



S.A. No. 726 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.726 of 2013

and

M.P.Nos. 1 & 2 of 2013

1. A.Abdul Hamid Kadir,
rep. by his Power Agent
Mr.Khwaja Nizamuddin
to the 2nd and 3rd appellants
(I.A.No.170 of 2000, dt. 27.03.2000)

2. Aayeesha,
W/o. Abdul Hamid Kadir

Jalma Nachiyar (deceased)

4. Khwaja Nizamuddin
S/o. A.Abdul Hamid Kadir
(4th appellant brought on record as
LR of 3rd appellant as per order
dated 06.06.2016 made in C.M.P.
No. 6845 of 2016)

... Appellants

Versus



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1. The Commissioner,
Thiruvarur Municipality,
Thiruvarur.
2. The President,
Lorry Owners Association,
Thanjai Salai, Thiruvarur.
3. General Secretary,
Lorry Owners Association,
Thanjai Salai, Thiruvarur.

... Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 16.12.2011 made in A.S.No.11 of 2010 on the file of Subordinate Judge at Thiruvarur as confirming the judgment and decree dated 05.06.2010 made in O.S.No. 28 of 2004 on the file of the District Munsif at Thiruvarur.

For Appellants : Mr.G.Krishnakumar

For Respondents : Mr.P.P.Shanmugasundaram for R1

Mr.K.V.Babu for R2 and R3



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JUDGEMENT

The appellants herein are the plaintiffs in the suit in O.S.No.28 of 2004 on the file of District Munsif, Thiruvarur filed by them against the defendants for the relief of permanent injunction not to cause interference in their possession and enjoyment of property situated at Vijayapuram Town, Thiruvarur bearing T.S.No. 558 to an extent of 1 acre 9496 sq.ft. and 33541 sq.ft and T.S.No.559 to an extent of 33541 sq.ft, totally 1 acre 43037 sq.ft.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The defendants contested the suit and the trial court on considering either submissions of the parties as well as on perusal of oral and documentary evidence, dismissed the suit by deciding that the suit property belongs to the Government and the plaintiffs not in possession of the suit property. Aggrieved over that, the plaintiffs have preferred an appeal in A.S.No. 11 of 2010 before the Sub-Court, Thiruvarur on framing five



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issues, the appellate judge considering submissions of either side dismissed the plaintiffs claim by confirming the findings of the trial court. Challenging the concurrent findings of the court below, the plaintiffs have preferred this Second Appeal and admitted on the following questions of law :-

- a) Whether the possession of the appellant is admitted by the respondent in the written statement filed by the 1st defendant is a conclusive proof for the possession of the appellants?
- b) Has the Lower Appellate Court and the Trial Court failed totally in its analysis to come to a conclusion that the properties described in Ex.A4 has not proved the possession of the appellants?
- c) Whether the Ex.A4 was disproved by the defendants before the Lower Appellate Court and Trial Court?
- d) Whether the written statement filed by the defendant is proving the possession of the appellant?



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4. According to the plaintiffs, based on three sale deeds Ex.A1 to A3, a portion of the property in S.No.559/2, 559 and 545 situated at Vijayapuram, Tiruvarur Town, wherein they built up row of shops and on the back side of the shops, the suit properties are situated in S.Nos.558 and 559, where they have put up two lavatories and a septic tank and enjoyed the properties purchased by them along with the suit property. The 1st defendant has no right over the suit property and without giving proper notice, they demolished the iron gate and septic tank. Hence, the plaintiffs have filed a suit. The defendants 2 and 3 also, being a President and Secretary of Lorry Owners Association, Thiruvarur, unlawfully parking their lorries inside the suit property. Hence, they approached the court for permanent injunction.

5. But, the District Collector/1st defendant denied the plaintiffs' right and title over the suit property in S.Nos.558 and 559, submitting that the suit property is a Government poramboke land, in which, neither the plaintiffs nor their vendor having title over the property, thereby he denied plaintiffs' possession and enjoyment of the property.



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6. The 2nd and 3rd defendants are the President and Secretary of Lorry Owners Association, who were permitted to park the lorry in the suit property by the order of 1st defendant in order to avoid the traffic congestion in that locality. Having approached the court contending that, they are in possession and enjoyment of the property, the plaintiffs are bound to prove the same.

7. To prove their claim, on the side of plaintiffs, they have relied on the documents Ex.A1 to A20 and on the side of defendants, Ex.B1 to B10 documents were marked and oral evidence was also adduced on either side.

8. As per the submissions of the plaintiffs, the suit property is in their possession and enjoyment. Based upon that, they prayed for injunction not to cause interference by the defendants.

9. The plaintiffs have also contended that they are in possession of the property, and they have purchased the property from one Nagaraja



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Gurukkal, but the 1st defendant/District Collector submitted that entire property originally belongs to Thiagarajasamy temple and the properties were acquired for forming up a road and other purpose by the Government and published a Gazette notification to that effect and the same was also produced before this Court in the additional typed set of papers.

10. On perusal of Gazette notification dated 15.09.1965 Inam dry, T.S.No.558, owner Sri Thiagarajaswamy Devasthanam.....and Inam dry T.S.No.559, owner Thiagarajaswamy Devasthanam, an extent of 33541 sq.ft. with four boundaries were acquired under the land acquisition proceedings, which was needed for the public purpose by the Government authority. To that effect, a notification was also issued in the Government gazette. But, the learned counsel for plaintiffs submitted that through Ex.A1 to A3, the plaintiffs have purchased the property from one Nagaraja Gurukkal and they have also executed sale agreement Ex.A4 with regard to the suit property. Based upon that, the plaintiffs are in possession of the same, but without giving proper notice, the 1st defendant caused interference. Hence, they approached the court by filing a suit.



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11. Per contra, the learned counsel for 1st defendant submitted that the alleged vendor of the plaintiff Nagaraja Gurukkal has no right over the property for the reason that the entire property originally belonged to Thiagaraswamy Devasthanam, Thiruvarur and then, it was acquired by the Government by proper notification. Therefore, the sale deeds would not bind on them and the Court below also rightly appreciated this aspect and accordingly, prayed to dismiss the appeal as no merits.

12. On perusal of notification, it would clearly establish that the lands in S.F.Nos.558 and 559 were acquired by the Government and now it is a Government poramboke land, in which, neither the plaintiffs nor alleged vendor Nagaraja Gurukkal having right over the property. Ex.A4 is also sale agreement. As discussed above, as the said Nagaraja Gurukkal has no right to execute the sale agreement in favour of plaintiffs with regard to Government poramboke land, the Court below has rightly concluded that Ex.A4 is invalid document and not binds on the defendants, which needs no interference by this court. Accordingly, the question of law are answered.



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Further, the plaintiffs have not proved that they were in possession of the property by material evidence before filing the suit, but instead of proving his possession, they have contended that their possession was admitted by the defendants in the written statement. But, on considering the entire recitals of written statement, the defendants totally denied the plaintiffs' possession and enjoyment of the suit property. On seeing the conduct of plaintiffs, it reveals that they want to grab the property belongs to the Government somehow by filing vexatious litigations, which should not be encouraged. To avoid the traffic congestion, the Government temporarily permitted the defendants 2 and 3 to park the lorry and other vehicles in the suit property. Other than that, the 1st defendant/District Collector having right over the Government poramboke land. Accordingly, the plaintiffs neither proved the possession of the suit property nor they are having title over the property, on the other hand, the 1st defendant established that the suit property is a Government poramboke land, which is under their control. Therefore, the Court below has rightly appreciated this aspect and dismissed the claim of plaintiffs as no merits, which caused no interference by this court. Accordingly, all the issues raised are answered and only with an



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ulterior motive, the plaintiffs have approached the Court with unclean hands. In these circumstances, no substantial question of law arises for consideration in the present Second Appeal. Accordingly, the present Second Appeal stands dismissed with exemplary cost of Rs.20,000/-. Consequently, the connected Miscellaneous Petitions are closed.

22.07.2022

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To

Sub-Judge,
Thiruvarur.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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