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S.A(MD)No.447 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A(MD)No.447 of 2005
and C.M.P(MD)No.15434 of 2023**

Rajagopal Chettiar,
S/o.Gopalasami Chettiar,
For Self and as Community Head of Valayal
Chettiar Community, Tamil Nadu,
Nachiyarpatti,
Srivilliputhur Taluk,
Virudhunagar District. ... Appellant/Appellant/Plaintiff

Vs.

1.Rajendran (died)
... 1st Respondent/1st Respondent/Defendant

2.Rajammal
3.Pandi
4.Chandran
5.Kumar
6.Nagalakshmi ... Respondents 2 to 6

(RR 2 to 6 were brought on record as Lrs of the deceased
sole respondent vide order dated 05.04.2019 made in
C.M.P(MD)Nos.5965 to 5967 of 2018)

Prayer: Second Appeal filed under Section 100 of the Code of Civil
Procedure against the judgment and decree, dated 19.02.2004 passed
in A.S.No.44 of 2001 on the file of the Sub Court, Srivilliputhur,
confirming the judgment and decree dated 14.08.2001 passed in
O.S.No.162 of 2000 on the file of the Principal District Munsif Court,
Srivilliputhur.



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For Appellant : Mr.T.M.Hariharan
For RR 2 to 6 : Mr.P.Subbaraj
: Mr.R.Ragavendran
Government Advocate
(Amicus Curiae)

JUDGMENT

The Judgments and decrees passed in O.S.No.162 of 2000 on the file of the Principal District Munsif Court, Srivilliputhur and in A.S.No.44 of 2001 on the file of the Sub Court, Srivilliputhur, are being challenged in the present Second Appeal.

2.The appellant herein as plaintiff instituted a suit in O.S.No.162 of 2000 on the file of the trial Court against the respondent seeking for declaration of title that the suit first schedule property belonged to the plaintiff, for injunction to restrain him from putting up constructions and removal of the structures put up by the defendant and in the alternative for recovery of possession of the same in case the Court finds that the defendant is in illegal occupation of the same.

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.



4. According to the plaintiff, the suit first schedule property was marked as 'ABCD', the suit second schedule property was marked as 'BCFE', the suit third schedule property was marked as 'DFGN', the suit fourth schedule property was marked as 'ANJK', the suit fifth schedule property was marked as 'LKIM', the suit sixth schedule property was marked as 'BOL' and the seventh schedule property was marked as 'GHIJ'. The suit 1 to 6 schedule property belonged to Government Natham poramboke land. The suit sixth schedule property was described as footpath and the suit seventh schedule property belonged to the plaintiff's Mandapam. The plaintiff's community has been enjoying the suit sixth schedule property as a pathway for many years. The suit property has been measured, sub-divided and issued patta to the plaintiff community under Natham Land Revenue scheme. The suit first schedule property was a roof house and the suit seventh schedule property was a Mandapam. The plaintiff's society paid the assets for the suit schedule property. One Subbiah had maintained the plaintiff's Madapam by residing there. One month prior to the suit the said Subbiah vacated suit first schedule property, as he was unable to continue as Watchman. Thereafter, the defendant removed the thatched roofing and laid an asbestos roofing and started claiming novel rights. The survey also confirmed the plaintiff's title, in fact in the



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Natham Land Revenue Scheme and patta has been issued to the plaintiff for the suit property even ten years prior to the suit. Since the defendant entered into the plaintiff's suit first schedule property illegally, the plaintiff lodged a complaint and the suit first schedule property was surveyed and it was found that the defendant encroached on the plaintiff's property. Hence, the plaintiff sent a notice on 16.03.2000 to the defendant. Since the defendant attempted to change the Registry in his name and to obtain an electricity connection in the suit first schedule property, the plaintiff has filed the said suit for the abovestated relief.

5.The defendant had filed a written statement stating that the plaintiff had to prove that the plaintiff's community was in possession and enjoyment of the suit first schedule property and the same belonged to the Government poramboke land. In the suit property, the defendant's father Ramasamy Naidu built a roof house 40 years ago and he obtained 'B' memo and thereafter, he died leaving behind the defendant as legal heir. After the demise of his father, the defendant was in possession and enjoyment of the suit first schedule property. While being so, on 02.07.1982, the roof house constructed by the defendant was completely ruined in a fire accident. For that, the



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District Administration has given compensation to the defendant. The old Door number of the suit property was 101 and property tax was levied and collected in the name of the defendant. The present door number of the suit first schedule property is 44. For the past 35 years, the defendant was in separate possession and enjoyment of the suit property. In the year 1994, the defendant obtained a loan in the Primary Agricultural Co-operative Bank, Mamsapuram in the name of the defendant's wife. In the year, the defendant demolished the entire old structure in the suit property and built two houses. The defendant and his two sons partitioned the suit property in respect of Door No.44 by a registered partition deed dated 30.03.2000. The southern portion of the suit first schedule property was allotted to Chandran and northern portion of the suit first schedule property was allotted to Kumar. Hence, the said Chandran and Kumar are necessary parties to the suit and the suit was bad for non-joinder of necessary parties. The defendant was in possession and enjoyment of the suit first schedule property for the past 35 years. It was denied that in respect of the suit property, patta has been granted under the Natham Land scheme. Without seeking for recovery of possession, the plaintiff has filed the suit for injunction, which was not maintainable. The suit property is worth about Rs.80,000/- and prayed for dismissal of the suit.



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6.Before the trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 & A10 were marked. On the side of the defendant, D.W.1 to D.W.4 were examined and Exs.B.1 to B.5 were marked.

7.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

8.Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff herein as appellant, had filed an Appeal Suit in A.S.No.44 of 2001 on the file of the first Appellate Court.

9.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.



10.Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff as appellant.

11.The appellants have raised the following substantial questions of law in the Second Appeal:

"1.Whether Ex.A.2-Adangal comprising both the survey number and patta number does not establish the claim of the appellant when there is no dispute regarding identity of the suit property?

2.Whether the finding that the patta and adangal have been obtained only in the year 2000 is not nearly perverse?

3.Whether the criticism regarding non-production of patta is justified when I.A.No.66 of 2002 had been filed before the Appellate Court to receive copies of patta Nos. 307 and 308?

4.Whether the criticism regarding the right of the plaintiff to prosecute the suit is legal and proper when the suit has been laid after obtaining leave under Order I Rule 8 of C.P.C?"



12.The learned counsel appearing for the appellant/plaintiff would submit that the Courts below failed to advert to and appreciate from a proper perspective the rival pleadings of the parties and the questions emerging for decision therefrom and this has vitiated the findings and judgments of the Courts below; having referred Ex.A.2-Adangal, the Courts below have failed to appreciate the same from a proper perspective; the Courts below ought to have seen that it is not in dispute that the suit property being item No.1 to the schedule is comprised in Survey No.530/64; Ex.A2 shows that the suit property belongs to the plaintiff and is comprised in Patta No.307; the reasoning of the appellate Court that the case of the plaintiff is that the suit property is Government poramboke and that therefore non-joinder of the Government will be fatal to the suit is completely erroneous; the Appellate Court failed to see that it is the definite case in the plaint that the suit property viz., suit item No.1 though a poramboke land initially is in fact a patt land at the time of the suit, patta having been granted to the plaintiff in the Natham Land Revenue Scheme, the cause of action refers to the fact that the patta was granted to the plaintiff ten years prior to the suit; the suit has been filed immediately after the defendant attempted to interfere with the possession of the plaintiff and the mere fact that the defendant managed to change the roof will



not render the suit with a prayer for possession in the alternative, bad and the reasoning that no document has been produced to establish possession of the plaintiff is fallacious as Ex.A.2-Adangal clearly shows the possession of the plaintiff and prayed for allowing the Second Appeal.

13.The learned counsel appearing for the respondent/defendant reiterated the averments made in the plaint and the appeal and submitted that the Courts below had rightly dismissed the suit.

14.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and also perused the records carefully.

15.According to the plaintiff, the suit first schedule property was marked as 'ABCD', the suit second schedule property was marked as 'BCFE', the suit third schedule property was marked as 'DFGN', the suit fourth schedule property was marked as 'ANJK', the suit fifth



schedule property was marked as 'LKIM', the suit sixth schedule property was marked as 'BOL' and the seventh schedule property was marked as 'GHIJ'. The suit 1 to 6 schedule property belonged to Government Natham poramboke land. The suit sixth schedule property was described as footpath and the suit seventh schedule property belonged to the plaintiff's Mandapam. The plaintiff's community has been enjoying the suit sixth schedule property as a pathway for many years. The suit property has been measured, sub-divided and issued patta to the plaintiff community under Natham Land Revenue scheme. The suit first schedule property was a roof house and the suit seventh schedule property was a Mandapam. The plaintiff's society paid the assets for the suit schedule property. One Subbiah had maintained the plaintiff's Madapam by residing there. One month prior to the suit the said Subbiah vacated suit first schedule property, as he was unable to continue as Watchman. Thereafter, the defendant removed the thatched roofing laid an asbestos roofing and started claiming novel rights. The survey also confirmed the plaintiff's title, in fact in the Natham Land Revenue Scheme and patta has been issued to the plaintiff for the suit property even ten years prior to the suit. Since the defendant entered into the plaintiff's suit first schedule property illegally, the plaintiff lodged a complaint and the suit first schedule



property was surveyed and it was found that the defendant encroached on the plaintiff's property. Hence, the plaintiff sent a notice on 16.03.2000 to the defendant.

16.The defendant had filed a written statement stating that the plaintiff had to prove that the plaintiff's community was in possession and enjoyment of the suit first schedule property and the same belonged to the Government poramboke land. In the suit property, the defendant's father Ramasamy Naidu built a roof house 40 years ago and he obtained 'B' memo and thereafter, he died leaving behind the defendant as legal heirs. After the demise of his father, the defendant was in possession and enjoyment of the suit first schedule property. While being so, on 02.07.1982, the roof house constructed by the defendant was completely ruined in a fire accident. For that, the District Administration has given compensation to the defendant. The old Door number of the suit property was 101 and property tax was levied and collected in the name of the defendant. The present door number of the suit first schedule property is 44. For the past 35 years, the defendant was in separate possession and enjoyment of the suit property. In the year 1994, the defendant obtained a loan in the Primary Agricultural Co-operative Bank, Mamsapuram in the name of



the defendant's wife. In the year, the defendant demolished the entire old structure in the suit property and built two houses. The defendant and his two sons partitioned the suit property in respect of Door No.44 by a registered partition deed dated 30.03.2000. The southern portion of the suit first schedule property was allotted to Chandran and northern portion of the suit first schedule property was allotted to Kumar. Hence, the said Chandran and Kumar are necessary parties to the suit and the suit was bad for non-joinder of necessary parties. The defendant was in possession and enjoyment of the suit first schedule property for the past 35 years. It was denied that in respect of the suit property, patta has been granted under the Natham Land scheme. Without seeking for recovery of possession, the plaintiff has filed the suit for injunction, which was not maintainable.

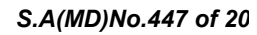
17.On a perusal of the materials available on record, it is seen that the first Appellate Court has stated that the plaintiff failed to prove the fact that the suit schedule property belonged to them and it has also been admitted that the suit schedule property belongs to the Government, the suit first schedule property does not belong to the plaintiff. Further, the plaintiff in his evidence has stated that the defendant resided in the suit property and from the evidence of D.W.1



to D.W.3, the defendant has been in possession and enjoyment of the suit property and hence, the plaintiff is not entitled for the relief. The first Appellate Court further held that the plaintiff has failed to prove the fact that the suit first schedule property belonged to them and the defendant had trespassed into the suit property has not been proved and at the time of filing of the suit, the defendant was in possession and enjoyment of the suit property and hence, the plaintiff is not entitled for the relief of recovery of possession and dismissed the appeal suit.

18.When the matter came up for hearing on 04.10.2024, this Court directed Mr.R.Ragavendran, learned Government Advocate to measure the property and to file a report.

19.When the matter is taken up for hearing today, the learned Government Advocate has produced the proceedings of the Tahsildar, Srivilliputhur in Na.Ka.FLA No.96/2024, dated 21.10.2024, wherein it is stated as follows:



Sl. No.	Employee Name	Designation	Grade	Basic Pay	Dearness Allowance	House Rent Allowance	Medical Allowance
1.	S30/69	S30/4A1C1A	1.10	2100.00	230	233	
2.	S30/70	S30/4A1C1A	1.10	2100.00	230	237	
3.	S30/65	S30/4A1C1A	1.10	2100.00	230	233	
4.	S30/66	S30/4A1C1A	1.10	2100.00	230	233	
5.	S30/68	S30/4A1C1A	1.10	2100.00	230	233	
6.	S30/69	S30/4A1C1A	1.10	2100.00	230	233	



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மேற்கண்ட அரசாங்கப் பார்வை 1-ல் கண்ட தீர்ப்பு ஆணையில் அடிப்படையில்
மனுதாரர், எதிர்மனுதாரர், திராவிட முன்னேற்றக் கழகம் மற்றும் அதன் பிரிவுகள்
புலத்தவர்களைச் செய்து உடனடியாக அந்தப் பகுதியை மீட்டர் உதவிபாளருடன், கூட்டு
ஆய்வுகள்(மர்வி) குழுவைக் கூட்டி, உடனடி நடவடிக்கை எடுக்க வேண்டும் என
என்களின் முயற்சியால் மன்னார்குடி அருகே உள்ள அபிமானம் மூலம் மனுச்செய்துள்ள புல
பெறப்பட்டும், எதிர்மனுதாரர்கள் அந்தப் பகுதியை மீட்டர் உதவிபாளருடன் கூட்டு
தற்காலிகமான ஆக்கிரமிப்பு நிலைப்படுத்தி அதற்கான அங்கீகரிக்கப்பட்ட
அபிவிருத்தியுடனும், எதிர்மனுதாரர்கள் அந்தப் பகுதியை மீட்டர் உதவிபாளருடன்
ஆக்கிரமிப்பு நிலைப்படுத்தி அதற்கான அங்கீகரிக்கப்பட்ட நிலைப்படுத்தி அதற்கான
இலாபத்தை மாற்று நிதிப்பகுதியில் அங்கீகரிக்கப்பட்ட நிலைப்படுத்தி அதற்கான
புல எல்லைக் கிராமப்புறப்பகுதியில் அங்கீகரிக்கப்பட்ட நிலைப்படுத்தி அதற்கான
நிதியை அளித்து இலாபத்தை அங்கீகரிக்கப்பட்ட நிலைப்படுத்தி அதற்கான
கொடுக்கப்பட்டிருக்கிறது.

இதனிடம் : ஆய்வுகள்

(ஆய்வு) அபிவிருத்தி
கட்டிடம்
திருவிழாபுரம்

/உத்தரவு/

வட்டாட்சியகம்

20.Now, the learned counsel appearing for the respondent/defendant would submit that the respondent will remove the thatched house which has been in occupation of them, as per the undertaking given by them before the Tahsildar, vide proceedings in Na.Ka.No.96/2024, dated 21.10.2024 and vacate the premises on or before 31.12.2024 and hand over the vacant site in the month of



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January 2025. If the defendants fail to vacate the premises and hand over the vacant site, the authorities concerned can seek the protection of the Police to remove the same.

21.In view of the above, this Second Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

30.10.2024

Index : Yes/No
Internet : Yes/No
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To

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- 1.The Sub Court,
Srivilliputhur.
- 2.The Principal District Munsif Court,
Srivilliputhur.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

ps

Judgment made in
S.A(MD)No.447 of 2005

30.10.2024