



SA No. 467 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-09-2024

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 467 of 2010

1. PERUMAL(died)
2. CHITRA
3. KALAIYARASI
4. ASHOKRAJ
5. JAYAKODI

Sole appellant died. Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant vide order of this Court dated 01.02.2024 made in CMP.No.17671 of 2021 in S.A.No.467 of 2010 [GAMJ].

Appellant(s)

Vs

1. The District Collector
Perambalur, Perambalur Dist.
- 2.The Tahsildar
Sendurai, Sendurai Taluk.
- 3.Sendurai Panchayat Board
On Behalf Of The Executive Officer
And Commissioner, Sendurai,
Perambalur Dist.



Respondent(s)

PRAYER

This Second Appeal is filed under Section 100 of CPC read with Order XLII of CPC, 1908, challenging the judgment and decree dated 21.08.2009, made in A.S.No.32 of 2004, on the file of learned Additional District Judge, [Fast Track Court], Ariyalur, confirming the judgment and decree dated 28.09.1999 made in O.S.No.285 of 1996, on the file of the learned District Munsif Judge, Ariyalur.

For Appellant(s): Mrs.V.Srimathi

For Respondent(s): M/s.S.Suriya, AGP for R1 & R2
Mr.V.Srikanth for R3

JUDGMENT

This Second Appeal has been filed challenging the Judgment and Decree dated 21.08.2009 made in A.S.No.32 of 2004, on the file of learned Additional District Judge, [Fast Track Court], Ariyalur, confirming the Judgment and Decree dated 28.09.1999 made in O.S.No.285 of 1996, on the file of the learned District Munsif Judge, Ariyalur.

2. For the sake of convenience, the parties hereinafter are referred to as per their ranking before the trial Court.



3. Originally, the plaintiff filed the Suit in O.S.No.285 of 1996 before the District Munisf Court, Ariyalur, for the relief of permanent injunction against the defendants. The defendants 1 to 3 filed written statement denying all the averments made in the plaint. After perusing the records, the Trial Court dismissed the original suit by Judgment and Decree dated 28.09.1999. Aggrieved by the Judgment and Decree, the plaintiff has preferred an appeal in A.S.No. 32 of 2004 before the learned Additional District Judge, Fast Track Court, Ariyalur. After scrutinizing the relevant records, the First Appellate dismissed the appeal suit by judgment and decree dated 21.08.2009 directing that the defendants may evict the plaintiff from the suit property in the manner known to law. Challenging the concurrent findings, the plaintiff has preferred the present Second Appeal.

4. It is the case of the plaintiff that he has filed the earlier suit in O.S.No. 349 of 1993, in which, the defendants had filed written statement which was marked under Ex.A24 and Ex.A25 as per the order passed in IA.No. 34 of 2008 filed under Order 41 Rule 27(b) of the Code of Civil Procedure by



the appellant. Subsequently, a meeting was convened in which there was a compromise between one Sellamuthu and others in respect of subject matter in the meeting before the Tahsildar, Sendurai, by which they had given an undertaking that they will not evict the appellant/plaintiff from the suit property and subsequently, the plaintiff has withdrawn the earlier suit. It is the further case of the plaintiff that the present suit, which culminated into the instant appeal, has been filed on the basis of fresh cause of action and not on the previous cause of action. Learned Counsel for the appellant/plaintiff contended that the second respondent/Tahsildar attempted to evict the plaintiff from the suit property on 02.08.1996 and hence, a fresh suit has been filed and therefore, there is no bar as claimed by the respondent in filing a suit on a fresh cause of action. The appellant/plaintiff categorically stated in his chief examination with reference to Ex.A18 and Ex.A19 that some of the villages had given a notice to the extent that if the plaintiff is not evicted from the suit property, they will conduct fast as per Ex.A18, dated 29.09.1994.



5. According to the appellant/plaintiff, the suit property is the Natham House Poramboke and the respondents have no right over the suit property. He is in peaceful possession and enjoyment of the property and he is regular in paying the revenue dues to substantiate the possession of the appellant. Having held that the cause of action had arisen for the plaintiff to initiate the suit for permanent injunction and having come to the conclusion that the plaintiff's possession shall not be disturbed, the lower appellate Court had erred in dismissing the appeal. The Trial Court has failed to appreciate the fact that it is admitted by the defendants that the plaintiff is in possession of the suit schedule property and the plaintiff had also established his possession over the subject land for decades through individual witnesses and therefore, the Courts below ought to have decreed the suit in favour of the plaintiff.

6. Dr.S.Suriya, learned Additional Government Pleader appearing for the Respondent Nos. 1 and 2 submits that prior to the filing of this present suit, yet another suit in O.S.No. 349 of 1993 on the file of District Munsif Court, Ariyalur was filed and the same was dismissed for default. The second suit on



the same cause of action u/s.23 r/w Order 23 Rule (1) & (4) of CPC., is liable to be dismissed. The plaintiff's claim of right, possession and enjoyment of the suit property for more than 100 years by himself and his predecessors in title in the residential house and had prescriptive title by adverse possession, are all denied as false. The plaintiff has obtained patta under Natham Registration Scheme has not yet been confirmed and recommended for cancellation of patta. Payment of house tax was not recognized for claim of title, but it is simply issued to the house erected either in patta land or poramboke land. The stand taken by the plaintiff that the Panchayat convened a meeting in the presence of three persons, namely Veerapandian, Thirisangu, Tamil Oli and others and a compromise was entered into, pursuant to which, subsequently, the plaintiff has withdrawn the earlier suit in O.S.No.349 of 1993 is construed to be utter false one. The defendants had never given any guarantee to defer from eviction of the plaintiff from the suit property. Hence, there is no emergency to file the suit u/s.80(2) of CPC. Therefore, the plaintiff is not entitled to get any relief of permanent injunction with respect to Poramboke land. The defendants have every right to evict the plaintiff from the Government Poramboke land.



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7. Heard Mrs.V.Srimathi, learned Counsel for the appellants, Ms.S.Suriya, learned Additional Government Pleader appearing for the Respondent Nos.1 & 2 and Mr.V.Srikanth, learned Counsel for the Respondent No.3 and perused the materials available on record.

8. On a perusal of the records, it reveals that the suit property is a Natham House Property. The appellant/plaintiff and his predecessors had been in possession and enjoyment of the suit property for more than 100 years. The northern side of the suit property is bound by Ariyalur to Jayankondam road and on the western side, the plaintiff is having patta land. The suit property is situated at Survey No. 619/23-1.74 ares. The door number for the plaintiff's house was 2/75 and there was no other residential house to the plaintiff at Sendurai Village. Therefore, the defendants had no right whatsoever in the suit property, viz., A, B, C and D portion. During the year 1993 that the defendants had taken steps to evict the plaintiff from the suit property and hence, he has filed a suit in O.S.No. 349 of 1993 on the file of District Munsif Court, Ariyalur



and subsequently, in a Panchayat meeting held between the plaintiff and the Union Secretary Chokalingam and others decided not take any eviction proceedings as against the plaintiff and hence the plaintiff has allowed the suit for dismissal on 18.11.1994. The 2nd respondent-Tahsildar, Sendurai issued a summon dated 02.08.1996 to appear before his office for enquiry. The plaintiff came to know that at the inducement of some private persons at Sendurai Village, the 2nd and 3rd defendants had taken steps to evict the plaintiff from the suit property. Therefore, the plaintiff has filed this suit for the relief of permanent injunction as against the defendants.

9. On a perusal of Exs.A18, it is seen that a meeting was conducted in the presence of Panchayat Union, in which it was decided to construct a Library Building at Sendurai. Ex.A19 notice was issued by the Sendurai-Tahsildar, calling for eviction of Solaimuthu from the suit property and condemned the activities of Village Administrative Officer. On the basis of Ex.A18 and Ex.A19, the Tahsildar-Sendurai issued a notice to the plaintiff under Ex.A20, directing him to appear in the Office of the Tahsildar with records. Therefore, a



fresh cause of action has arisen for the plaintiff to file a suit as per Ex.A18, Ex.A19 and Ex.A20 and the plaintiff is entitled to file the present suit and hence, the 2nd suit filed by the appellant/plaintiff is not affected by the provision of law u/s.12 read with Order 23.

10. The plaintiff has filed the suit for the relief of permanent injunction restraining the defendants from evicting the plaintiff from the suit property unauthorizedly. The oral evidence of the plaintiff goes to show that the suit property mentioned as 'ABCD' in the Ex.A1-Rough plan filed by the plaintiff and commissioner's report and plan C1 and C2 reveal that the plaintiff is having a thatched house in the suit property running towards west in the patta house-site and the same has also been mentioned in the Commissioner's plan. It seems that the Sendurai Panchayat Union has constructed a library for the public purpose in the south of suit property as per the evidence of DW1. Admittedly, the suit property is a Government Poramboke -Namtham land. The plaintiff has received "B" Memo and paid appropriate taxes to the Government. When the plaintiff has admitted that the Government is the paramount title holder



irrespective of patta granted under the Natham Registration Scheme during the year 1994 still the government is entitled to cancel the patta granted under the Natham Updating Registration Scheme and is entitled for recovery of possession from the plaintiff. Ex.A22-Sale deed dated 10.12.1956 reveals that the plaintiff's father Solaimuthu Padayachi purchased some properties from Subramaniayan Pillai Vagaiyara in Natham Survey No.263/1C-9.33. Hence, the suit property is a Government Poramboke land which was permitted by the government to be enjoyed by the plaintiff which amounts to permissive possession, which is evident from the letter dated 12.09.2024 in Na.Ka.A1/2489/2024, produced by the learned Additional Government Pleader appearing for the Respondent Nos.1 and 2 to that effect, and at any time, the Government is entitled to evict the occupant namely, the plaintiff under due process of law. The government is the actual owner and paramount title holder and, as against the Government, permanent injunction cannot be granted. Even though the Government has admitted the possession of the appellant/plaintiff, mere possession of the property will not entitle a person to claim right over a property without producing necessary documents in proof thereof. Needless to



state that the Government is entitled to evict the plaintiff from the suit property, but, the same has to be done by following due procedures under the relevant provisions of law, relating to eviction.

11. At this stage, the learned Additional Government Pleader for the respondent Nos.1 and 2 contended that the respondents had proposed to expand the Sundurai Library. Admittedly, it is a Natham Poramboke, which is meant for residential plots and therefore, this Court does not want to render any finding on the proposal of the Government to expand the library.

12. Considering the totality of the circumstances, this Court is of the view that the Courts below have rightly dismissed the suit and there is no infirmity in the judgment and decree passed by the Courts below. Therefore, the appellants are not entitled to the relief sought for in this appeal.

11. With the above observations and discussions, this Second Appeal is disposed of. Liberty is granted to the defendants to evict the



appellants/plaintiffs under due process of law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23-09-2024

Jai

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The District Collector

Perambalur, Perambalur Dist.

2.The Tahsildar

Sendurai, Sendurai Taluk.

3.Sendurai Panchayat Board

On Behalf Of The Executive Officer

And Commissioner, Sendurai,

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