



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.952 OF 2015

AND

M.P.NO.1 OF 2015

K.Ramasamy ...Appellant / Appellant / Defendant
Vs.

K.Murugesan ...Respondent / Respondent / Plaintiff

PRAYER : The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 13.03.2015 made in A.S.No.93 of 2014 on the file of the learned Principal Subordinate Judge, Erode, confirming the judgment and decree dated 22.08.2014 made in O.S.No.292 of 2012 on the file of the learned Second Additional District Munsif, Erode.

For Appellant : M/s.M.Rajeev Gandhi
for Mr.S.Kaithamalai Kumaran

For Respondent : Mr.M.Karthik
for Mr.I.C.Vasudevan

J U D G M E N T

Aggrieved over the concurrent findings of the learned Principal Subordinate Judge, Erode, made in A.S.No.93 of 2014, dated 13.03.2015, confirming the decree and judgment made in O.S.No.292 of 2012, dated 22.08.2014, on the file of the II Additional District Munsif, Erode, the defendant is before this Court.

2. The plaintiff/respondent herein has filed a suit in O.S.No.292 of 2012, before the Court of the District Munsif, Erode, for permanent injunction. The plaintiff/respondent herein claims that he is an occupier of the Odai Poramboke for over 30 years and was paying all the taxes and other charges and he was issued with B-Memo in his favour. He is in exclusive possession and enjoyment of the suit property and was disturbed by the defendant, who is none other than his brother. On 15.05.1994, the defendant/appellant herein made unlawful attempts to trespass and encroach the suit property and therefore, he filed



a suit in O.S.No.823 of 1994. The said suit was withdrawn as settled out of Court on 21.02.1997. Again in May 2012, the defendant/appellant herein started giving troubles and on 10.06.2012, they attempted to demolish the northern side of the house with the aid of rowdy elements and attempted to trespass into the property. It was prevented by the plaintiff/respondent herein with the help of the neighbors. Taking this as a cause of action, above said suit viz., O.S.No.292 of 2012 for permanent injunction was filed.

3. In written statement, the defendant/appellant herein contend the land is Odai Poramboke. The plaintiff and defendant are brothers and their father Karuppanna Nadar encroached upon the suit property and constructed a tiled house in the suit property. He was residing with his family and B-Memo notice was issued in favour of his father and he was paying the penalty. After the marriage of the defendant, he was residing in the house along with his wife till the year 1990. Thereafter, to suit his convenience to run his business, the defendant/appellant herein shifted the residence to Dharapuram. In the meanwhile, taking advantage of his absence, the plaintiff/respondent herein has managed to get possession of B-Memo in his favour. Meanwhile, the plaintiff/respondent herein convened the Panchayat on 21.03.1994, wherein the parties and their father were present. Their father advised the plaintiff and defendant to take the property equal moiety and the Panchayathars also advised the same. Though the plaintiff/respondent herein agreed and signed in the Muchalika in the presence of the panchayathars and by suppressing the same, he filed the suit in O.S.No.823 of 1994, setting out the details of Panchayat and the family arrangement held on 21.03.1994. Thereafter, the Panchayathars who settled the dispute, called the plaintiff/respondent herein and advised him to withdraw the suit. The defendant/appellant herein reserves his right to file additional written statement, when it is necessary. Suppressing all the facts, the plaintiff/respondent herein had preferred the second suit on the very same relief and on the very same subject matter. Therefore, the suit is barred by Order II Rule II of C.P.C.

4. The trial Court based on the above pleadings filed framed appropriate issues and decreed the suit in favour of the plaintiff/respondent herein. Aggrieved over the same, the defendant filed an appeal in A.S.No.93 of 2014 before the learned Principal Subordinate Judge, Erode, wherein, the learned Judge by an order dated 13.03.2015, has confirmed the same. Aggrieved over the same, the defendant is before this Court.

5. Admittedly, both the parties are not the owners of the land. The land is a Odai Poramboke land and it is also a



Government land. The dispute is only with respect to the possession of the parties. It is admitted by the defendant/appellant herein that till 1990 he along with the plaintiff/respondent herein was residing in the very same house put up by their father viz., Karuppanna Nadar. The exhibits marked as B1 to B4 do not prove the possession of the defendant. On the other hand, it shows that he had used this address or he has given this address for his convenience. Ex.B1 is the Voter Survey, which discloses all the names of the family members including the plaintiff/respondent herein.

6. It is a specific case of the defendant/appellant herein that there was a Panchayat between the plaintiff and defendant in the presence of their father and other Panchayathars. Pursuant to the same, a Muchalika was prepared on 21.03.1994 and both the parties were signed in the same. Even though it is the stand taken by the defendant/appellant herein, he was not marked the said Muchalika before the Court in order to examine the parties involved in the mediation. On the other hand, the exhibits marked by the plaintiff/respondent herein is proved and he continues to be in possession and paying the penalty to the Government for the use of that land. In that event, if the occupier of the Government property is entitled to be in possession, it cannot be disturbed by anybody. The defendant/appellant herein cannot claim any title over the property even the defendant's father cannot claim any title over the property. Therefore, the defendant/appellant herein cannot claim any share or joint possession over the property.

7. Both the plaintiff and defendant have encroached the land and they have to vacate as on when the Government directs. In that event, there is no vested right over the parties to claim co-ownership or possession over the Odai Poramboke.

8. In view of the matter, the Courts below have rightly found the issue in possession in favour of the plaintiff/respondent and decreed the suit. Therefore, the substantial questions of law on which the second appeal is admitted is answered against the plaintiff/appellant herein.

9. In fine, the Second Appeal stands dismissed, confirming the orders passed by the Courts below. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

Pns



To

1. The Principal Subordinate Judge,
Erode.

2. The Second Additional District Munsif,
Erode.

Copy To

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

+1cc to Mr.S.Kaithamalai Kumar, Advocate Sr.No.49133

+1cc to Mr.I.C.Vasudevan, Advocate Sr.No.48865

S.A.No.952 of 2015
and
M.P.No.1 of 2015

PVS (CO)
RVM(08/06/2022)