



S.A.Nos.976 and 977 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.976 and 977 of 2013
& M.P.Nos.1 of 2013 (02 Nos)

1.Sundrambal

2.Thillai Karasi

3.Pachyappan

4.Shiek Mehaboob Basha

... Appellants/Appellants/Plaintiffs
in S.A.No.976 of 2013

1.R.Mani

2.Vijayalakshmi @ Ma.Lakshmi

... Appellants/Appellants/Plaintiffs
in S.A.No.977 of 2013

Vs.

1.Paneerselvam

2.Jambulingam

... Respondents/Respondents/Defendants
in S.A.No.976 of 2013

Paneerselvam

... Respondent/Respondent/Defendant
in S.A.No.977 of 2013

PRAYER in S.A.No.976 of 2013: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree in A.S.No.68 of 2011 dated 28.03.2013 on the file of the Court of Principal Subordinate Judge, Tindivanam, confirming the Judgment and Decree in O.S.No.400 of 2004 dated 31.10.2011 on the file of the Court of Additional District Munsif, Tindivanam.



S.A.Nos.976 and 977 of 2013

PRAYER in S.A.No.977 of 2013: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree in A.S.No.69 of 2011 dated 28.03.2013 on the file of the Court of the Principal Subordinate Judge, Tindivanam, confirming the Judgment and Decree in O.S.No.356 of 2004 dated 31.10.2011 on the file of the Court of Additional District Munsif, Tindivanam.

In both the S.A's.:

For Appellants	: Mr.C.Anbu for Mr.M.R.Thangavel
For Respondents	: Mr.Ruban Chakravarthy for Mr.S.Kaithamalai Kumaran

COMMON JUDGMENT

These two Second Appeals arise out of two suits filed for declaration of possessory title and consequential relief of injunction. O.S.No.356 of 2004 was filed by one R.Mani and Vijayalakshmi against one Paneerselvam. Similarly, O.S.No.400 of 2004 was filed by the following persons, Sundarambal, Thillai Karasi, Pachayappan and Shiek Mehaboob Basha against Paneerselvam and Jambulingam.

2. The case of the plaintiffs in both the suits is that the properties in which they are in occupation are classified as 'Agazhi Poramboke'. They



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would state that they are paying 'B' memo to the Government. Since the defendants, who are residents of an adjacent property, are trying to interfere with their possession they come forward with the above suits for declaration of possessory title and consequential relief of injunction.

3. The defendants on service of summons entered appearance and stated that the suit schedule mentioned property has been wrongly mentioned as 271/3, which is 'Agazhi Poramboke', but the suit property actually situated in 271/4C which is a patta land. They would state that the property originally belongs to one Muthu Krishna Mudaliar, who purchased the property on 04.02.1925. On his death, the properties were came to the hands of his legal heirs, who are the defendants. They state that the plaintiffs are none other than the persons who have purchased the properties by way of un-registered sale deeds from the tenants of Muthu Krishna Mudaliar and his successors in interest and therefore cannot claim any relief against the defendants.



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4. Before the Trial Court on the basis of the pleadings, following

issues were framed.

"1.Whether the suit property is "Agazhi Poramboke" land?

2.Whether the plaintiffs have been in possession of the suit property for more than 30 years by paying penal tax to the Government?

3.Whether the plaint ABCD property is the only way for the plaintiffs to reach the road?

4.Whether the property in S.No.271/4 with an extent of 57 cents, originally belonged to Muthu Krishna Mudaliar by virtue of Sale deed dated 04.02.1925?

5.Whether the suit property was allotted to Jambulinga Mudaliar S/o Munusamy Mudaliar in the partition dated 04.08.1981?

6.Whether the father of the 1st plaintiff has executed a rental agreement dated 22.09.1964 for the vacant site in favour of defendant?



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7. Whether the Court fee paid is proper?

8. Whether the plaintiffs are entitled for declaration and permanent injunction?

9. To what other relief, the plaintiffs are entitled?"

5. On the side of the plaintiffs, P.W's.1 to 6 were examined and Exs.P.1 to 126 were marked. On the side of the defendants, D.W's.1 to 4 were examined and Exs.B.1 to 20 were marked.

6. The learned Trial Judge came to the conclusion that the suit schedule mentioned property is situated in Survey No.271/4 and not in 271/3. He also held that it is 271/3 which is a 'Agazhi poramboke' land, whereas the S.No.271/4 is a patta land, belonging to the defendants. Taking into consideration the long possession of the plaintiffs, the Trial Court while denying the relief of declaration of possessory title, granted them the relief of injunction restraining the defendants from interfering their possession.



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7. Aggrieved by the denial of declaratory portion of the decree, the plaintiffs preferred A.S.No.68 of 2011 and A.S.No.69 of 2011 before the Principal Subordinate Judge, Tindivanam. The learned Principal Subordinate Judge came to a conclusion by confirming the findings of the Trial Court, but modified the decree of the Trial Court and held that where the main relief has been denied the consequential relief of injunction cannot be granted. Against the said concurrent finding, the present Second Appeals have been preferred before this Court.

8. This Court ordered notice of motion regarding admission in both the appeals on 05.09.2013, thereafter, the appeals have been listed before me for the purpose of admission and to pass orders in the appeals.

9. Heard, Mr.C.Anbu, learned counsel for the appellants, representing Mr.M.R.Thangavel and Mr.Ruban Chakravarthy for the



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respondents.

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10. Mr.Anbu would suggest the following substantial questions of law for the purpose of admission,

“1.Whether the Courts below right in accepting the validity of the disputed Will (Ex.B.3) without it being proved as required under Section 68 of the Evidence Act ?

2.Whether the Courts below right in holding that the Government is a necessary party to the suit when there is no lis between the government and the parties to the suit ?

3.Whether the Courts below right in holding that tenancy existed between the appellants/plaintiffs and the respondents/defendants without it being proved in accordance with law by the profinder of such plea ?

4.Whether the Courts below right in



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accepting the tenancy pleaded by the respondents/defendants when the appellants/plaintiffs are assessed to property tax and paying electricity charges?

5.Whether the Lower appellate court right in rejecting the claim of injunction when the possession of the appellants is proved?

6.Whether the appellants being found in possession of the suit property could be evicted except under due process of law?

7.Whether the courts below right in accepting the evidence of D.W.4 – VAO without any records being produced by him in his official capacity ?

8.Whether the presumptions as to the official documents would also equally apply to the official witness deposing without any records being produced ?."



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11. Mr.Ruban Chakravarthy, learned counsel for the respondents would submit that the property being a patta land, the Courts below have rightly rejected the relief of possessory title. He would state that the lower Appellate Court merely corrected the decree of the Trial Court which had granted the decree of injunction, which is consequential to the relief of declaration and therefore, he would state that there is no interference is necessary in the hands of this Court.

12. I have carefully considered the arguments of the learned counsel on either side and perused the records of the Courts below.

13. It is not in dispute that the plaintiffs are in possession of the property situated in Survey No.271/4. Their entire case is based on the facts that they have been in possession of the property for more than 50 years and therefore, they are entitled to a decree for possessory title. The Courts below have concurrently found that it is Survey No.271/3, which is 'Agazhi



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Poramboke', whereas the Survey No.271/4 is a property which had been purchased under Ex.B.1 by one Muthu Krishna Mudaliar. Apart from that Ex.B.2 is a patta passbook for the suit property, which stands in the name of the defendants.

14. Mr.Anbu, would submit that the defendants have projected a Will and they have not proved the same. It is not in dispute that the plaintiffs are not the members of the family of Muthu Krishna Mudaliar. It is only a person, who has a caveatable interest in and over the properties, who can deny the same. To put it in other words, a Will is written in order to change the natural line of succession, which would happen in case of an interstate succession. A tenant cannot claim to be a successor in such an interstate succession. Therefore, the submission of Mr.Anbu, that the Will has not been proved goes beyond the scope of his client's claim. The Courts below having concurrently held that the Survey No.271/4 is a patta land, I am not in a



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position to interfere with the same. Once the Court comes to the conclusion that the Survey No.271/4 is a patta land, the question of granting the relief of possessory title does not arise. This is because, possession follows title and title has been found to have vested with the family of Muthu Krishna Mudaliar.

15. Now turning to the relief of injunction, it has been recently held by the Supreme Court in ***Padhiyar Prahladi Chenaji (Deceased) through LR's Vs. Maniben Jagmalbhai (Deceased) through LR's (2022) 12 SCC 128***, that where the main relief of declaration is denied, the Court cannot grant the consequential relief of injunction. A perusal of the plaint shows that the main relief that had been sought by the plaintiffs in both the suits was for declaration of possessory title and they had consequently sought for the relief of injunction. Even the Court Fee that has been paid is only with respect to declaration portion and the suit has not been separately valued for the relief



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of permanent injunction. The Trial Court having come to the conclusion that the plaintiffs have not proved their declaratory relief, erred in granting consequential relief of injunction not to be existed otherwise in accordance with law. This has been corrected by the lower Appellate Court in the appeals.

16. Mr.Anbu would argue that in the appeals filed by the plaintiffs, the lower Appellate Court ought not to have interfered with that portion of the decree as it was an appeal at the instance of the plaintiffs. The lower Appellate Court under Order 41 Rule 33 of CPC has the power to pass an appropriate decree in the suit even though no appeal is filed against that portion of the decree. It is in exercise of that power, the lower Appellate Court had set aside the decree of the Trial Court and modified the decree of the Court granting consequential relief of injunction. No exception can be taken to the exercise of that power by the lower Appellate Court.



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17. At this stage Mr.Ruban Chakravarthy would submit that his clients have already filed suits in O.S.Nos.202 to 206 of 2013 before the Principal District Munsif, Tindivanam, seeking relief of recovery of possession. Therefore, by virtue of the decree of the Trial Court, the defendants have already initiated proceedings to evict the plaintiffs only in accordance with law. Hence the apprehension of Mr.Anbu, that his clients will be forcibly dispossessed from the suit property does not arise.

18. In fine, the question of law suggested by Mr.Anbu to admit these appeals do not arise. I have no other option than to confirm the Judgment and Decree of the learned Subordinate Judge, Tindivanam in A.S.Nos.68 and 69 of 2011 dated 28.03.2013 in partly modifying and confirming the Judgment and Decree of the learned Additional District Munsif, Tindivanam in O.S.No.356 of 2004 dated 31.10.2011.



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19. In the result, the Second Appeals are dismissed. No costs.

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Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Principal Subordinate Judge

Tindivanam.

2.The Additional District Munsif

Tindivanam.

3.The Section Officer

V.R.Section, High Court of Madras.



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V.LAKSHMINARAYANAN, J.

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