



S.A.No.810 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 17.11.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

S.A.No.810 of 2023

and

C.M.P.No.25239 of 2023

R.Ganapathy

... Appellant/3<sup>rd</sup> Defendant

Vs

1.T.R.Srinivasan

..1<sup>st</sup> respondent/plaintiff

2.M.Paulraj

3.A.Yuvaraj

4.A.Yesuraj

5.A.Selva

6.T.Paulpandi

7.D.Pauldurai

... Respondents / Defendants

**Prayer:** Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 20.07.2023 made in A.S.No.3 of 2018 on the file of the Principal District Judge, Chengalpettu, confirming the Judgment and Decree made in O.S.No.489 of 2009 dated 17.10.2016, on the file of Sub-Court, Tambaram.



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For Appellant : Mr.P.Gunaraj  
For Respondents : M/s.R.Srividhya  
Caveator for R1

## **JUDGMENT**

The third defendant who unsuccessfully contested the suit for recovery of possession and damages is the appellant before this Court.

2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the trial Court.

3. The plaintiff has filed the suit O.S.No.489 of 2009 on the file of the Subordinate Judge, Tambaram. It is the case of the plaintiff that her sister Gomathy had purchased the property under a registered Sale Deed dated 14.03.1975 and she had been maintaining the same till the year 1990. Her husband passed away and thereafter, she was unable to take care of the suit schedule property. The plaintiff is the retired



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employee of TVS Company. During 1990, the plaintiff was transferred to Calcutta and thereafter to New Delhi and Bangalore. In the year 2007, the plaintiff retired from the Company and returned to Chennai. In the interregnum, the defendants, taking advantage of the absence of the owner from the suit schedule property, had encroached into the same and put up the residence illegally. They had also fraudulently obtained tax receipts from the Pammal Municipality and also the electricity connection. The plaintiff had lodged a complaint on 15.09.2008 before the Commissioner of Police, Chennai Sub Urban, Chennai 600 016, but no action was taken. The plaintiff has also obtained information from the Pamal Municipality under the Right to Information Act regarding the approval granted for putting up the construction. He had then come to know that no approval had been granted for construction. On receipt of the letter from the plaintiff, the Tamil Nadu Electricity Board had also taken steps to disconnect the electricity service of the defendants 1 to 3. Pending these proceedings,



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the fourth defendant has also entered into the possession of the property and put up a thatched shed. The plaintiff would submit that his sister Gomathy had settled the suit property on him under a settlement deed on 13.10.2008 and now, he is the sole and absolute owner of the suit property.

4. The plaintiff would submit that when he had attempted to measure and survey the suit property, the defendant had opposed the same and the surveyor had left without measuring and at the time of survey, the plaintiff also came to learn that the fifth defendant had also encroached into the suit property. Therefore, the plaintiff has come forward with the suit for recovery of possession and damages.

5. The defendants 1 and 3 had taken a stand that the property in question is a Government Poromboke land, in which the first defendant was in possession and enjoyment having purchased the same from one



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George Nadar who had transferred his possessory right. On the strength of this purchase, they had put up the construction. The plaintiff has attempted to evict the defendants from this portion in order to form a road for his own use. The defendant would submit that they are paying necessary tax in respect of the said property and therefore, the suit deserves to be dismissed.

6. The fourth defendant had filed a written statement *inter-alia* contending that one Kandasamy had purchased the property under a Sale Deed dated 15.04.1992. Thereafter, under a Sale Deed dated 30.06.1996, the said Kandasamy had sold the property to the fourth defendant's wife and they are in possession and enjoyment of the said property. They would further submit that the plaintiff has no right to question anything as it is his sister, who is the owner of the property.

7. The fifth defendant, on the other hand, would contend that he



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has nothing do with the suit property. His property is far away from the suit property. The plaintiff had approached this defendant to support him in the dispute with defendants 1 to 4. Since the fifth defendant had refused, the plaintiff bore a grudge against him and with a view to take revenge, he has been impleaded. He would further submit that the plaintiff who claims a right to plot No.7 is seeking relief against five persons in respect of the very same plot. However, no door number was mentioned by the plaintiff in the impleading petition. According to this defendant, his door number was 1 and he has been issued with house tax receipts for the last 10 years.

8. Based on the plaint and written statement the trial Court has framed the following issues :

- 1. Whether the plaintiff is entitled for the relief of recovery of possession of the suit property as prayed for?*



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2. *Whether the first defendant is liable to pay a sum of Rs.1,000/- per month towards damages for illegal use and occupation from the date of filing the suit till the date of handing over possession to the plaintiff as contended by the plaintiff?*
3. *To what other relief the plaintiff is entitled to?*

Thereafter, the following additional issues were framed:

1. *Whether the defendants are liable person to hand over the vacant possession of the suit property to the plaintiff as prayed for?*
2. *Whether the defendants are liable to pay damages to the plaintiff as prayed by him?*
3. *To what other relief the plaintiff is entitled to?*



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9. The plaintiff had examined himself as P.W1 and marked Exs.A1 to A27. On the side of the defendants, only the fifth defendant had examined himself as D.W1 and no documents were marked.

10.The defendants 2 to 4 had not only avoided the witness box but they had also not submitted their arguments. Ultimately by judgment and decree dated 17.10.2016, the learned Subordinate Judge, Tambaram was pleased to decree the suit. The property which the defendants claimed was a poromboke land, but they had not let in any evidence whatsoever to prove the said contention. On the contrary, the plaintiff has filed documents to prove that the property in question is a patta land and he has produced Exs.A5, A12, A13, A19, A20 and A21 to prove the same. The original documents of title has also been marked as Exs.A1 to A3. Ex.A4 is the settlement deed in favour of the plaintiff. Therefore, the learned Subordinate Judge had decreed the



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suit. Challenging the same, the third defendant has filed the appeal in A.S.No.3 of 2018 on the file of the Principal District Court, Kancheepuram District at Chengalpet. The appeal was dismissed by the learned Principal District Judge by her judgment and decree dated 20.07.2023, against which, the second appeal has been filed.

11. Heard Mr.P.Gunaraj, learned counsel for the appellant / 3<sup>rd</sup> defendant and M/s.P.Srividhya, learned counsel for the first respondent/Caveator and perused the materials available on record.

12. The learned counsel appearing on behalf of the appellant would base his arguments on the fact that the property in respect of which the suit is filed and the property in respect of which the appellant / third defendant is in possession are totally different and that in the guise of the suit, the plaintiff is attempting to dispossess the defendant from his property. A perusal of the written statement would indicate



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that the property is a poromboke land, but however beyond this, the defendants have not described the property in which they are in occupation, within four boundaries. That apart, the defendants have not entered the witness box and adduced oral evidence or submitted the documentary evidence to prove their case that the property in question is a poromboke land, which is totally unconnected with the suit property. On the contrary, the Courts below have found that when the Surveyor had visited the property for measuring the land, the defendants have not permitted the surveyor to measure the property. This contention has not been refuted by any of the defendants. The defendants who pleaded that they have purchased the property from different persons have not even produced the documents under which they claim a right to the property in which they are in possession. In the appellate Court, the appellant / the third defendant has filed a suit O.S.No.911 of 2010 on the file of the District Munsif, Alandur against the Electricity Board which he had later not pressed. Further, the



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construction which has been put up by the third defendant is unauthorized and the same is proved by Exs.A29 and A30 which were filed in the appellate Court. The documents would show that the third defendant is in unauthorized occupation of the suit property. The third defendant has not adduced any oral or documentary evidence to disprove these documents. Therefore, the plaintiff has proved that the defendants have illegally occupied the suit property. The Courts below have concurrently held that the appellant is in illegal occupation of the suit property and I see no reason to interfere with the same. The appellant has not made out any substantial question of law warranting interference of this Court. Accordingly, the Second Appeal is dismissed. No costs. C.M.P. is closed.

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Index: Yes/No  
Speaking order/non-speaking order  
srn

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**P.T.ASHA, J.,**

srn

To

1. The Principal District Judge,  
Chengalpettu.
2. The Sub-Court,  
Tambaram.
3. The Section Officer,  
V.R.Section,  
High Court, Madras.

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and  
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