



S.A.(MD)No.1169 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.1169 of 2008

1.P.Thavasimuthu
2.V.Narayanan

... Appellants

Vs

1.A.Thangaraj
2.C.Ponnukrishna Iyyavu (Died)
3.T.Kathiravan
4.Selvarani
5.Balaji
6.Nithesh
7.Thanga Muthu

... Respondents

(Respondents 4 to 7 are brought on record as LRs of the deceased second respondent vide Court order dated 12.04.22 made in C.M.P.(MD)Nos.10315, 10316 & 10317/2021)

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 26.06.2008 rendered in A.S.No.112 of 2006 on the file of the First Additional Subordinate Judge, Nagercoil, confirming the decree and judgment dated 03.11.2006 rendered in O.S.No.315 of 2002 on the file of the Principal District Munsif of Nagercoil.



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For Appellants : Mrs.P.Jessi Jeeva Priya

For Respondents : Ms.VT.Harshini for
Mr.D.Nallathambi for R1 & R4 to R7
No Appearance for R3
R2 Died.

JUDGMENT

The defendants are the appellants. The respondents herein filed a suit for bare injunction. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendants have come by way of this Second Appeal.

2. According to the respondents / plaintiffs, the suit property originally belonged to their forefathers viz., Rathinaswamy Dhas, Elayaperumal and Sivaraman, who are the sons of Pandaram. The plaintiffs have been in possession and enjoyment of the suit property exclusively as descendants of the original owners. It was claimed by the plaintiffs that they had put up a building in the suit property and planted trees and hence, they have been in settled possession of the suit property. It was further claimed that the defendants were strangers to the property



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and they had no right and possession over the same and without having any manner of right, the defendants attempted to interfere with the possession of the plaintiffs. Hence, the above suit was laid for bare injunction.

3. The appellants/defendants filed a written statement claiming right and possession over the suit property. It was specifically claimed by the defendants that the suit property had been treated as 'Nilaviyal Pathai' and used by the Mela Asaripallam Hindu Nadar Samudhaya People. It was also claimed that no individual could claim any right over the public property and hence, sought for dismissal of the suit. It was also asserted that the suit property had been in enjoyment of the entire villagers and the same was not in exclusive possession of the plaintiffs.

4. Before the trial Court, the first plaintiff was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. On behalf of the plaintiffs, 10 documents were marked as EX.A1 to Ex.A10. The first defendant was examined as D.W.1 and yet another witness was examined as D.W.2. On behalf of the defendants, 7 documents were marked as Ex.B1 to B7. The plan and report of the Advocate



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Commissioner were marked as Ex.C1 and Ex.C2.

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5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit property was a Nilaviyal Pathai and however, granted decree for injunction on the ground that the plaintiffs have been in settled possession over the suit property. Aggrieved by the said judgment, the appellant preferred an appeal in A.S.No.112 of 2006 on the file of the First Additional Subordinate Judge, Nagercoil. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the defendants are before this Court.

6. The learned counsel for the appellants contended that Ex.A1-'A' Register filed by the plaintiffs would establish that the suit property is a public pathway on ground and in such circumstances, the Courts below ought not to have granted a decree for injunction restraining the other member of the public from using the suit property. The learned counsel further submitted that the respondents / plaintiffs failed to establish their right over the suit property by producing any acceptable document.

7. Based on the argument advanced by the learned counsel for the



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appellant, the following substantial question of law is arising for consideration:

a) Whether the decree for permanent injunction would be granted in respect of a public property against other members of the public from using the suit property?

b) Whether the Courts below are justified in granting a decree for injunction in respect of a public property simply because, the Government failed to initiate any action for removal of the encroachment?

8. The learned counsel for the respondents was heard on the question of law arising for consideration.

9. It is the case of the plaintiffs that the suit property originally belonged to their forefathers viz., Rathinaswamy Dhas, Elayaperumal and Sivaraman, sons of Pandaram. The plaintiffs are claiming right and possession over the suit property in their capacity as descendants of the said original owners. In order to prove their right over the suit property, the village 'A' Register was filed by the plaintiff as Ex.A1. A perusal of



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the same would suggest that the name of the plaintiffs' forefathers Rathinaswamy Dhas, Elayaperumal and Sivaraman were mentioned as the person in possession of the suit property. In column No.12 of 'A' Register, it was also mentioned as 'Nilaviyal Pathai' (pathway on ground). Therefore, the revenue document produced by the plaintiffs Ex.A1 is the only worth while document filed by the plaintiffs to prove the possession of their forefathers over the suit property. It is settled law, a person, who produced the document cannot rely on one part of the document and refuse the entry in the other part of the document. In the case on hand, in Column No.11 of Ex.A1, the name of the plaintiffs' forefather were mentioned as the persons, who are in possession of the suit property. Likewise in Column No.12, the suit property was described as 'Nilaviyal Pathai'. Therefore, though Ex.A1 is useful to prove the possession of the plaintiff over the suit property, the same also establishes the defendants' case that the suit property is a Nilaviyal Pathai or public pathway on ground. The plaintiffs have not filed any title document or patta, etc., to prove their exclusive possession over the suit property. Therefore, it is clear that the suit property is not private property of the plaintiffs and the same is classified as 'Nilaviyal Pathai' meant for use of general public. In such circumstances, the Courts below



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also observed that the defendants cannot try to evict the plaintiffs when they established their possession over the suit property.

10. In view of the fact that the plaintiffs are claiming possession over the pathway, the Courts below ought not have granted permanent injunction in their favour. The same will affect the rights of the defendants and general public to use pathway permanently. In this regard reference may be had to a decision of this Court in **G.Ramasamy Vs. R.Dasan in S.A.(MD)Nos.987 & 988 of 2009, dated 05.02.2020.** On the other hand, as held by the Hon'ble Supreme Court in **Rame Gowda Vs. M.Varadappa Naidu** reported in **(2004) 1 SCC 769**, a person, who is in established possession, is entitled to a limited injunction restraining the defendant from interfering with his possession except by due process of law. The plaintiffs proved their possession over the suit property by producing Ex.A1. The physical features noted by the Advocate Commissioner in his report also mentioned that there is a building in the suit property. In such circumstances, the plaintiffs' possession can be safely presumed as a settled possession. In such cases, as held in **Rame Gowda Vs. M.Varadappa Naidu reported in (2004) 1 SCC 769**, the



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plaintiffs are entitled to a limited injunction restraining the defendants from interfering with his possession except by due process of law. To that extent, the decree for permanent injunction granted by the Courts below requires modification. The substantial question of law arising for consideration are answered accordingly.

11. In nutshell, the second appeal is partly allowed by modifying the judgment and decree passed by the first appellate Court granting decree for injunction restraining the defendants from interfering with possession of the plaintiffs except by due process of law. There shall be no order as to costs.

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Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The First Additional Subordinate Judge, Nagercoil
- 2.The Principal District Munsif, Nagercoil.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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