



S.A.No.1013 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1013 of 2022

1. E.Annamalai
2. E.Krishnan
3. E.Ramasamy
4. E.Kathiriyappan
5. E.Venkatesan @ Venkatesh Raja
6. Ponnammal
7. Karthick
8. Sundaresan
9. Sudhakar
10. Minor Sureka
represented by her next friend
and mother Ponnammal

.. Appellants

Vs.

1. C.Ravichandran
2. The Thasildar,
Taluk Office,
Krishnagiri.
3. The District Collector,
Krishnagiri District.

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree in A.S.No.24 of 2020 dated 30.09.2021 on the file of the Principal District Court, Krishnagiri by confirming the Judgment and Decree



S.A.No.1013 of 2022

dated 07.02.2020 granted in O.S.No.54 of 2015 on the file of the Additional Special Court, Krishnagiri and decree the suit by allowing the Second Appeal.

For Appellants : M/s. G.Selvi George

JUDGMENT

This second appeal has been filed as against the Judgment and Decree in A.S.No.24 of 2020 dated 30.09.2021 on the file of the Principal District Court, Krishnagiri, thereby confirming the Judgment and Decree dated 07.02.2020 granted in O.S.No.54 of 2015 on the file of the Additional Special Court, Krishnagiri.

2. The appellants filed a suit in O.S.No.54 of 2015 on the file of the Additional Special Court, Krishnagiri, for declaration, recovery of possession and mandatory injunction in respect of the suit property. The case of the appellants is that they owned patta land adjacent to the suit property comprised in S.No.331/1. Along with their patta land, they have occupied the suit poromboke land and enjoying the same for more than 100 years. While being so, the first respondent herein disturbed their enjoyment of the suit property and as such they filed a suit in O.S.No.169 of 2012 on the file of the District Munsif Court, in respect of the patta land comprised in S.No.269/1 owned by the first respondent herein. Due to which, there was a quarrel between them and as such



the respondents occupied the suit property and refused to vacate and handover vacant possession of the suit property.

3. The first respondent resisted the case of the appellants and filed a written statement stating that the property comprised in S.No.269/1 ad-measuring 1.10 acres, situated at Periya Sakkanavur was purchased by the first respondent by the registered sale deed dated 26.11.2010. The first respondent is in possession and enjoyment of the said property. The suit property which is a poromboke land is in possession and enjoyment of their ancestors for about 30 years.

4. On basis of the pleadings, the Trial Court framed the following issues:-

“1) Whether the 1st defendant had purchased Acre 1.10 S.No.269/1 and whether the 1st defendant is in possession and enjoyment of the said land and the suit property?

2) Whether the plaintiffs are entitled for declaration of possessory right and enjoyment right over the suit land as prayed for?

3) Whether the plaintiffs are entitled for deliver of possession as prayed for?

4) Whether the plaintiffs are entitled for Mandatory injunction as prayed for?

5) To what relief the plaintiffs are entitled?”

5. On the side of the appellants, they had examined P.Ws.1 to 4 and



marked Exs.A1 to 9. On the side of the respondents, they had examined D.Ws.1 to 3 and no document was marked. The Court document was marked as Ex.C1.

On a perusal of oral and documentary evidences, the Trial Court dismissed the suit and aggrieved by the same, the appellants preferred an appeal suit in A.S.No.24 of 2020, on the file of the Principal District Court, Krishnagiri and the same was also dismissed, confirming the Judgment and Decree passed by the Trial Court. Hence, this appeal.

6. The appellants raised the following substantial questions of law:-

“1. Whether the Courts below was right in dismissing the suit against the first defendant?

2. Whether the Courts below was right in rejecting the evidences of the plaintiff and their documents which proves their possession of the plaintiffs and their ancestors in respect of the suit property?

3. Whether the Courts below was right in rejecting the evidence given by P.W.1 to 4 who categorically spoke about the possession and payment of penalty charges to the Government in respect of suit property?

4. Whether the Courts below was right in holding that the plaintiffs have failed to produce possession documents for 100 years to prove their possession?

5. Whether the Courts below was right in dismissing to restore possession of the suit property from the first defendant who had trespassed into the property?”

7. The learned counsel for the appellants would submit that the Trial



S.A.No.1013 of 2022

Court concluded that the appellants failed to prove what extent of land was occupied by the respondents. At the same time, the respondents also failed to prove their possession and enjoyment of the suit property. Even then, both the Courts below dismissed the suit. There was previous enmity between them in respect of the patta land owned by the first respondent comprised in S.No.269/1 and due to which, the first respondent occupied the suit property which was in possession and enjoyment of the appellants.

8. A perusal of the records revealed that admittedly the suit property is classified as Poromboke land comprised in S.No.331/2 situated at Periya Sakkanavur Village, Krishnagiri Taluk. Adjacent to the suit property, the appellants owned their patta land comprised in S.No.331/1. The first respondent owned land comprised in S.No.269/1. In that regard, already a suit was filed in O.S.No.169 of 2012, on the file of the District Munsif Court, Krishnagiri District by the appellants herein as against the respondents. Though, initially it was allowed, subsequently in A.S.No.30 of 2017, on the file of the Principal Sub Court, Krishnagiri, allowed the appeal suit and the suit filed by the appellants came to be dismissed.

9. The Zonal Deputy Tahsildar was examined as P.W.2. He categorically



S.A.No.1013 of 2022

deposed that the land comprised in S.No.331/2 is classified as Podugal Poromboke and it is a dry land, ad-measuring 0.53 Ares. It is not in possession of the appellants and no B Memo was issued to the appellants. Therefore, the appellants failed to prove their case and both the Courts below rightly dismissed the suits and this Court finds no substantial questions of law involved in this case and is liable to be dismissed.

10. Accordingly, this Second Appeal is dismissed.

03.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn

G.K.ILANTHIRAIYAN,J.



WEB COPY



S.A.No.1013 of 2022

mn

To

1. The Principal District Court, Krishnagiri.
2. The Additional Special Court, Krishnagiri.

S.A.No.1013 of 2022

03.01.2023