



S.A.No.1238 of 2003

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.No.1238 of 2003

and

C.M.P.No.10583 of 2003 and C.M.P.(MD)No.9195 of 2024

Vellimalai Rubber Company Limited,  
represented by its Director,  
Vellimalai Estate, Vellimalai P.O.,  
Kanyakumari District.

...Appellant

-Vs-

The State of Tamil Nadu,  
represented by its District Collector,  
Kanyakumari.

... Respondent

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 09.01.2003 made in A.S.No.55 of 2002 on the file of the Additional District Judge, Kanyakumari District, Nagercoil reversing the judgment and decree, dated 14.02.2002 made in O.S.No.43 of 1997 on the file of the Subordinate Court, Padmanabhapuram.



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For Appellant :Mr.S.Partha Sarathy  
for Mr.B.Ponnupandi  
For Respondent :Mr.SRA.Ramachandran  
Additional Government Pleader  
\*\*\*\*

### **JUDGMENT**

The plaintiff in the suit is the appellant herein. The suit is for declaration of title and for injunction. The trial Court granted a decree as prayed for. The first appeal filed by the defendant was allowed by the first appellate Court and the suit got dismissed. Aggrieved by the same, the plaintiff is before this Court.

2.According to the appellant/plaintiff, the suit properties with an extent of 9.86 hectares situated in old S.Nos.6269, 6343, 6347 and 6349 relevant to Re.S.Nos.661/1, 667, 668, 671, 672/9, 679/1, 706 and 748/3 originally belonged to Mundakayam Valley Rubber Company Limited, a Company incorporated in England. The plaintiff purchased the suit properties along with larger extent of adjacent lands under a registered sale deed, dated 27.07.1944 from the aforesaid Company. It was asserted by the plaintiff that it has been in possession and enjoyment of the suit properties



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along with other lands purchased under 1944 document all along. During resurvey of the lands, the suit properties were wrongly classified as poramboke without notice to the plaintiff. The said fact came to the knowledge of the plaintiff in the year 1997. When the defendant attempted to interfere with the plaintiff's possession and enjoyment of the suit properties, the plaintiff was constrained to file a suit for declaration and also for injunction restraining the defendant from interfering with its peaceful possession and enjoyment of the suit property.

3.The defendant filed a written statement denying the title of the plaintiff over the suit properties. It was claimed by the defendant that the suit properties were classified as river poramboke and assessed waste land. It was also claimed by the defendant that the suit properties were forcefully encroached by the plaintiff and they have been paying “B” memo charges for the occupation. The defendant specifically denied the title of the plaintiff as well as the plaintiff's predecessor-in-interest, Mundakayam Valley Rubber Company Limited, to convey the same to the plaintiff. It was also claimed that the survey and the re-settlement had been done in Kanyakumari District



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25 years prior to the filing of the suit and all the formalities were scrupulously adhered to. It was also claimed by the defendant that the enjoyment of the plaintiff will not give any right to it, as prohibitory assessment and penalty were levied on the plaintiff. On these pleadings, the defendant sought for dismissal of the suit.

4.Before the trial Court, the Manager of the plaintiff Company was examined as PW-1 and eight documents were marked on the side of the plaintiff as Ex-A1 to Ex-A8. On behalf of the defendant, no witness was examined and Ex-B1 to Ex-B3 were marked on consent.

5.The trial Court, on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiff has proved its title as well as the possession over the suit properties and consequently, decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in A.S.No.55 of 2002 on the file of the Additional District Court, Kanyakumari. The first appellate Court, on re-appreciation of evidence available on record, came to the conclusion that the plaintiff failed



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to prove its title over the suit properties and consequently, allowed the appeal and dismissed the suit. Aggrieved by the same, the plaintiff is before this Court.

6.At the time of admission, this Court formulated the following the substantial questions of law, by order, dated 29.07.2003:

*“(a)Whether the survey made under the Madras Survey and Boundaries Act without notice to the plaintiff will bind him regarding the classification made and if not whether the plaintiff's title and possession under registered sale deed dated 27.07.1944 will be affected by the classification made by the Government treating the property as poramboke land?*

*(b)Whether notarised photo copy of original registered sale deed which was exhibited need to be proved by any other mode in as much as section 68 of the Evidence Act does not apply to proof of sale deed?”*



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7.The learned Counsel for the appellant submitted that the title of the plaintiff over the suit properties was proved by Ex-A1 sale deed and in the absence of any material to show that classification of the suit properties as poramboke during resurvey was done with proper notice to the plaintiff, there may not be any impediment for the Courts below to uphold the title of the plaintiff. The learned Counsel also submitted that “B” memos relied on by the first appellate Court to negative the claim of the plaintiff came into existence subsequent to the suit. Therefore, the first appellate Court ought not have taken into consideration the “B” memos filed by the defendant. The learned Counsel also submitted that the plaintiff proved its long uninterrupted possession and therefore, the first appellate Court ought to have come to the conclusion that the prescriptive title of the plaintiff over the suit properties has been proved.

8.*Per contra*, the learned Additional Government Pleader appearing for the respondent submitted that the plaintiff had failed to produce the original sale deed in its favour and what was produced was only the xerox copy of the sale deed. The learned Additional Government Pleader by



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relying on Section 65 of the Indian Evidence Act, submitted that in the absence of original sale deed, the plaintiff is not entitled to produce the xerox copy of the same, unless the condition mentioned in Section 65 of the Indian Evidence Act is satisfied. The learned Additional Government Pleader also submitted that the plaintiff failed to produce the revenue documents prior to resurvey to prove their case that the suit property was wrongly classified as poramboke land in the resurvey. The Additional Government Pleader also submitted that the plaintiff paid “B” memo charges to the Government by admitting the title of the Government and hence, it is estopped from asserting the title in itself.

9.It is the specific case of the plaintiff that the suit properties were purchased by it under Ex-A1 sale deed, dated 27.07.1944. In order to prove the title, the plaintiff failed to produce the original sale deed in its favour. Only the xerox copy of the sale deed certified by the Notarised Public has been produced and marked as Ex-A1. In fact, the Notary Public was also not examined to prove that Ex-A1 is a true copy from the original sale deed. The explanation offered by the plaintiff for failure to produce the original sale



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deed is that the document was mortgaged with Bank. Even if the document was deposited with a Bank, the plaintiff could have taken steps to send for the document for comparison and the same has not been done. The plaintiff could have produced the certified copy of the sale deed in its favour to prove its contentions and the same has not been done. The failure on the part of the plaintiff to produce the original sale deed or the certified copy of the same before the Court's below is a serious defect, especially in a suit for declaration of title. Now, the appellant filed C.M.P.No.10583 of 2003 to produce certified copy of the sale deed, dated 27.07.1944, as additional evidence in this Second Appeal. The same has been dealt with in paragraphs 16-18, *infra*.

10.The plaintiff asserted that the suit properties originally owned by its predecessor-in-interest, Mundakayam Valley Rubber Company Limited and during re-settlement proceedings, the suit property was wrongly classified as poramboke. In order to prove that prior to re-settlement, the suit property stood in the name of the plaintiff or in the name of the predecessor-in-interest, no revenue documents have been produced by the plaintiff.



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Likewise, even though the plaintiff asserted that patta for the suit property stands in its name, no patta has been produced. More over, Ex-B2 is the “B” memos issued to the plaintiff in respect of the suit properties. Therefore, it is clear that the plaintiff admitted the title of the Government and paid “B” memo charges for its illegal occupation of the suit properties.

11.The learned Counsel for the appellant vehemently contended that “B” memos produced by the defendant were subsequent to the suit, therefore, the same cannot be taken into consideration. Ex-B2, “B” memos were marked by the defendant without any objection from the plaintiff. Even if Ex-B2, “B” memos are documents subsequent to the suit, the act of the plaintiff in paying “B” memo charges to the Government by admitting the title of the Government will have a bearing on the issue involved in the suit. Therefore, there is nothing wrong in the judgment of the first appellate Court placing reliance on Ex-B2. Likewise, Ex-B1 is an “A” register extract for the suit properties. A perusal of the same would suggest that Re.S.Nos.667, 668, 671 and 672/9 are classified as river in the “A” register and Re.Survey Nos.661, 679/1, 706 and 748/3 are classified as *arasu anatheenam* land.



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Taking into consideration the fact that the plaintiff failed to establish its vendor's title by producing any title or revenue documents and patta in its name and also the fact that the plaintiff paid “B” memo charges to the Government admitting its title, the first appellate Court rightly came to the conclusion that the plaintiff failed to prove its title over the suit property and hence, the plaintiff is not entitled to declaration of title. The said conclusion of the first appellate Court need not be interfered with.

12.It is the admitted case of the defendant even in their written statement that the plaintiff encroached the suit property and has been in effective possession of the same. The Ex-B2, “B” memos issued by the defendant would also prove that the plaintiff has been in settled possession and enjoyment of the suit property. Even if the plaintiff failed to prove the title over the suit property, in view of the settled possession over the same, the plaintiff is entitled to a limited injunction restraining the defendant from interfering with its possession over the suit property except by due process of law. It is settled law that person in settled possession of the property cannot be disturbed except by due process of law, even by the real owner of the



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property. (reference may be had to ***Rame Gowda (Dead) and others vs M.Varadappa Naidu (dead) and others***, reported in ***2004 (1) SCC 769.***)

13.In view of the same, the first appellate Court is not justified in negating the relief of injunction in the light of the evidence available on record to prove the settled possession of the plaintiff. Accordingly, the judgment and decree passed by the first appellate Court is set aside with regard to the relief of injunction alone. The plaintiff is entitled to limited injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property except by due process of law. The substantial questions of law are answered partly in favour of the appellant and the Second Appeal is partly allowed.

14.The appellant has filed a petition in C.M.P.(MD)No.9195 of 2024 to receive additional evidence. It was the case of the appellant that in respect of some other properties covered by the very same sale deed, the appellant had filed a suit for declaration of title and injunction in O.S.No.105 of 1994 on the file of the Subordinate Court, Padmanabhapuram and the same was



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decreed. It was submitted by the learned Counsel for the appellant that the judgment and decree passed in O.S.No.105 of 1994 was also confirmed by the first appellate Court in A.S.No.179 of 2003. The appellant filed the judgment and decree passed in A.S.No.179 of 2003, as additional evidence to be marked in the Second Appeal. The learned Counsel for the appellant submitted that challenging the judgment and decree produced as additional evidence, the respondent/defendant had not filed any appeal and therefore, the same has attained finality. The learned Counsel for the appellant also submitted that since in respect of other properties covered by the very same sale deed, the plaintiff's title has been already upheld, the present suit has to be decreed as prayed.

15.The judgment and decree passed by the trial Court in O.S.No.105 of 1994 was marked during trial as Ex-A8. A perusal of the said judgment would suggest that in that case, the defendant has not produced any “B” memo in respect of the suit property covered in that suit. However, in the case on hand, the defendant had produced “B” memos issued to the plaintiff in respect of the present suit property. When the plaintiff paid “B” memo



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charges admitting the title of the defendant in respect of the present suit property, the judgment and decree passed in respect of the other property covered by the same sale deed would not advance the case of the appellant. Accordingly, the additional document produced will not have a material bearing on the final outcome of the Second Appeal. Therefore, C.M.P. (MD)No.9195 of 2024 stands dismissed.

16.C.M.P.No.10583 of 2003 has been filed to receive certified copy of the sale deed, dated 27.07.1944 as an additional document in this appeal. It was the case of the appellant that the appellant Company had purchased the suit properties under sale deed, dated 27.07.1944. Before the trial Court, only the xerox copy of the sale deed was marked by the plaintiff. The failure of the plaintiff to produce the original sale deed was pointed out by the first appellate Court while negating the relief of declaration. In order to overcome the same, the plaintiff has filed the present application seeking to receive the certified copy of the sale deed dated 27.07.1944, as an additional document in this Second Appeal.



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17.In the affidavit filed in support of this petition to receive additional evidence, the appellant has not given any convincing reason for its failure to produce the certified copy of the document before the Courts below. Though in the plaint, it was stated by the plaintiff that the original sale deed was with the Bank, the appellant could have applied for the certified copy of the sale deed and produced it before the trial Court itself. The appellant has not given any valid reason for its failure to produce the certified copy of the sale deed before the Courts below. Further, even assuming that the certified copy of the sale deed produced by the appellant is received as additional evidence, in the absence of any revenue documents prior to re-settlement in the name of the appellant or in the name of the predecessor-in-interest of the appellant, the certified copy of the sale deed alone would not establish the title of the appellant's vendor over the suit property.

18.In the written statement, the title of the appellant's vendor to convey the suit property to the appellant has been specifically disputed. In the absence of any other evidence to establish the semblance of right of the appellant's predecessor over the suit property, like revenue document or any



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other document, mere production of certified copy of Ex-A1 will not have any impact on the final outcome of the Second Appeal. Further, as mentioned earlier, the appellant paid “B” memo charges to the respondent by admitting the title of the Government. Therefore, the certified copy of the sale deed in favour of the appellant would not have any impact on the final outcome of the Second Appeal. Therefore, C.M.P.No. 10583 of 2003 stands dismissed.

19.In nutshell:

(a)The Second Appeal is partly allowed by setting aside the judgment and decree passed by the first appellate Court insofar as the relief of injunction is concerned;

(b)The judgment and decree passed by the first appellate Court negating the relief of declaration is confirmed;

(c)The plaintiff is entitled to the relief of injunction restraining the defendant from interfering with its possession



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over the suit property except by due process of law;

(d)C.M.P.No.10583 of 2003 and C.M.P.(MD)No.9195

of 2024 stand dismissed; and

(e)In the facts and circumstances of the case, there shall

be no order as to costs.

**22.07.2024**

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The Additional District Judge, Kanyakumari District, Nagercoil.

2.The Subordinate Judge, Padmanabhapuram.

3.The District Collector,  
The State of Tamil Nadu,  
Kanyakumari.

4.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

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**S.SOUNTHAR, J.**

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