



S.A.(MD).No.16 of 2017

WEB COPY

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.16 of 2017
and
C.M.P.(MD)No. 358 of 2017

1. P.Veluchamy
2. P.Nagaiah

... Appellants

/Vs./

1. R.Savadallai
2. Senthil Murugan
3. The Tahsildar,
Vedasanthur Taluk,
Dindigul District.
4. The State of Tamil Nadu,
Represented by its the District Collector,
O/o. the Collectorate Office,
Dindigul, Dindigul District.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 07.01.2013 made in A.S.No.37 of 2012 on the file of the Sub Court, Vedasanthur, partly allowed the Judgment and Decree dated 29.04.2010 made in O.S.No.157



S.A.(MD).No.16 of 2017

of 2002 on the file of the District Munsif Court cum Judicial Magistrate, Vedsanthur, Dindigul District.

For Appellants : Mr.S.Rajasekar

For Respondents : Mr.H.Lakshmi Shankar, for R-1 & R-2

Mr.A.Kannan,
Additional Government Pleader, for R-3 & 4

JUDGMENT

This Second appeal is filed against the Judgment and Decree, dated 07.01.2013 passed in A.S.No.37 of 2012 on the file of the Sub Court, Vedsanthur, wherein the appeal was partly allowed. The first appeal was filed against the Judgment and Decree, dated 29.04.2010 passed in O.S.No.157 of 2002 on the file of the District Munsif Court cum Judicial Magistrate, Vedsanthur, Dindigul District, wherein the suit was dismissed.

2. The Plaintiffs are the Appellants and the Defendants are Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiffs and Defendants as per the ranking in the suit.



S.A.(MD).No.16 of 2017

WEB COPY

3. The plaintiffs had filed the suit for declaration and injunction and also to grant patta based on adverse possession against the Government and the same was dismissed. Against the dismissal, the plaintiffs have preferred an appeal in A.S.No.37 of 2012 and the same was partly allowed. Aggrieved over the same, the plaintiffs are before this Court.

4. The contention of the plaintiffs is that they are the owner of the lands situated in S.Nos.124 admeasuring 5.54 cents & S.No.125 1.20 cents for which patta is issued in favour of the plaintiffs. The plaintiffs' ancestors had purchased the properties through sale deed dated 01.03.1933 and hence the properties are their ancestor properties. Adjacent to the plaintiffs' patta lands, the government poramboku lands in S.No.128/B2 are available. The plaintiffs patta lands along with government poramboku lands are continuous and the plaintiffs were considering as single piece of land and was in possession and enjoyment by planting trees in the government poramboku lands and fencing the same along with their patta lands. The plaintiffs' family are in possession and enjoyment of the land for more than 100 years by paying 'B' memo.



S.A.(MD).No.16 of 2017

The defendants are having land adjacent to the plaintiffs' property which is situated in S.Nos.128/B1 to the total extent of 0.87.50 Ares.

5. The plaintiffs has sought declaration and injunction for the three items, namely S.No.124, S.No.125 and 128/B2. The Trial Court had dismissed the suit in entirety. However, on appeal, the First Appellate Court has granted declaration and injunction for S.No.124/2 and 125, thereby partly allowed the appeal. As far as S.No.128/B2 is concerned the First Appellate Court has dismissed the said appeal. Now the dispute is only to the property situated in S.No.128/B2 having larger extent. The specific contention of the plaintiffs is that they are in possession and enjoyment of the property situated in S.No.128/B2 based on 'B' memo. This Court is of the considered opinion that once 'B' memo is issued, the plaintiffs cannot claim adverse possession. The 'B' memo indicates that the plaintiffs are in permissive possession. Therefore, the claim of the plaintiffs that they are in adverse possession is erroneous and incorrect and their claim falls.



S.A.(MD).No.16 of 2017

WEB COPY

6. Admittedly, the said land in S.No.128/B2 is classified as 'Parai Poramboke', which belongs to the Government and therefore, the plaintiffs are not entitled for the relief of declaration. However, as far as relief of injunction is concerned, the same may be considered, since the plaintiffs are in possession of the property.

7. The defendants 1 & 2 are claiming pathway in the said land in S.No.128/B2. Since the land belongs to the Government, pathway cannot be declined. After creating 10 feet width pathway, the balance land the plaintiffs are entitled. However, it is made clear the plaintiffs are entitled to the balance land under B memo only. Therefore, the defendants 3 & 4 are directed to grant pathway to the defendants 1 & 2 and the other 3rd parties to use the same as pathway, which is shown in the diagram attached to this Judgment.

Land belongs to third parties	AB CD	S.No.128/B2 Government Poramboku land, the plaintiff is in in possession under B memo
1 st and 2 nd defendants' land In S.No.128/B1		S.No.124 Plaintiff's land
S.No.125 Plaintiff's land		



S.A.(MD).No.16 of 2017

WEB COPY

8. The pathway shall be created as stated supra. As far as the remaining land is concerned, the plaintiffs are not entitled to the relief of declaration, however, they are allowed to continue their possession based on the 'B' memo with a condition that the plaintiffs shall maintain the land for agricultural activities alone.

9. The Second Appeal is admitted on the 3rd substantial question of law. In view of the above discussion, the 3rd substantial question of law is held against the plaintiffs and the declaration is declined. However, the plaintiffs are permitted to be possession under B memo. The plaintiffs and the defendants 1 & 2 and other 3rd parties are permitted to use the land in 'ABCD' as pathway.

10. With the above observations, this First Appeal judgment is modified to the extent stated above and the second appeal is partly



S.A.(MD).No.16 of 2017

allowed. No Costs. Consequently, connected miscellaneous petition is closed.

24.11.2023

Index : Yes / No
NCC : Yes / No
KSA

TO:

1. The Sub Court,
Vedasanthur.
2. The District Munsif Court cum Judicial Magistrate,
Vedasanthur, Dindigul District.
3. The Tahsildar,
Vedasanthur Taluk,
Dindigul District.
4. The District Collector,
O/o.the Collectorate Office,
Dindigul,
Dindigul District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.16 of 2017

S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No.16 of 2017

Dated:
24.11.2023