai, the claim of the plaintiff that he is in the occupation and enjoyment of the entire suit property, as such, cannot be countenanced in any manner and the plaintiff having laid the suit only for the relief of permanent injunction, has the duty to establish his possession and enjoyment of the entire suit property as claimed by him. The plaintiff having failed to establish the same, the first appellate Court is found to have misdirected itself in improper appreciating of the materials placed on record on the part of the plaintiff as evidencing his claim of possession of the entire suit property. Even assuming for the sake of arguments that the defendants have failed to establish their case, the plaintiff being the suitor, when he has miserably failed to establish his possession and enjoyment of the entire suit property belonging to the Government, the first appellate Court is not justified or correct in granting the relief of permanent injunction for the entire suit property by erroneously setting aside the well considered reasonings and conclusions of the trial Court.

13.In support of his contention, the counsel for the defendants placed reliance upon the decisions reported in (2001) 2 M.L.J.300 (K.Sadasivam and another Vs. B.Harikrishnan),



AIR 2004 MADRAS 450 (S.Ponnuthai Vs. P.Muthusamy), 2008 -2- L.W.488 (Sri Thimmaiah Vs.Shabira and others), (2006) 7 Supreme Court Cases 570 (T.Anjanappa and others Vs. Somalingappa and another) and 2019 SCC OnLine SC 975 (Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

14. When admittedly, the suit property is only the Government Poramboke land and the plaintiff has established his possession of 6 1/4 cents in the same by putting up tiled house and Kalam, unless and until, he is vacated by the Government under due process of law, it is seen that the plaintiff is entitled to enjoy the said portion and the plaintiff having established his occupation of the said portion by filing acceptable documents, other than the Government, no one including the defendants would be entitled to disturb his possession with reference to the said portion of the suit property. Accordingly, for the reasons aforesaid, the substantial questions of law 1 & 2 are answered and the substantial questions of law No.3 is answered in favour of the defendants and against the plaintiff.

15. In conclusion, the Judgement and Decree dated 12.02.2008 passed in A.S.No.27 of 2006 on the file of the Additional District-cum-Sessions Judge, Fast Track Court No.II, Ranipet, are set aside and resultantly, the Judgment and Decree dated 10.10.2002 passed in O.S.No.5 of 2001 on the file of the District Munsif, Ranipet, Vellore District, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Deputy Registrar (Accounts)

//True Copy//

Sub Assistant Registrar

sms

To:

1. The Additional District-cum-Sessions Judge,
(2nd Fast Track Court),
Ranipet.



2. The District Munsif,
Ranipet,
Vellore District.

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3. The Section Officer,
V.R.Section,
High Court, Madras.

S.A.No.954 of 2008

GMR(CO)
SU(25/11/2021)