



S.A.No.578 of 2007 & M.P. No.1 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.578 of 2007

and

M.P. No.1 of 2007

Mohamed Rafiq

...Appellant

Vs.

The Panchayat Board
Thirukkalacheri
rep. by its President
Thirukkalacheri
Tranqubar Taluk
Nagapattinam District.

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 25.10.2006 passed in A.S. No.78 of 2006, on the file of the Principal Subordinate Judge, Mayiladuthurai, reversing the decree and judgment dated 28.02.2006 passed in O.S. No.141 of 2004, on the file of the District Munsif Court, Sirkali.

For Appellant : Mr. A. Muthukumar

For Respondent : Dr. S. Surya

Additional Government Pleader.



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JUDGMENT

The appellant is the plaintiff in O.S. No.141 of 2004 on the file of the District Munsif Court, Sirkali (initially filed before the Principal Subordinate Court, Mayiladuthurai, and numbered as O.S.No.61/2003 and subsequently transferred to the file of District Munsif Court, Sirkali). He filed the suit for a permanent injunction restraining the defendant, namely, the The Panchayat Board, Thirukkalacheri, represented by its President, from interfering with his possession over the suit property morefully described in the plaint as a land in R.S. No.133, Thoppu Poromboke of Thirukkalacherry Village, Tranquebar Taluk, Mayiladuthurai district, measuring 72 cents within the boundaries stated therein.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



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3.The brief facts of the case of the plaintiff in nutshell are as follows:

- 1) The suit property was originally in the possession of Thandavaraya Pathar and Arunachala Mudaliar and they were granted 2C patta for enjoying the trees in the property.
- 2) Subsequently, they conveyed their right over the same in favour of one Fathamuthu Ammal, wife of Mohamed Abubakker Ravuthar under two registered sale deeds dated 13.12.1943 (Ex.A1 and Ex.A2).
- 3) Fathamuthu Ammal was in enjoyment of the suit property with the trees and after her death, her daughter Mariyamul Azia was in possession of the suit property.
- 4) Mariyamul Azia also died and her son Mohamed Rafiq (the plaintiff) is in possession of the suit property.
- 5) During December 2002, the Panchayat Board, Thirukkalacheri (the defendant) measured the suit property with the help of the taluk surveyor on the ground that the house put up by the plaintiff is on a tank belonging to the Panchayat board. However, it was



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- 6) There are 7 mango trees and bamboo clusters in the suit property.
- 7) The plaintiff's grandmother was issued B memo notice by the Government and in such circumstances the defendant Panchayat Board does not have any right over the suit property.
- 8) Since the defendant is preventing the plaintiff from enjoying the income from the trees in the suit property and also from constructing a house, he is constrained to file a suit for permanent injunction.

4.The suit was resisted by the defendant on the following grounds :

- i. The suit property is a Government land and it was handed over to the Panchayat Board, Thirukkalacheri, during the year 1954.
- ii. The defendant has been enjoying the income from the trees and the suit filed by the plaintiff is liable to be dismissed.
- iii. The defendant is also taking steps to construct an overhead tank in the suit property.



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5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. "Whether the plaintiff is in possession of the suit property?
- ii. Whether the plaintiff is entitled for a permanent injunction as prayed for by him?
- iii. To what relief the plaintiff is entitled?"

6. In the trial Court, the plaintiff examined himself and two other witnesses and marked Ex.A1 to Ex.A11. On the side of the defendant, one witness was examined and Ex.B1 and Ex.B2 were marked. Ex.X1 and Ex.X2 were also marked through Mr. S.Sambandam (P.W.3), Village Administrative Officer, Thirukkalacheri Village.

7. After full contest, the learned trial court Judge decreed the suit filed by the plaintiff vide her decree and judgment dated 28.02.2006, aggrieved over which, the defendant filed an appeal in A.S. No.78 of 2006 before the Principal Subordinate Court, Mayiladuthurai. The learned Principal Subordinate Judge, Mayiladuthurai, after analysing the



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oral and documentary evidence adduced on both sides held that the plaintiff has been in possession only in respect of 26 cents in Survey No.133 of Thirukkalacheri Village, and therefore, remitted the matter back to the trial court for appointing an Advocate Commissioner to note down the exact area in which the plaintiff is in possession, vide his decree and judgment dated 25.10.2006.

8. Now the present second appeal is filed by the plaintiff and the same is admitted on the following substantial questions of law.

- 1) *"Whether the first appellate Court was justified in placing reliance on Ex.A3 alone in giving a finding that the plaintiff is entitled to the relief only to an extent of 26 cents and not to the entire extent of 72 cents?"*
- 2) *"Whether the first appellate court was not legally justified in remanding the matter to the trial court ignoring the evidence available on record for carving out the said 26 cents of land and pass judgment accordingly?"*



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9. Heard Mr. A. Muthukumar learned counsel for the appellant and Dr. S. Surya, Additional Government Pleader for the respondent.

10. Mr. A. Muthukumar, learned counsel for the appellant contended that the B memo notice issued in favour of Fathamuthu Ammal during the year 1968 clearly shows that the area under the occupation of Fathamuthu Ammal is 190 x 135 sq. ft and that the trial court had taken this into consideration and had granted a decree in favour of the plaintiff in respect of the entire suit property and on the other hand, the first appellate court had held that the plaintiff is in possession of only 26 cents of land. He therefore prayed for allowing the present appeal.

11. Per contra Dr. S. Surya, learned Additional Government Pleader for the respondent contended that as per Ex.B1 and Ex.B2, the suit property was handed over to the Panchayat Board, Thirukkalacheri Village, even during the year 1958 and that on the date of filing of the suit, the plaintiff was not in possession of the suit property. According to



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her the panchayat board is taking steps to construct an overhead tank in the suit property.

12. At the outset, it may be observed that the plaintiff even in his plaint had admitted that the suit property absolutely belonged to the Government. According to him, B memo notices were issued to his mother Mariyamul Azia and his grand mother Fathamuthu Ammal and that after the death of his mother he has been in possession and enjoyment of the suit property. His another contention is that the suit property was originally in possession of Thandavaraya Pathar and Arunachala Mudaliar, who transferred their right in respect of the suit property in favour of Fathamuthu Ammal during the year 1943 through two registered sale deeds dated 13.12.1943 (Ex.A1 and Ex.A2).

13. In order to establish his possession over the suit property, the plaintiff relied on his evidence as well as the evidence of P.W.2 and P.W.3. He also marked Ex.A1 to Ex.A11. Out of these documents the kist receipts Ex.A5, Ex.A6, Ex.A10 and Ex.A11 are all photostat copies.



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These documents are not useful to the case of the plaintiff since in kist receipts survey number and extent of land would not be indicated. In such circumstances, it is not known as to how Mr.S.Sambandam (P.W.3), the Village Administrative Officer of Thirukkalacheri Village, has deposed that these kists receipts pertain to the suit property without bringing the relevant Registers. P.W.3 had brought only 'A' Register and a copy of relevant entry of the said register was marked as Ex.X1. In Ex.X1, Survey No.133 is shown as Government Thoppu. Ex.X2 is said to be a copy of village Adangal extract, in which it is shown that a building was constructed in Survey No.133 of Thirukkalacheri Village by the plaintiff. The fasli year is not indicated in Ex.X2. Therefore, Ex.X2 is also not useful to the case of the plaintiff to show that he is in possession of the suit property prior to and on the date of filing of the suit.

14. Similarly notices were issued under Tamil Nadu Act 5 of 1905 to Mariyamul Azia and Fathumuthu Ammal and the same were marked as Ex.A7 and Ex.A3 respectively. In Ex.A3 the linear measurement is shown as 190 x 135. Actually this is over written.



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However, the total extent is written as 26 cents below 190 x 135.

Ex.A7 is another notice issued under Tamil Nadu Act 5 of 1905 to Mariyamul Azia, wife of Abdul Ajiz. The year of issuance of the said notice has not been indicated in Ex.A7. Therefore Ex.A7 is least useful to the case of the plaintiff. Ex.A4 is an Adangal Extract issued by the Tahsildar, Tharangampadi. In the said notice, it is stated that Mariyamul Azia is in possession of 29 cents in Survey No.133. This was issued in the year 2003. The fasli year is mentioned as 1410, which corresponds to July 2000 - June 2001. The plaintiff did not file either the death extract of his mother Mariyamul Azia or the legal heirship certificate. The trial court, based on these documents, had held that the plaintiff is in possession of the entire suit property. It is also pertinent to point out that the Village Administrative Officer, Thirukkalacheri Village, had taken sides with the plaintiff and had gone to the extent of deposing that xerox copies of the kist receipts pertain to the suit property even without verifying the concerned Registers. The Village Administrative Officer, at the time of giving evidence in the trial court was aged 55 years and by now he would have attained superannuation.



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15. The first appellate court mainly based on Ex.A3, Ex.A4 and Ex.A7 notices issued in favour of Mariyamul Azia and Fathamuthu Ammal, had concluded that the plaintiff is possession of 26 cents in the suit property and had directed the trial court to appoint an Advocate Commissioner to note the exact area which is in possession of the plaintiff.

16. The transfer of right in favour of Fathamuthu Ammal during the year 1943 in respect of Survey No. 133 of Thirukkalacheri Village (Ex.A1 and Ex.A2) shows that Fathamuthu Ammal was given only the right to enjoy 9 Iluppai trees (Mahua) and one vila tree (wood-apple) standing in the suit property. Thus Fathamuthu Ammal has not been given enjoyment of the vacant site in Survey No.133. P.W.1 during the course of cross examination admitted that there are no mahua trees in the suit property and that they had withered out. Moreover, the plaintiff has not also adduced any documentary evidence to show that he, his mother and his grandmother were continuously enjoying the suit property by adducing any acceptable oral and documentary evidence. Both the



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courts below had mainly relied on the evidence of P.W.3, the Village Administrative Officer, who had also deposed that the suit property was handed over by the Government to the Panchayat Board, Thirukkalacheri Village during the year 1963 and that he is also one of the signatories in the proceedings (Ex.B1). Ex.B2 is the register showing maintenance of various Government lands in Thirukkalacheri Village. In Ex.B2, Survey No.133 is indicated and relying on this particular document, Dr. Suriya, learned Additional Government Pleader contended that the defendant has taken over possession of the suit property and that the plaintiff cannot seek permanent injunction against the defendant.

17. As observed earlier, the plaintiff has not filed any document to show that he is in possession of the suit property prior to or on the date of filing of the suit. Ex.A4 is for the year July 2000-June 2001 in which existence of mango trees are indicated. It is not the case of the plaintiff that he grew up mango trees in the suit property and what was conveyed to Fathamuthu Ammal was to enjoy the usufructs of vila trees (wood-apple) and Iluppai (mahua) trees. The plaintiff has not



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shown the Government as a party to the suit especially when he had admitted that the suit property is a Government land. The suit filed by the plaintiff appeared to be misconceived and a collusive one. The defendant on their part had examined the office assistant working in the Panchayat board to prove the documents Ex.B1 and Ex.B2 and this is viewed with disfavour and deprecated .

18. In view of these reasons stated by me, the appeal is liable to be dismissed. Thus, the substantial questions of law are answered accordingly.

19. In the result,

i. the second appeal is dismissed. No costs.

Consequently, connected civil miscellaneous petition is closed.

ii. the decree and judgment dated 25.10.2006 passed in A.S. No.78 of 2006, on the file of the Principal Subordinate Judge, Mayiladuthurai, and the decree



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and judgment dated 28.02.2006 passed in O.S. No.141 of 2004, on the file of the District Munsif Court, Sirkali, are set aside.

iii. The suit in O.S. No.141 of 2004 on the file of the District Munsif Court, Sirkali, is dismissed with costs.

17.04.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. The Principal Subordinate Judge, Mayiladuthurai
2. The District Munsif, Sirkali
3. The Section Officer, VR Section, High Court, Madras.

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