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S.A.No.1074 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1074 of 2009 and
M.P.No.1 of 2009

1.Pravind Chandra
2.Hansa D.Shah

... Appellants / Plaintiffs

Vs.

1.Pandian
2.Ranganathan

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Court of Sub Judge, Poonamallee in A.S.No.43 of 2008 dated 29.11.2008 in confirming the judgment and decree of the Court of the District Munsif, Poonamallee in O.S.No.213 of 1994 dated 13.11.2007.

For Appellants : Mrs.V.Srimathi
For Respondents : Mr.A.Palaniappan for R1

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree of the Sub Court, Poonamallee in A.S.No.43 of 2008 dated



29.11.2008 in confirming the judgment and decree of the District Munsif Court, Poonamallee in O.S.No.213 of 1994 dated 13.11.2007.

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2. The Second Appeal has not yet been admitted. The plaintiffs in O.S.No.213 of 1994 on the file of the District Munsif Court, Poonamallee are the appellants herein. They had filed O.S.No.213 of 1994 seeking a judgment and decree against the defendants therein for grant of permanent injunction restraining the defendants from interfering with their peaceful possession of the suit property and for costs of the suit. The property has been described in the schedule to the plaint as a land measuring 5 cents in S.No.579, Maduravoyal Village, Saidapet Taluk, bounded on north by a portion of lake bund which was under possession and enjoyment of Vinod Chandra M.Shah, south by portion of land under the occupation of the defendants, east by the house of the plaintiffs and west by the portion of the lake. The documents relating to the possession are the 'B' memo, for which the date had not been given, but of the year 1991 and two kist receipts dated 02.03.1993 and 23.02.1994.



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3. In the plaint, the plaintiffs have stated that they had purchased the wet land to an extent of 20 cents in S.No.268/3 part at Maduravoyal Village, Saidapet, by a registered sale deed dated 03.04.1990 registered as a Document No.1573/1990 in the office of the Sub-Registrar, Virugambakkam. Thereafter, they have further stated that they had encroached on the land on the western side of the property which they had purchased. The property which they had encroached measuring about 5 cents is the suit property. The plaintiffs did not claim title and they are claiming possession under 'B' memo which was issued. The date of issuance of 'B' memo has not been stated in the list of documents. Even otherwise, they cannot claim right to possess continuously. The Government has not been made as a party to determine the nature of the land.

4. In the written statement filed by the defendants, it had been stated that the defendants are cultivating the land in S.No.579 to an extent of 50 cents for the past 10 years and the Revenue Authorities had issued 'B' memo in their name. They have very specifically questioned the right of the plaintiffs to claim that they were in possession. It had been stated that the defendants has been in continuous possession and enjoyment of the suit



property for the past 10 years. It had been further stated that the plaintiffs had purchased the adjacent property at S.No.268/3 and put up a construction over that particular land and had also fenced the suit property. It had been stated that the plaintiffs had been demanding the defendants to convey the enjoyment right in favour of the plaintiffs and since that was refused by the defendants, holding it was a lake poramboke, the suit has been filed.

5. The suit came up for final hearing before the District Munsif Court, Poonamallee and by Judgment dated 13.11.2007, the suit was dismissed. While examining the issues framed, the learned District Munsif had observed that the plaintiffs had relied on a notice issued to them by the revenue authorities which was marked as Ex.A2. It was found that in Ex.A3 kist receipt, the survey number had not been mentioned and that Ex.A1 sale deed was not related to the suit property. On perusal of Ex.A2, it had been observed that 5 cents in S.No.579 has been described as 'eri' (lake) in possession of the plaintiffs and it had also been observed that the entries in the receipt had been overwritten and the extent of the land had been overwritten and the nature of the occupation had been overwritten and the names of the plaintiffs have also been over written. To clarify the correct



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entries and correct details, it had been observed that the plaintiffs had not chosen to examine any revenue authority and had not produced any revenue document to substantiate the claim that the plaintiffs were in possession.

6. It had also been observed that the defendants had questioned the authenticity of the documents. It had been further observed that when the authenticity of the document was questioned, the burden was on the plaintiff to prove the genuinity of the document. The plaintiff had not chosen to do so. On the other hand, the defendants had produced Exs.B10 to B12, B5, B6 and B9 which according to the learned District Munsif clearly established that the defendants were in occupation of the land in S.No.579.

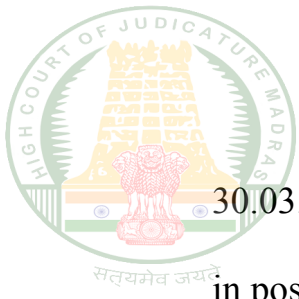
7. It is also seen that a Commissioner had been appointed and in his report and plan, which were marked as Ex.C1 and Ex.C2, it had been clearly stated that there are a few huts in the land which were not disclosed by the plaintiffs in the plaint also. The learned District Munsif had therefore dismissed the suit.



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8. The plaintiff had then filed A.S.No.43 of 2008 which came up for consideration before the Sub Court, Poonamallee. The learned Sub Judge by judgment dated 29.11.2008 dismissed the Appeal Suit. In the judgment, the learned Sub Judge had again found that the plaintiff had filed Ex.A2 which is a 'B' memo for the Fasli year 1401. It had also been noted that Ex.A3 is a xerox copy of the kist receipt. It must be further pointed out that the learned District Munsif had rejected Ex.A3, since the survey number of the land has not been given. The First Appellate Court had rejected Ex.A3 also, since it was a xerox copy.

9. With respect to Ex.A2, the finding of the learned Trial Judge were that the details therein were overwritten. The learned First Appellate Court had examined the documents produced on behalf of the defendants in a detailed manner by giving the details of each and every documents produced on behalf of the defendants. The nature of the documents had been stated and the nature of the land and the identity of the land had also been stated. It was held by the First Appellate Court that the defendants have established that they were in possession. It was also noted that the plaintiffs had purchased the land adjoining the suit property only on



30.03.1990. They had also not produced any record to show that they were in possession from 1990 till 11.03.1994, the date of filing of the suit.

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10. The First Appellate Court had also examined Exs.C1 and C2 which were the report and the plan filed by the Advocate Commissioner. It was also found that the report did not state that the land of the plaintiffs was the boundary of the suit property. It was therefore very specifically held that the suit property was not adjacent to the land of the plaintiffs. Therefore, it had been held that the claim of encroachment is doubtful.

11. Both the Courts below have returned a consistent finding that the plaintiffs had not established possession. More damagingly, the Trial Court has found that Ex.A2 which was a 'B' memo had been overwritten not only with respect to the area of the land but also with respect to the nature of occupation and more importantly with respect to the names of the persons.

12. No substantial question of law arises for consideration. Both the Courts below have proceeded on facts and had returned a clear and



categorical finding that the documents produced by the plaintiffs do not merit a finding on possession.

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13. The learned counsel for the appellants had placed reliance on the judgment of a learned Single Judge in *S.A.No.941 of 2015 dated 19.11.2015, in the case of Deivanai Vs. J.Masilamani Reddi and Others*, wherein, the learned Single Judge had observed that if the property is a poramboke property and if the plaintiff claims that she was in possession and enjoyment and the defendants also claimed that they were in possession, the Government was at liberty to issue 'B' memo and collect penalty from the possessor.

14. In the instant case, Ex.A2 is the 'B' memo produced by the plaintiffs. The learned Trial Judge had an opportunity to examine the document and found that there were overwritings in Ex.A2 / 'B' memo, about the nature of occupation, about the names of the individuals and about the area of the land and therefore, rejected the said document as not being worthy to be looked into. It is thus evident that the plaintiffs have not come to Court by disclosing the correct facts and documents.



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15. The learned counsel for the appellants also placed reliance on a judgment of this Court in *S.A.No.954 of 2008 dated 08.03.2021 in the case of Perumal and Others Vs. Tamizhchelvan and Others*, wherein again the issue was with respect to a Government poramboke land and the issue was also with respect to the possession and wherein, it had been held that the plaintiffs had established possession by putting up a tiled house and kalam, unless and until, they are vacated by the Government under due process of law, must be held that the plaintiffs therein were entitled to protect their possession.

16. In the instant case, the Courts below had given a categorical finding that the documents reflect that the defendants were in possession for a considerable period of time and from the other documents produced by the defendants, it was found that 'B' memo had been issued in the names of the defendants.

17. In view of the discussion above, I hold no question of law arises much less substantial question of law to merit admission of the Second



Appeal. The Second Appeal is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

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Speaking order / Non-speaking order

04.07.2025

Index : Yes / No

Neutral Citation : Yes / No

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- 1.The Sub Judge,
Poonamallee.
- 2.The District Munsif,
Poonamallee.



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C.V.KARTHIKEYAN, J.

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