



S.A.Nos.752 & 759 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

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

S.A.Nos.752 & 759 of 2018

J. Tajudeen

...Appellant in both the appeals

Vs.

1. Raja Reddy

2. J. Mohammed Zackaria

... Respondents in both the appeals

Common Prayer : Second Appeals filed under Section 100 CPC, 1908 against the decree and judgment dated 23.11.2017 passed in A.S. No.33 of 2011 and A.S. No.89 of 2010, on the file of the II Additional District Judge, Poonamallee, upholding the decree and judgment dated 24.02.2010 passed in O.S. No.501 of 2000 and O.S. No.25 of 2004, on the file of the Subordinate Judge, Poonamalle.

For Appellant : Mr. N. Nithianandam (in both appeals)

For R1 : Mr. M. Stalin (in both appeals)

R2 : given up in both appeals

COMMON JUDGMENT

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The appellant is the 2nd plaintiff in O.S. No.501 of 2000 on the file of the Subordinate Judge, Poonamallee. He along with one J.Mohammed Zackaria, filed the said suit for a permanent injunction restraining the 1st respondent/defendant from interfering with his peaceful possession and enjoyment of the suit property, which is morefully described in the plaint as a Government land, which is adjacent to the properties of the plaintiffs as indicated in the plaint schedule as Item No.1 and 2, in Natham Survey No.425 of Mugappair Village, Saidapet Taluk, Chengai M.G.R. District, within the boundaries stated therein.

2. The 1st respondent/defendant in O.S. No.501 of 2000 filed a suit in O.S. No.25 of 2004 against the plaintiffs in O.S. No.501 of 2000 before the same Court for a Mandatory injunction directing the defendants (in O.S. No.25/2004) to remove all the barbed wire fencing put up by them in the B schedule layout road and also to remove the name board "Zackaria Mansil" on the plaintiff's (in O.S. No.25/2004)



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gate, which is described in the plaint as 'C' schedule plot. He also prayed for a permanent Injunction restraining the plaintiffs in O.S.No.501 of 2000 from interfering with his peaceful possession and enjoyment of 'C' schedule property. The 'C' schedule property is described as a plot of land comprised in Survey No.420 bearing plot No.189 in Golden George Nagar with a compound wall and a main gate within the boundaries stated therein. The "B" schedule property is described in the plaint as a land in Survey No.425 in Mogappair Village, Ambattur Taluk.

3. 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 appeal would also be indicated.

4. Since the disputed property as well as the parties are one and the same in both the suits, the learned trial court judge tried both the suits jointly and recorded the evidence in common in O.S. No.501 of 2000.



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5. The case of the plaintiffs in O.S. No.501/2000 in nutshell is as follows:

- i. The plaintiffs (1) J.Mohamed Zackaria and (2) J. Tajudeen, are the owners of the land in Survey No.425 of Mogappair Village, Chennai, measuring an extent of 2795 sq. ft.
- ii. They purchased the said land from one L. Selvam under two registered sale deeds dated 31.10.1996 (Ex.A1 and Ex.A2) and ever since the date of purchase, they are in possession and enjoyment of the same by putting up a pucca compound wall.
- iii. Originally the land belonged to one Jayaram Naicker, who executed 4 settlement deeds in favour of the plaintiffs' vendor L.Selvam. In fact, Jayaram Naicker's wife Rukmaniammal purchased 0.77 cents during the year 1936 through a registered sale deed dated 21.08.1936 (Ex.A12). Rukminiammal predeceased her husband Jayaram Naicker. L.Selvam is the adopted son of Jayaram Naicker and Rukminiammal.

- iv. The plaintiffs' vendor L.Selvam was also in possession of one



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- v. All the lands in possession of L.Selvam were conveyed to the plaintiffs and they are in possession and enjoyment of the entire property including one ground of Government land.
- vi. According to the plaintiffs, the defendant Raja Reddy, who is highly influential in the locality is attempting to interfere with the plaintiffs' possession and enjoyment of the said one ground of land belonging to the Government, which is in possession of the plaintiffs.
- vii. In fact, the Government had issued notices (Ex.A9 to Ex.A11) under Act III Part 7 of the Tamil Nadu Land Encroachment Act 1905, recognising the plaintiffs' possession over the said Government land. Hence the suit.

6. The brief averments of the plaint filed by the 1st respondent Raja Reddy/ plaintiff in O.S. No.25/2004 is as follows:

- i. The plaintiff is the owner of a plot in Golden George Nagar, which is described as a plot of land in Survey No.420 bearing plot No.189 ('C' schedule property)



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- ii. On the southern side of the plaintiff's plot, there is a road and the same is described as "D" schedule property in the plaint.
- iii. The plaintiffs in O.S.501/2000 own a plot of land on the eastern side of plaintiff's plot.
- iv. The plaintiff is enjoying his property ('C' schedule property) by constructing a compound wall all around and also put up a grill gate.
- v. The plaintiffs in O.S. No.501/2000 wanted to have access to their properties through the 'B' schedule (as described in the plaint in O.S.No.501/2000) property layout road. Since the plaintiff did not permit them to do so, they filed the suit in O.S.No.501/2000 by falsely claiming that the 'D' schedule (as described in the plaint in O.S. No.25/2004) property, which is a road, is a Government land and that their vendor was in possession and enjoyment of the said strip of land.
- vi. In the suit in O.S. No.501/2000, an Advocate commissioner was appointed and he inspected the suit property on 16.10.2000.
- vii. The plaintiffs in O.S. No.501/2000, with a view to harass the 1st



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respondent Raja Reddy, illegally removed the plaintiff's (in O.S. No.25/2004) name slab from the compound wall and fixed a board with an inscription on it as "Zackaria Mansil". Thus they have caused damage to the property of the plaintiff (1st respondent in the present Second Appeal). Therefore, they are liable to pay compensation of Rs.3,03,000/- to him. He also prayed for a Mandatory Injunction directing the defendants to remove the fencing which had been put up on the 'B' schedule layout road and also to remove the name board "Zackaria Mansil", which is on the compound gate of the plaintiff.

7. In both the suits, the written statements filed by the respective parties are similar to that of the pleadings in the respective plaint and therefore the same are not extracted.

8. On the basis of the above pleadings, the following issues were framed by the trial court Judge.

In O.S.No.501/2000



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- i. Whether the plaintiffs are entitled for Permanent Injunction as prayed for by them?
- ii. To what relief are the plaintiffs entitled?

In O.S. No.25/2004

- i. Whether the plaintiff is entitled for a compensation as prayed for by him?
- ii. Whether the plaintiff is entitled for a Mandatory Injunction and Permanent Injunction as prayed for by him?
- iii. Whether there is no cause of action for filing the suit.
- iv. To what relief the plaintiff is entitled?

9. In the trial court, the 1st plaintiff in O.S. No.501/2000 examined himself as P.W.1 and one M. Loganathan as P.W.2 and marked Ex.A1 to Ex.A13. The plaintiff in O.S. No.25/04 examined one Venkat Reddy as D.W.1 and marked Ex.B1 to Ex.B7. An Advocate Commissioner was appointed by the trial court and he marked his report and plan as Ex.C1 and Ex.C2.

10. As already observed, the suits were tried jointly by the trial



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court judge and after full contest, the trial court judge dismissed the suit filed by the plaintiffs in O.S. No.501/2000 and decreed the suit in O.S.No.25/2004, vide his decree and judgment dated 24.02.2010, on the following grounds:

- i. The disputed property as admitted by both the parties are 40' x 60' land. This is also indicated by the Advocate Commissioner in his plan as ABCD.
- ii. The contention of the plaintiffs in O.S. No.501/2000 is that they are in enjoyment of this particular portion of land, as is seen from Ex.A5 to Ex.A11. On the other hand, the plaintiff in O.S.No.25/2004 states that this property is a road segment. Though the plaintiffs in O.S. No.501/2000 contended that the disputed property is abutting survey No.425, the FMB sketch Ex.A13 does not show the existence of such a Government land in Survey No.425.
- iii. The plaintiffs in O.S. No.501/2000 have not also adduced any revenue records to show that the disputed property is a Government land. Ex.A9 to Ex.A11 are notices issued only in



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respect of village natham and village natham is not the Government land. On the contrary, the sale deed Ex.B2 shows existence of a road on the southern side. The engineer who had assessed the property of the plaintiff in O.S. No.25/2004, in his report Ex.B3 had shown the existence of the road on the southern side.

- iv. The plaintiffs in O.S. No.501/2000, after filing the suit, had illegally trespassed into the property of the defendant (plaintiff in O.S. No.25/2004), for which a police complaint was also lodged by the latter and the copy of the same is marked as Ex.B4.
- v. The disputed portion of land is in survey No.420 and it is a patta land and hence the suit filed by the plaintiffs in O.S. No.501/2000 is liable to be dismissed.
- vi. The plaintiff in O.S.No.25/2004 had proved his contention by way of adducing acceptable evidence and hence the suit filed by him is decreed with costs.

11. Aggrieved over the decree and judgment passed by the trial



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court, the plaintiffs in O.S. No.501/2000 filed two appeals in A.S.Nos.89/2010 and 33/2011 before the II Additional District Court, Poonamallee. The learned II Additional District Judge, Poonamallee, after analysing the oral and documentary evidence adduced on both sides, dismissed the appeals filed by the plaintiffs in O.S. No.501/2000, vide her decree and judgment dated 23.11.2017.

12. Now the present Second Appeals are filed by the 2nd plaintiff in O.S. No.501/2000 and are admitted on the following substantial questions of law.

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- i. "Whether the suit for mandatory injunction filed by the respondent/plaintiff without praying for declaration of title is maintainable in law?
- ii. Whether the court below erred in decreeing the suit vide in O.S.No.25/2004 filed praying for mandatory injunction in which the plaintiff has not established better title to the disputed 'C'



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S.A. No.759 of 2018

- i. "Whether the courts below erred in dismissing the suit vide in O.S.No.501 of 2000 filed praying for permanent injunction, when the plaintiff is admittedly in possession of the disputed property ("C" Schedule in O.S. No.25/2004)?
- ii. Whether the court below ought to have allowed the petition filed for Receive Additional documents vide in I.A. No.646 of 2017 in A.S.No.33 of 2011 instead of dismissing the same?"

13. Heard Mr. N. Nithianandam, learned counsel for the appellant and Mr. M. Stalin, learned counsel appearing for the first respondent.

14. Mr. N. Nithianandam, learned counsel for the appellant contended that since the trial court had made an observation that the plaintiffs in O.S. No.501/2000 have not adduced any revenue records to show that the disputed portion of the land belongs to the Government,



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they filed an application before the first appellate court in I.A.No.646/2017 for presenting additional evidence such as Town Survey Land register, FMB sketch, adangal extract, etc. They also examined the Tahsildar, Ambattur, apart from examining the Advocate Commissioner as witness. According to him, the first appellate court did not consider those documents though they were marked as exhibits. He also drew the attention of this Court to the evidence of Mrs.Varalakshmi, Tahsildar, Ambattur Talul, who had deposed that survey No.420 has been shown as Government land in the Village Accounts and that patta was not issued in favour of any person. This aspect was not at all considered by the first appellate court. According to him, both the courts below had wrongly held that the plaintiffs in O.S. No.501/2000 are not in possession of the disputed portion of land and that they have encroached upon the defendant's land which is shown as 'D' schedule property in O.S. No.25/2004. It is his contention that the first respondent had filed the suit in O.S.No.25/2004 only in the year 2004 by contending that the plaintiffs in O.S.No.501/2000 had trespassed into his land and put up a name board on his gate. It is his contention that the first respondent did



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not file the said suit within 3 years from the date of alleged trespass made by the appellant and both the courts below had believed the version of the first respondent merely on the ground that the appellant did not prove his possession over the suit property. In fact the first respondent had not established that there is a road segment as alleged by him on the southern side of his property and the decree and judgment passed by both the courts below in respect of O.S. No.25/2004 are totally erroneous. It is also the contention of the counsel for the appellant that the first respondent had sold his property in favour of the third party through a registered sale deed even during the year 2011 and that the first respondent does not have any interest over the suit property and in order to substantiate his contention he filed a copy of the sale deed which shows that the first respondent Raja Reddy had sold his property in favour the third party. He therefore, prayed for allowing the present second appeals.

15. Per contra, Mr. M. Stalin, learned counsel appearing for



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the first respondent drew the attention of this court to the plaint schedule in O.S. No.501/2000 and contended that the suit property has not been properly described by the appellant. It is his further submission that both the courts below had analysed the oral and documentary evidence adduced on both sides and had come to a definite conclusion that the appellant had not established his contention and on the other hand the first defendant is entitled for a permanent injunction and mandatory injunction as prayed for by him. According to him, when the courts below had, after analysing the oral and documentary evidence, rendered concurrent findings, the scope of this court for interfering with the same under Section 100 CPC is limited. It is his specific contention that the FMB sketch of Survey No.425 does not show the existence of a Government land as alleged by the appellant and that the appellant did not adduce any acceptable revenue records to show that the Government land exists on Survey No.425. He also drew the attention of this court to the sale deed Ex.A1 and Ex.A2 and contended that the southern side boundary in both the sale deeds are indicated as Golden George Nagar and not the Government land. He therefore, prayed for the dismissal of



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the present second appeals.

16. The plaintiffs (1) J.Mohamed Zackaria and (2) J. Tajudeen, had filed the suit in O.S. No.501/2000 for a bare injunction against the defendant Raja Reddy. Similarly Raja Reddy filed the suit in O.S.No.25/2004 against the same plaintiffs. Both the suits were tried jointly. It is true that the plaintiffs in O.S. No.501/2000 had not described the disputed portion of land in their plaint. However, the Advocate Commissioner appointed by the trial court had filed his report and plan (Ex.C1 and Ex.C2), in which the disputed portion of land is indicated as ABCD and there is no dispute with regard to the identification of the disputed land. According to the first respondent Raja Reddy, there is a road segment on the southern side of his property. In order to substantiate the same, he had mainly relied on the evidence of one Venkat Reddy (D.W.1) and a rough sketch showing the plan of Golden George Nagar (Ex.B1). He also relied on the valuation report (Ex.B3) of the engineer, who had indicated the existence of road on the southern side of his property. Ex.B2 is a sale deed dated 22.05.1987 in



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respect of the first respondent's property, in which the southern side boundary is indicated as a road.

17. It is clear from the pleadings made by the plaintiffs in both the suits that the disputed portion is only with regard to the property indicated as ABCD in the Advocate Commissioner's plan. The plaintiffs in O.S.No.501/2000 state that this portion of land is a government land and that they have been in possession and enjoyment of the same as evidenced by Ex.A5 to Ex.A11, whereas the contention of the plaintiff in O.S. No.25/2004 is that this portion is a road segment. Of course, in the sale deed of the first respondent, the southern side boundary is described as road. But it is to be noted that the property of the plaintiffs and the defendant situate in Golden George Nagar. The vendor of Raja Reddy (first respondent) was not examined as a witness to show that there exists a road as shown in the sale deed Ex.B2. Moreover, the plaintiff in O.S. No.25/2004 (1st respondent in the present appeals) did not file the approved layout plan to show that there was a road on the southern side of his property. Surprisingly, the disputed property, which is shown as



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the 'B' schedule property in O.S.No.25/2004 in the plaint is shown as in Survey No.520. Learned counsel for the appellant contended that no revenue records were produced by the 1st respondent (plaintiff in O.S.No.25/2004) to show that the said survey Number 520 is on the southern side of his property. On the contrary, the plaintiffs in O.S.No.501/2000 have adduced sufficient documentary evidence (Ex.B1 to Ex.B3) before the first appellate court showing that there is a Government land abutting their property and that the survey number of the said property is Old No.T.S.85/2 (New S.No.420). Tmt.Varalakshmi, Tahsildar, Ambattur Taluk had also deposed that in the Village Accounts Old Survey No.85/2 is (New S.No.420) indicated as Government land. It is the further submission of the learned counsel for the appellant that the police complaint (Ex.B4) given by the 1st respondent (plaintiff in O.S.No.25/2004) is only with regard to the removal of the name board but not in respect of the alleged encroachment made by the plaintiffs in O.S. No.501/2000 and this aspect has not at all been considered by both the courts below. There is force in the above contention.

18. Apart from this, the 1st respondent (plaintiff in



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O.S.No.25/2004) did not choose to examine himself as a witness to prove his various allegations made in the plaint. The person who was examined as D.W.1 by Raja Reddy (1st respondent) did not have any direct and personal knowledge and therefore, his evidence cannot be relied upon for any purpose. It is not also established by the 1st respondent (plaintiff in O.S. No.25/2004) by adducing acceptable oral and documentary evidence that the disputed portion of land is actually a road segment. Moreover, both the courts below had concurrently held that the plaintiffs in O.S. No.501/2000 have not proved their case. They did not go into the case of the plaintiff in O.S.No.25/2004 though both were tried jointly. It is well settled that the onus of proof in any civil suit lies with the plaintiff and he cannot pick holes in the defendant's case. However, in the present case, there are two suits tried jointly and the plaintiffs in O.S. No.501/2000 become the defendants in O.S.No.25/2004. But both the courts below have focused on the plaintiffs in O.S. No.501/2000 and did not advert their attention to the assertions made by the plaintiff in O.S. No.25/2004 which tilts the balance in the fact finding mission. No doubt it is true that the plaintiffs in O.S.No.501/2000 had not shown in the plaint as to where



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exactly the Government land situate. However, the plaintiffs in O.S. No.501/2000 have examined the Tahsildar, Ambattur Taluk, before the first appellate court, who had deposed that the disputed land is a Government land and that the old survey number of the same is 420. During the course of cross examination, it was suggested to her by the plaintiff in O.S.No.25/2004 that in the revenue records the Survey No.420 is wrongly indicated as Government land and that it is only the patta land. This suggestion was strongly refuted by the Tahsildar. Though the plaintiffs in O.S. No.501/2000 had not described the suit property in their plaint, the defendant (1st respondent) had described the suit property in his plaint in O.S.No.25/2004 and the Advocate Commissioner has also marked the disputed land ABCD in his report and plan (Ex.C1 and Ex.C2). Therefore, there is no dispute with regard to the identification of the suit property. The first appellate court had dismissed the I.A.No.646/2017 merely on the ground that the documents adduced by the appellants are not necessary for deciding the dispute between the parties. The reason for coming to such a conclusion has not been indicated in the judgment rendered by the first appellate court. Moreover,



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the plaintiff in O.S. No.25/2004 (1st respondent) had not established that there exists a road on southern side of his property by way of adducing acceptable evidence. In the circumstances, the matter has to be remitted back to the first appellate court for considering the documents adduced along with I.A.No.646/2017. Since the matter is remitted back to the first appellate court, the substantial questions of law are not answered.

19. In the result,

- i. both the Second Appeals are disposed of. No costs.
- ii. The decree and judgment dated 23.11.2017 passed in A.S. No.33 of 2011 and A.S. No.89 of 2010, on the file of the II Additional District Judge, Poonamallee, and the decree and judgment dated 24.02.2010 passed in O.S. No.501 of 2000 and O.S. No.25 of 2004, on the file of the Subordinate Judge, Poonamallee, are set aside.
- iii. The matter is remitted back to the II Additional District Judge, Poonamallee, for considering the documents adduced on the side of



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WEB COPY the appellants in I.A. No.646/2017 and also the oral and documentary evidence adduced by the plaintiffs in O.S.No.501/2000 and O.S.No.25/2004.

23.06.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The II Additional District Judge, Poonamallee.
2. The Subordinate Judge, Poonamalle.
3. The Section Officer, VR Section, High Court, Madras.



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Pre-delivery judgment in
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