



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.490 OF 2014

AND

M.P.NO.1 OF 2014

1. P.Madheeswaran
2. Periyammal

... Appellants/  
Appellants/Plaintiffs

Vs.

1. Government of Tamil Nadu  
Rep. by its District Collector,  
Collectorate, Namakkal District,  
Namakkal.
2. The District Revenue Officer,  
Namakkal Town,  
Namakkal District.
3. The Tahsildar,  
Tahsildar Office,  
Rasipuram Town and Taluk.
4. Madhavan
5. Gunasekaran

... Respondents/  
Respondents/Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 12.08.2013 passed in A.S.No.12 of 2012 on the file of the Subordinate Judge, Rasipuram, Namakkal District whereby confirming the judgement and decree dated 02.03.2012 passed in O.S.No.126 of 2009 on the file of the District Munsif Court, Rasipuram, Namakkal District.

For Appellant : Mr.C.Prakasam

For Respondent : M/s.E.Indhumathi  
Government Advocate  
for R1 to R3  
Ms.Zeenath Begum for R4 & R5



## JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

2.The case of the plaintiffs is that the suit properties originally belonged to the paternal grandmother and the father of the plaintiffs by virtue of registered Sale Deeds dated 07.11.1958 and 15.10.1962, marked as Exhibits A1 and A2. After the demise of the paternal grandmother, the father of the plaintiffs became the absolute owner of the property and he was in possession and enjoyment of the entire property. After his demise in the year 2003, the plaintiffs are in possession and enjoyment of the property. Even though, the plaintiffs have described the suit property by including S.Nos.422/3, 422/2 and 422/1B, the dispute in this case only pertains to S.No.422/1B and insofar as the other two survey numbers are concerned, they are admitted patta lands of the plaintiffs.

3.The further case of the plaintiffs is that the land in S.No.422/1B is a cart track poromboke and which has been in usage for a long period of time and therefore, the plaintiffs claimed right and title over the property by adverse possession. According to the plaintiffs, an attempt was made by the official respondents to remove the revetment and standing crops in the property in S.No.422/1B. Hence, the suit was filed seeking for the relief of declaration of title and permanent injunction.

4.The defendants 1 to 3 filed a written statement and they took a stand that the land in S.No.422/1B is a cart track poramboke in which the plaintiffs have encroached. They also denied the right claimed by the plaintiffs through adverse possession and according to these defendants, the plaintiffs cannot claim for adverse possession against the Government for the cart track. Hence they sought for the dismissal of the suit.

5.The 4<sup>th</sup> and 5<sup>th</sup> defendants who were private parties also filed the written statement and they took a stand that they have been using the cart track in S.No.422/1B for taking their vehicles and cattle to their property for a very long time. They further contended that the plaintiffs and their predecessors in title obstructed the enjoyment of the cart track and hence, the father of the 5<sup>th</sup> defendant filed a suit in O.S.No.182 of 1999 before the District Munsif Court, Rasipuram seeking for the relief of permanent injunction. The father of the plaintiffs also filed the suit in O.S.No.198 of 1999 with respect to a portion of the property in S.No.422/1B. Both the suits were tried together and the suit filed by the father of the 5<sup>th</sup> defendant was decreed and it was also confirmed in appeal in A.S.No.17 of 2008. The decree passed by the trial Court was



marked as Ex.A9 and the Judgment and Decree passed in the appeal was marked as Exs.B1 and B2. These defendants therefore, contended that the plaintiffs have intentionally concealed about the earlier suits and are claiming for an exclusive right over the property in S.No.422/1B and thereby, preventing the 4<sup>th</sup> and 5<sup>th</sup> defendants from using the cart track. The 4<sup>th</sup> and 5<sup>th</sup> defendants therefore sought for the dismissal of the suit.

6.Both the Courts below on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held against the plaintiffs and the suit was dismissed. Aggrieved by the same, the plaintiffs have filed the Second Appeal before this Court.

7.Heard Mr.C.Prakasam, learned counsel appearing on behalf of the appellants, Ms.E.Indhumathi, learned Government Advocate appearing on behalf of the respondents 1 to 3 and Ms.Jeenath Begum, learned counsel appearing on behalf of the respondents 4 & 5.

8.The dispute in the present case is confined to the lands comprised in S.No.422/1B. According to the plaintiffs, S.No.422/1B consists of a total extent of 23½ cents and out of the same, 9 cents was utilized for cultivation along with the cultivation made in the patta lands of the plaintiffs and the remaining 14½ cents was used as a pathway and cart track to reach the patta lands of the plaintiffs. According to the plaintiffs, they have been using the lands in S.No.422/1B for more than 45 years. Thereby, the plaintiffs were claiming the right and title over the lands by way of adverse possession.

9.Both the Courts below took into consideration, the Commissioner's Report and sketch which were marked as Exs.C1 to C4. On going through the Report, it was found that the plaintiffs have actually encroached 6.5 cents on the eastern side of the cart track and the western side of their property and they have been cultivating in this 6.5 cents also along with their patta lands and they have put up a revetment. Thus, both the Courts found that the plaintiffs were not cultivating to an extent of 9 cents in S.No.422/1B as claimed by the plaintiffs.

10.Insofar as the enjoyment of the cart track is concerned, both the Courts found that the cart track has been categorized as a cart track poramboke and it belonged to the Government. While dealing with the same, both the Courts found that the plaintiffs had concealed about the earlier suit that was filed by the father of the 5<sup>th</sup> defendant who was claiming a right of usage of the very same cart track and which was obstructed by the father of the plaintiffs. A suit came to be filed in



O.S.No.182 of 1999 and the competent civil court found that the 4<sup>th</sup> and 5<sup>th</sup> defendants have a right to use the cart track and enjoined the father of the plaintiffs from interfering with the same. This was further confirmed in appeal in A.S.No.17 of 2008. After considering the judgment of the competent civil court, both the Courts found that the plaintiffs cannot claim for exclusive possession and enjoyment of the cart track and claim title by way of adverse possession, since they are not in exclusive enjoyment of the cart track.

11.Insofar as the issue of adverse possession is concerned, both the Courts found that the description of the suit property as found in the schedule to the plaint was not in line with the property as was found in the report filed by the Advocate Commissioner. The Advocate Commissioner had measured the property with the help of the Surveyor and he had taken into account the survey and settlement register that was maintained by the authority while fixing the boundaries. Hence, both the Courts found that the very description of the property as stated in the plaint, disentitles the plaintiffs from claiming for any relief in the suit. While dealing with the issue of adverse possession, both the Courts found that the land in S.No.422/1B was being enjoyed by the adjacent land owners also and the ingredients that were required for claiming adverse possession was not proved by the plaintiffs and it was further held that the mere fact that the plaintiffs were enjoying an extent of 6½ cents along with their patta lands, by itself does not give any title to the plaintiffs. Accordingly, both the Courts concurrently held that the plaintiffs cannot claim for title over the lands in S.No.422/1B and accordingly, the suit was dismissed.

12.In the considered view of this Court, the findings were rendered by both the Courts below on appreciation of oral and documentary evidence and this Court does not find any perversity in those findings. In any event, no substantial questions of law are involved in this Second Appeal.

13.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

ssr



To

1. The Subordinate Judge,  
Rasipuram, Namakkal District.
2. The District Munsif Court,  
Rasipuram, Namakkal District.
3. The District Collector,  
Collectorate, Namakkal District,  
Namakkal.
4. The District Revenue Officer,  
Namakkal Town,  
Namakkal District.
5. The Tahsildar,  
Tahsildar Office,  
Rasipuram Town and Taluk.

Copy To

The Section Officer,  
V.R. Section,  
High Court, Madras - 104.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.18311

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.17699

+1cc to the Special Government Pleader(CS), High Court, Madras,  
S.R.No.18293

S.A.No.490 of 2014  
and M.P.No.1 of 2014

SJ(CO)  
RLP(13/04/2022)