



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE **T. RAVINDRAN**

Rev. Aplc(MD)No. 232 of 2019

in

S.A.(MD) No.39 of 2015

Kumaresan

S/o. Pooliah Thevar

... Petitioner/Appellant

Vs.

S. Muthulakshmi

W/o. Shanmuga Thevar

... Respondent/Respondent

Prayer: Review Application filed under Order 47 Rule 1 r/w 114 of CPC to review the judgment and decree passed in S.A.(MD) No.39 of 2015 dated 28.11.2018 on the file of this Hon'ble Court by allowing the review petition.

Prayer in SA(MD). 39/ 2015 :

Second Appeal filed under Section 100 C.P.C to set aside the Judgment and Decree passed in A.S.No.96 of 2012 on the file of learned Addl.Sub Court, Tirunelveli dated 10.09.2014 confirming the Judgment and Decree made in O.S.No.165 of 2010 on the file of the Principal District Munsif, Tirunelveli dated 17.07.2012.

For Petitioner : Mr. S. Kumar

For Respondent : Mr. Ananth C. Rajesh

JUDGMENT

Seeking to review the judgment and decree dated 28.11.2018 passed in S.A.(MD) No.39 of 2015, the Review Application has come to be laid by the petitioner.

2. The SA(MD) No.39 of 2015 has been preferred challenging the judgment and decree dated 10.09.2014 passed in A.S. No.96 of 2012, on the file of the Additional Subordinate Court, Tirunelveli, confirming the judgment and decree dated 17.07.2012, passed in O.S. No.165 of 2010, on the file of the Principal District Munsif Court, Tirunelveli.

3. The review applicant is the appellant in the abovesaid second appeal and the defendant in the trial court. The respondent/plaintiff has laid the suit for the relief of Permanent Injunction.

4. Considering the materials placed on record, it has been held by the courts below that the suit property is the natham

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poramboke belonging to the Government. Now, according to the plaintiff, the suit property has been in her possession and enjoyment and she would go to plead that the suit property has been in the possession and enjoyment of her father-in-law and after his demise, her husband and thereafter, her husband had executed the settlement deed qua the suit property in her favour on 14.05.2007. However, the suit property admittedly being the natham poramboke belonging to the Government, the abovesaid plea of the settlement deed put forth by the plaintiff did not find acceptance by this Court in the second appeal. However, the plaintiff has laid the suit claiming the relief of permanent injunction on the footing that the defendant without any entitlement is endeavouring to disturb her possession and enjoyment of the same. To sustain her claim of possession and enjoyment, the plaintiff would also project the building permit issued to her by the panchayat marked as Ex.A3 on 18.08.2008. Therefore, the courts below have rightly concluded that, on a perusal of Ex.A3 coupled with the evidence of the Panchayat Assistant examined as D.W.2, inasmuch as the suit property has been in the possession and enjoyment of the plaintiff, the building permit had been issued in her favour under Ex.A3. As above pointed out, the suit property being the natham poramboke land, according to the plaintiff, pending suit she had also been granted the patta qua the suit property marked as Ex.A4. Though Ex.A4 had come to be issued during the pendency of the suit, it has been held by all the courts that the requisition for the grant of patta has been made by the plaintiff during the year 2009 itself, after considering that only, during the course of the suit, the patta had come to be issued in her favour. Therefore, considering the possession and enjoyment of the suit property by the plaintiff, it was held that the Government had also decided to grant the patta in favour of the plaintiff and therefore, proceeded to hold that Ex.A4 patta would also justify the claim of the plaintiff that she is in the possession and enjoyment of the suit property as put forth by her.

5. The only contention raised by the defendant is that, he has been using the suit property as an access to reach his property lying on the western side. In this connection, he is mainly relied upon the panchayat resolution dated 15.08.2008 marked as Ex.X1. However, though it is found that by way of the abovesaid resolution, the panchayat had held that the suit property should be used for public purpose, however, subsequent to the same, the same panchayat had proceeded to issue the building permit in favour of the plaintiff on 18.08.2008 under Ex.A3. Therefore, the courts have determined that Ex.X1 would not, in any manner, undermine or affect the plaintiff's case and inasmuch as the plaintiff has been in the possession and enjoyment of the suit property over a long period of time, as put forth by her, recognising her possession and enjoyment, the building permit had been issued in her favour and also the patta had also been issued by the Government. Considering the abovesaid



factors, the courts below as well as this Court in the second appeal have upheld the possession and enjoyment of the plaintiff qua the suit property.

6. Inasmuch as the Government is not endeavouring to disturb the plaintiff's possession and enjoyment of the suit property and it is only the defendant who had endeavoured to disturb her possession, accordingly, it was noted that the plaintiff is not necessitated to implead the Government as a party in the proceedings. Considering the fact that the suit property is the Government property and also the patta had been issued in favour of the plaintiff vide Ex.A4 and the plaintiff having also established her possession and enjoyment of the suit property and the defendant having failed to establish his claim of possession and enjoyment of the suit property, all put together, the courts have held that there is no necessity on the part of the plaintiff to seek the relief of declaration of the suit property.

7. Considering the abovesaid factors, it is noted that the courts below as well as this Court in the second appeal by considering all the points raised by the parties in all aspects, had rightly proceeded to uphold the plaintiff's case.

8. In the Review Application, the defendant has only taken the pleas already raised by him that the courts have failed to consider the resolution of the panchayat marked as Ex.X1. However, as above discussed, when the courts below as well as this Court in the second appeal have considered the effect of Ex.X1 resolution of the panchayat viz-a-viz the building permit given to the plaintiff subsequent thereto under Ex.A3 and also the issuance of patta in favour of the plaintiff by the Government under Ex.A4, all put together, came to the conclusion that it is only the plaintiff who has been in the possession and enjoyment of the suit property, therefore, the contention of the review applicant that the resolution of the panchayat marked as Ex.X1 has not been considered by the courts below as well as this Court in this second appeal merits no acceptance.

9. By way of the review application, the defendant cannot be allowed to agitate the points, which were already put forth by him, considered and decided by the courts. No sufficient reason has been projected by the applicant to review the judgment in question and also the review applicant has not placed any material to show that the impugned judgment is bad on account of the mistake or error apparent on the face of the record. When the contention raised by him in the review application has already been considered and determined by the courts including this Court in the second appeal, it is evident that none of the parameters for entertaining the review application as provided under Order 47 Rule(1) CPC had been established by the review applicant and in such view of the matter,



the review application does not merit acceptance.

10. In conclusion, the Review Application is dismissed with costs. Consequently connected miscellaneous petition, if any, is closed.

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Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bga

TO

1.The Additional Subordinate Judge,
Tirunelveli.

2.The Principal District Munsif,
Tirunelveli

+1 CC to M/s.ANANTH C.RAJESH, Advocate (SR-1300[F] dated
20/01/2021)

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SSS (CO)

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