



IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

RESERVED ON	11.01.2022
PRONOUNCED ON	27.01.2022

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1310 of 2010 &
M.P.No.1 of 2010

Ellappan

..Appellant/Defendant

Vs.

1. Balakrishnan
2. Nagammal
3. Mani
4. Arumugham

...Respondents/Plaintiffs

Prayer: Second Appeal is filed under Section 100 Civil Procedure Code to set aside the Judgment and Decree passed in A.S.No.88 of 2007 on the file of the Subordinate Judge, Kancheepuram dated 24.03.2010 by confirming the Judgment and Decree passed in O.S.No.68 of 2003 on the file of the District Munsif cum Judicial Magistrate, Uthiramerur dated 08.12.2006

For Appellant : Mr.Kumar rajan for
M/s Kumar & Baskar,

For Respondent : Mr.Vijayakumar Shanmugam for
Mr.R.Selvakumar for R1 to R4

J U D G M E N T

The Second appeal is focussed as against the Judgment and Decree dated 24.03.2010 passed in A.S.No.88 of 2007 by the learned Subordinate Judge, Kancheepuram by confirming the Judgment and Decree dated 08.12.2006 passed in O.S.No.68 of 2003 by the learned District Munsif cum Judicial Magistrate, Uthiramerur.

2.The appellant is the defendant and the respondents are the plaintiffs. The parties, for convenience sake, are referred to herein according to their litigative status before the trial court.

3.The laconic averments found in the plaint filed by the plaintiffs are as follows:-

(i) The suit is for the relief of permanent injunction. The



suit property measuring an extent of three acres in Survey No.277/287 of Kattingulam Madura Amaravathi Pattanam village is classified as 'Government Tharisu Poramboke Lands'. The said property was originally encroached by 1st plaintiff's father, namely, Varadhappa Naicker. The said Varadhappa Naicker by using his own physical labour had reclaimed the said property and made suitable for cultivation and he was in continuous possession in the suit property for more than 25 years.

(ii) The Government has also issued penal tax receipt in favour of Varadhappa Naicker and before 15 years, the said Varadhappa Naicker died after leaving his four sons, namely, (i) Balakrishnan (ii) Subramani (iii) Mani and (iv) Arumugham. The said Subramani died about five years back and the 2nd plaintiff is the wife of said Subramani. After the demise of Varadhappa Naicker, plaintiffs are in possession of the suit property.

(iii) The 1st plaintiff constructed a house in a part of the suit property and residing there. The plaintiffs are entitled to remain in possession of the suit property until they are evicted by the Government under due process of law. The defendant is the adjacent land owner having land on the western and northern side of the suit property. On 09.12.2003, the defendant attempted to tress-pass into the suit property with the help of some rowdy elements and the same was managed by the plaintiffs, hence the suit.

4. The averments found in the written statement filed by the defendant are as follows:-

(i) Neither the plaintiffs nor the said Varadhappa Naicker is in the possession of the suit property, as alleged in the plaint by the plaintiffs. The documents filed along with the plaint are no way connected with the suit property. Since the suit property is classified as 'poramboke land' to decide the issue raised in this appeal, the Government is a necessary party.

(ii) It is true that the defendant is the neighbouring land owner of the suit property. The plaintiff filed a suit without a cause of action, hence the suit is liable for dismissal.

5. Based on the above averments, the trial court framed necessary issues and tried the suit. On the side of the plaintiffs, P.Ws.1 to 3 were examined and thirteen documents were marked as Exs.A.1 to A.13. On the side of the defendant, D.W.1 was examined and no documents have been exhibited.

6. Having considered the materials placed before him, the learned District Munsif cum Judicial Magistrate, Uthiramerur allowed the suit with entirety and granted the relief of interim



injunction as prayed for. In the appeal, the findings arrived at by the trial court was confirmed and as a result of which, the learned Subordinate Judge, Kancheepuram dismissed the appeal. Feeling aggrieved over the same, the defendant is before this Court with the present Second Appeal.

7. When the Second Appeal is taken up for admission, this Court has formulated the following substantial question of law for consideration:-

"1. Whether the Courts below have rendered a perverse finding that the plaintiff has proved his possession in respect of the suit property when the plaintiff has failed to correlate the documents, namely 'B' memos filed by him with the suit property?"

8. Heard the learned counsels appearing on either side and perused the documents placed on record.

9. It is the case of the plaintiffs that they are in the possession of the suit schedule property from time immemorial and hence they should be evicted only by due process of law. Since the defendant unlawfully entered into their possession, it was necessary to grant an order of injunction, simplicitor, for restraining the defendant in interfering with the Plaintiffs' peaceful possession. On the other hand, it is the case of the defendant that suit schedule property being the government poramboke, the defendant, who is a neighbouring land owner, is having every right to enjoy the suit schedule property. Further, the suit schedule property is in possession of the defendant and therefore, the relief asked by the plaintiffs cannot be granted.

10. Admittedly, the suit schedule property is the Government poramboke. In this occasion, the plaintiffs, in order to prove their possession, produced the penal tax receipts pertaining to the year 1967, 1969, 1999, which are all marked as Exs.A.1 to A.5. Further, the plaintiffs produced the house tax receipts pertaining to the house as Exs.A6 and A.7 which is situated in the suit schedule property. The said tax receipts are evident to show that the plaintiffs alone resided in the said house. More than that, the plaintiffs produced copies of the electricity receipts as Exs.A.8, A.9 and A.10 which pertains to the year 2003 and 1997. In the said occasion, in respect to the plaintiffs' possession, while at the time of giving evidence as D.W.1, the defendant has stated in his cross examination that in the suit schedule property, the 1st plaintiff constructed a house and residing there. Accordingly, the defendant himself admitted that the possession of the suit schedule property is with the plaintiffs. Though it was contended on the side of the defendant as he is in the suit property, in order to prove the same, he



11. Since the defendant himself admitted the possession of the plaintiffs in the suit property, it is not necessary to expect some more evidence for accepting the case of the plaintiffs. However, in order to prove their possession, on the side of the plaintiffs, one Muniappa Gounder and Andalammal, who are the neighbouring owners were examined and they gave the evidence as the plaintiffs are in possession of the suit schedule property. Further, D.W.1, in his cross examination admitted that P.W.2 and P.W.3 are the neighbouring land owners, accordingly, the evidence given by P.Ws.2 and 3 also supports the case of the plaintiffs, as the plaintiffs alone are in possession of the suit schedule property.

13. Though the trial court took a judicial notice as the revenue authorities at the time of issuing such a type of penal receipt, have not mentioned survey numbers, the same is not in accordance with the procedure established. Here it is a case the admission made by the defendant is sufficient to accept the case of the defendant.

"It is common knowledge that if a poramboke land belonging to the Government is possessed by an individual the Government is at liberty to issue B-memo and collect penalty from the possessor. Similarly, if necessary, the Government is always at liberty to evict such trespasser. But, the person who is in occupation



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of the Government land and has been paying penalty to the Government is certainly entitled to maintain a suit for permanent injunction against a third party by which he can protect his possession. In this case, the trial court had found that there are B-memos issued by the Government and that the plaintiff had proved her possession over the B-schedule property. But, the first appellate court has concluded otherwise on the ground that the B-memos did not contain the office seal of the Tahsildar and one B-memo did not even contain the signature of the issuing authority. The plaintiff has explained the same through her evidence that what ever was served upon her has been produced in evidence. It is not at all the case of any of the parties that these documents were forged documents or documents prepared for the purpose of the case. When that be so, in my considered view, the absence of the office seal of the Tahsildar does not make the documents invalid. But, at the same time, it is seen that though the defendants claim that they are in possession of the B-schedule property, which is a poramboke land, they did not have even a semblance of document to prove their possession. In such view of the matter, in my considered view, the trial court was right in decreeing the suit in respect of B-schedule property; whereas the first appellate court was not right in reversing the decree and judgement of the trial court. Thus, I answer the question of law in favour of the appellant. It is, however, made clear that if the Government intends to take possession of the land in question, the Government is always at liberty to evict the plaintiff by following the procedure established by law.

15. In the Judgment reported in 2004 (1) SCC 769 [Rame Gowda (dead) by Lrs Vs. M. Varadappa Naidu (Dead) by Lrs., and Another, the Hon'ble Apex Court while at the time of deciding the prayer in respect of the injunction, has held as follows:-

"In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court. The person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. A rightful owner who has been wrongfully



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dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. Settled possession gives a right to possession such that even the rightful owner may only recover it by taking recourse to law."

16. Accordingly, if a person proved his settled possession in a property, which belongs to the government, he is entitled to avail the relief of injunction against the person, who attempted to tress-pass in the settled possession. No doubt, here it is a case the property belongs to the Government. Being the owner of the land, the Government, is entitled to take necessary action against the plaintiffs for recovering the possession, but the government has not initiated any steps for recovering the suit schedule property, therefore, the defendant, being neighbouring land owner, does not have any right to cause disturbance to the possession of the plaintiffs.

17. Hence in view of the above, the plaintiffs are entitled to the relief of injunction. Accordingly, I am of the considered view that by producing the necessary documents, plaintiffs have proved their possession and therefore, they can be evicted only by due process of law and not by unlawful means by third party. The substantial question of law framed is answered as above.

In the result, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Subordinate Judge,
Kancheepuram

2. The District Munsif cum Judicial Magistrate,
Uthiramerur.

+1cc to Mr.Kumar and Baskar, Advocate, S.R.No.4898

S.A.No.1310 of 2010 &
M.P.No.1 of 2010

RLD(CO)
RGA(18/05/2022)