



S.A.No.928 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM

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

S.A.No.928 of 2022

M.Murugesan (deceased)

1. Kumari
2. G.Kuralarasi
3. R.Ganthimathi
4. M.Vedachalam
5. M.Ramya

(The appellants 1 to 5 are the legal heirs of late.Murugesan who is that 1st appellant)

... Appellants

Vs.

1. The District Collector,
Tiruvallur District.
2. The District Revenue Officer,
Tiruvallur District.
3. The Revenue Divisional Officer,
Tiruttani,
Tiruvallur District.
4. The Tahsildar,
Tiruttani,
Tiruvallur District.



S.A.No.928 of 2022

5. The Revenue Inspector of Periakalkatoor,
Tiruttani Taluk,
Tiruvallur District.

6. The V.A.O. of Periakalakatoor,
Periakalakatoor Village,
Tiruttani Taluk, Tiruvallur District.

7. A.Gnanamoorthy

8. M.K.Setttu

9. A.Jayapal

10. Vanaja

Respondents

...

Prayer : Second Appeal filed under Section 100 r/w. Order 41 CPC, 1908 against the decree and judgment dated 29.04.2019 passed in A.S.No.1/2017, on the file of the Subordinate Court, Tiruttani, upholding the decree and judgment dated 30.07.2016 passed in O.S.No.8/2007, on the file of the District Munsif, Tiruttani.

For Appellants : Mr.A.Rajesh Kanna

For Respondents 1 to 6 : Mr.P.Gurunathan,

Additional Government Pleader

JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal.



S.A.No.928 of 2022

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2. This Second appeal is posted before this Court for admission and the same is decided at the admission stage itself.

3. The plaintiffs filed the suit for a permanent injunction restraining the defendants 7 to 10 from interfering with their peaceful possession and enjoyment of the suit property and for a mandatory injunction directing the defendants 1 to 6 to grant patta in their favour.

4. 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 second appeal would also be indicated.

5. The case of the plaintiffs in a nutshell is as follows :

The suit property was assigned in favour of the father of the first plaintiff to cultivate the land vide proceedings, dated 13.05.1963, by the Revenue Officials. As per the said proceedings, the Tahsildar, Tiruttani was requested to make necessary assignment proposals in respect of the suit property. The first plaintiff's father was cultivating the



S.A.No.928 of 2022

land and after his death, the first plaintiff as his legal heir has been in possession and enjoyment of the suit property. The second plaintiff is the wife of the first plaintiff. The plaintiffs have been paying kists to the Government as is evidenced by Ex.A1 and Ex.A2. However, the Government did not issue any patta to the plaintiffs. While so, the defendants 7 to 10 are attempting to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property and one such attempt was made on 07.01.2007. Hence the suit.

6. The defendants 1 to 6 remained absent and were set exparte.

The defendants 7 to 10 filed their written statement contending that,

- i. the suit property was originally an Anadeenam land.
 - ii. the plaintiffs were not in possession and enjoyment of the suit property.
 - iii. the suit property was sub divided into Survey numbers.74/17 and 74/18 Periakalakatoor village, Tiruttani Taluk, Tiruvallur District.
- An extent of 1.30 cents in each of the above survey numbers were allotted to the defendants 8 and 9 on 07.12.2006.



S.A.No.928 of 2022

WEB COPY

7. The trial Court after framing necessary issues posted the case for trial.

8. In the trial Court, the first plaintiff examined himself and three other witnesses and marked Ex.A1 to Ex.A5. The defendants 8 to 10 examined themselves and two other witnesses and marked Ex.B1 to Ex.B5.

9. After full contest, the learned District Munsif, Tiruttani, vide her decree and judgment dated 30.07.2016, dismissed the suit filed by the plaintiffs on the following grounds:- :

- i. A perusal of the proceedings of the Tahsildar in Na.Ka.No.4249/2005/M1, dated 20.04.2005 (Ex.A4) shows that the Tahsildar, Tiruttani had issued a direction to the Revenue Inspector, Tiruttani to conduct an enquiry on the petition submitted by the first petitioner to the District Collector on 19.01.2005 and submit a report.



S.A.No.928 of 2022

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- ii. The first plaintiff's contention that after the death of his father, he is in possession and enjoyment of the suit property, has not been substantiated.
- iii. The defendants 7 to 10 claimed right over the property in Survey numbers.74/17 and 74/18 Periakalakatoor village, Tiruttani Taluk, Tiruvallur District measuring 1.30 cents and these properties do not relate to the suit property.
- iv. However since the plaintiffs have not established possession over the suit property, the suit filed by them has to be dismissed.

10. Aggrieved over the decree and judgment passed by the trial court, the plaintiffs filed an appeal in A.S.No.1/2017, before the Subordinate Court, Tiruttani. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 29.04.2019, as against which the present second appeal is filed.



S.A.No.928 of 2022

WEB COPY

11. Heard Mr.A.Rajesh Kanna, learned counsel for the appellants and Mr.P.Gurunathan, learned Additional Government Pleader appearing for the Respondents 1 to 6.

12. Mr.A.Rajesh Kanna, learned counsel for the appellants contended that both the Courts below had concurrently held that the defendants had not established right over the suit property and dismissed the suit filed by the plaintiffs even though the plaintiffs have adduced several documents to show their possession. He also drew the attention of this Court to the proceedings of the Jamabandhi officers (Ex.A5) and contended that the first plaintiff's father was permitted to cultivate the land and that after the death of his father, the first plaintiff and his wife were cultivating the land. He therefore would contend that the decree and Judgment passed by both the Courts below are to be set aside.

13. Per contra, Mr.P.Gurunathan, learned Additional Government Pleader appearing for the Respondents 1 to 6 contended that



S.A.No.928 of 2022

both the Courts below by well reasoned orders had dismissed the suit filed by the plaintiffs and therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.

14. This is a suit filed by the plaintiffs seeking permanent injunction, restraining the defendants from interfering with their peaceful possession and enjoyment over the suit property. After the decree passed in A.S.No.1/2017, the first appellant Murugesan died and therefore his legal heirs were shown as appellants 2 to 5. In order to substantiate that the plaintiffs are in peaceful possession and enjoyment of the suit property, the plaintiffs mainly relied on the proceedings of the Revenue Authorities, dated 13.05.1963 (Ex.A5). According to the plaintiffs, as per Ex.A5, the first plaintiff's father was granted temporary permission to cultivate land in the suit property. In Ex.A5, nine persons were granted permission to cultivate the suit property and the name of the father of the first petitioner is not indicated therein. In the plaint, the plaintiffs have stated that they have raised crops in the suit property. However they have not filed Adangal extract to show that they are actually cultivating crops



S.A.No.928 of 2022

in the suit property. A perusal of the records shows that the plaintiffs 1 and 2 submitted two representations to the Revenue Authorities on 26.04.1994 (Ex.A3) and 20.04.2005 (Ex.A4) seeking assignment of patta in respect of the suit property in their favour. Based on these representations, the Tahsildar, Tiruttani directed the Revenue Inspector to conduct an enquiry. However, the result of the said enquiry has not been filed either before the trial Court or before the first appellate Court. Thus, Ex.A1 to Ex.A5 are least helpful to the case of the plaintiffs. All these aspects were dealt with by both the Courts below. Though the defendants have not shown their possession over the suit property, the suit filed by the plaintiffs cannot be decreed since the plaintiffs have not adduced acceptable evidence to prove any of their contentions. In fact, there is no substantial question of law involved in the second appeal.

15. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 29.04.2019 passed in A.S.



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S.A.No.928 of 2022

No.1/2017, on the file of the Subordinate Court, Tiruttani, Tiruttani and the decree and judgment dated 30.07.2016 passed in O.S.No.8/2007, on the file of the District Munsif, Tiruttani, are upheld.

19.11.2024

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

To

1. The Subordinate Court, Tiruttani.
2. The District Munsif, Tiruttani.
3. The Section Officer, VR Section,
Madras High Court, Chennai.

R. HEMALATHA, J.



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S.A.No.928 of 2022

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S.A.No.928 of 2022

19.11.2024