



S.A. No. 1152 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A. No. 1152 of 2009
and M.P.No.1 of 2009

1.Guruswamy @ Kuruvan

2.Kaliammal

3.Appuswamy

4.Kuppuswamy

...Defendants 4 to 7/Appellants/Appellants

Vs.

1.Nataraj

2.Thangaraj

3.Rajendran

4.Sekar

5.Nallaswamy

6.Selvaraj

...Respondents 1 to 6/Respondents 1 to 6/Plaintiffs

7.State of Tamil Nadu,
Rep.by the District Collector,
Erode District.

8.The Thasildhar,
Erode Taluk,
Compound Cutchery Street,
Erode Town.

9.Adi-Dravidar Welfare Thasildhar,

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Collectorate Buildings,
Perundurai Road,
Erode-11.

... Respondents 7 to 9/ Respondents 7 to 9/
Defendants 1 to 3

10.Chidambaram ...10th respondent/10th respondent/
8th Defendant

Prayer: This Second Appeal has been filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 20.07.2009 made in A.S.No.42 of 2009 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 29.12.2006 made in O.S.No.3 of 2006 on the file of the Principal District Munsif Court, Erode.

For Appellants : Mr.D.Rajagopal
For Respondents : Ms.D.Sathya
for Mr.V.Rajesh for R1 to R6
Mr.G.Ameedius
Government Advocate for R7 to R9

J U D G E M E N T

The defendant Nos.4 to 7 in O.S.No.3 of 2006 on the file of the Principal District Munsif Court, Erode, are the appellants herein.

2. O.S.No.3 of 2006 had been filed by the plaintiffs/ respondent



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Nos.1 to 6 herein in the second appeal seeking a relief of declaration that the suit property is a common reserved site exclusively used by the plaintiffs for common and communal purposes and for granting permanent injunction restraining the defendants 4 to 8 from encroaching upon the suit property and to direct the defendants 1 to 3 to remove the encroachments and restore the suit property to its original position and for costs of the suit.

3. By judgment dated 29.12.2006, the learned Principal District Munsif, Erode, had decreed the suit without costs and had further directed the defendants 1 to 3 to comply with the mandatory injunction directions within a period of two months.

4. The defendant Nos.4 to 7 then filed A.S.No.126 of 2007 before the I Additional Sessions Court, Erode, which was later transferred to the Principal District Court, Erode and re-numbered as A.S.No.42 of 2009. By judgment dated 20.07.2009, the Appeal Suit was dismissed and two months' time was granted for removal of encroachments.



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5. The defendant Nos.4 to 7 then filed the present Second Appeal. The Second Appeal had been admitted on the following substantial questions of law:-

“1. Whether the Courts below have erred in law in not considering the admission of the defendants 1 to 3 as to the possession and enjoyment of the suit properties by the defendants 4 to 7?

2. Have not the Courts below erred in law in decreeing the suit by granting injunction in respect of the natham land ignoring law that the 1st occupier of the natham land is the owner of the land?”

O.S.No.3 of 2006 (Principal District Munsif Court, Erode)

6. In the plaint, it had been contended that the property described in the schedule was situated at Alagirisamy Colony, Chinniyagoundenvalasu at 48-A, Thuyyampoondurai Village, Erode Taluk. The plaintiffs are hutments and publics in Alagrisamy Colony, Chinniyagoundenvalasu, belonging to Adi Dravidar Community. The suit property was Government Poramboke land and it had been reserved for



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public communal purposes for playground, temple, well and festival purposes. The plaintiffs are adjacent land owners and they had been granted patta by the Government. The defendants 4 to 8 had encroached into the suit property and built two asbestos cement sheet sheds and two thatched sheds and were enjoying the suit property. This was objected by the plaintiffs and other villagers. Contending that the possession by the defendants 4 to 8 is illegal and unlawful, the suit had been filed. The plaintiffs had made several representations to the Tahsildhar, Erode and the District Collector, Erode, but the defendants Nos.1 to 3 who are the Government Officials, had not taken any action to remove the encroachments. It was under these circumstances that the suit had been filed seeking declaration that the suit property must be reserved for common and communal purposes and for granting permanent injunction restraining the defendants 4 to 8 from encroaching upon the suit property and for a direction to the defendants 1 to 3 to remove the encroachments and restore the property to its original position.

7. The suit property had been described as being situated in S.F.No.102/2 in R.S.No.245/5 reserved site allotted for common and



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communal purpose for the public of Alagirisamy Colony, measuring to an extent of 10,398.92 sq.ft.

8. The third defendant had filed a written statement stating that the land in Survey No.245/5 at Thuyyampoondurai Village, Erode District, belongs to Adi Dravidar Welfare Department. It had been stated that the Adi Dravidar Welfare Tahsildar, Erode, had granted patta vide proceedings in Na.Ka.No.2616/1968 dated 26.10.1970 to 18 individuals by converting the land into Natham Poramboke. It had been stated that the suit property had been reserved for common usage. It had been stated that in the suit property, the defendants 4 to 8 had constructed thatched houses and are residing there. It had been stated that the defendants 4 to 8 had been in possession for nearly 30 years. It had been stated that they had also given representations to give patta for their possession. It had been stated that an enquiry was conducted and steps have been taken to grant patta to them in the manner known to law. At that stage, the suit had been filed and therefore, further proceedings had been stopped. The allegation in the plaint that the defendants 4 to 8 were exercising influence had been denied. It had been stated that since steps



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have been taken to grant patta, the suit is not maintainable and it has to be dismissed.

9. The defendant No.7 had filed a written statement, wherein, it had been stated that the suit property is a Government Poramboke land. It had been denied that it has been reserved for playground, temple, well and festival purpose etc., It had been stated that the plaintiffs are adjacent owners. It had been denied that the plaintiffs are using the suit property for public purpose. It had been stated that the defendant Nos.4 to 7 are in possession of the suit property and had put up houses and are residing there. The allegations that the plaintiffs and the villagers objected and asked them to remove the sheds had been denied. It had been stated that the Government is the owner of the suit property. It had been stated that the plaintiffs, with an ulterior motive to dispossess the defendant Nos.4 to 8, have made false representations to the Government. It had been denied that the defendants had a plan to put up permanent structure in the suit property.

10. It had been further stated that the plaintiffs and the

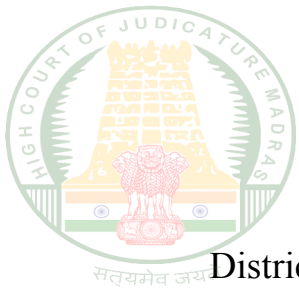


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defendants belong to same community and are agricultural coolie workers. They had migrated from different places about 40 years ago. It had been stated that the plaintiffs and the defendants have encroached the entire area in R.S.No.245/5. It had been stated that the Government had earmarked the said land for Harijan Community. The Government had also issued patta for 18 vacant house sites to the Harijans. The plaintiffs have also constructed house by obtaining loan from the Banks. The defendants have also constructed houses in the suit property about 30 years ago and have also applied for grant of patta. The Government had considered their request for grant of patta permitting them to occupy the said property. It had been stated that the Government had not objected to their possession. It had also been stated that all the villagers including the defendants had contributed money for construction of Kannimar Samy Temple and Kumbabishegam was also performed. The plaintiffs had also participated in Kumbabishegam. The defendants requested the plaintiffs for settlement of accounts. This had enraged the plaintiffs and it was owing to that, the suit had been instituted.

11. On the basis of the above pleadings, the learned Principal



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District Munsif had framed the following issues for trial:-

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“(i) whether the plaintiffs are entitled to the relief of declaration as sought for?

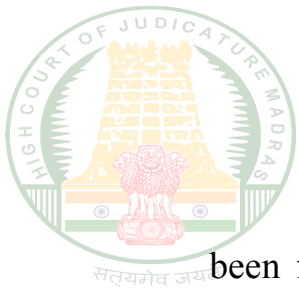
(ii) whether the plaintiffs are entitled to the relief of mandatory injunction as sought for?

(iii) whether the plaintiffs are entitled for the relief of permanent injunction as sought for?

(iv) to what other reliefs, the plaintiffs are entitled to?”

12. During trial, the plaintiffs examined two witnesses and marked Ex.P1 to Ex.P25. The defendants examined three witnesses, but did not mark any document.

13. On the basis of the evidence, the learned Principal District Munsif had observed that the plaintiffs are in possession of the adjacent property and that the property had been adopted for common usage. Further, it has been observed by the trial Court that the defendants had encroached into the suit property and put up constructions. The statement made on behalf of the defendant Nos.1 to 3 that the defendant Nos.4 to 8 had been in possession for nearly about 30 years ago has also been noted by the learned Principal District Munsif Judge, Erode. However, it had been pointed out that the defendants had not been granted patta. It had



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been further observed that under these circumstances, the vacant place which has been left aside for communal purposes has been encroached by the defendants and they have put up unauthorized constructions in that particular place. The learned Principal District Munsif, Erode, therefore, was of the opinion that the plaintiffs are entitled for the relief of declaration that the suit property should be reserved only for common usage and therefore, issued a mandatory injunction directing the defendants 1 to 3 to remove the huts and the constructions. The suit was decreed as prayed for.

A.S.No.42 of 2009 (Principal District Court, Erode):

14. The learned Principal District Judge, Erode, vide judgment dated 20.07.2009, framed the following points for consideration:

“ (a) whether the plaintiffs are entitled to the relief of declaration, permanent injunction and mandatory injunction as prayed for? and

(b) whether the judgment and decree of the trial Court is to be set aside?”



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15. The learned Principal District Judge, Erode, again re-examined the evidence adduced by the parties. It had been observed that the property mentioned was reserved for communal purposes and no one has any right to encroach upon the property. It had also been observed that when the appellants were trying to encroach upon the suit property, the people residing in Chinniagoundenvalasu, had sent petitions to the District Collector to take necessary action and an acknowledgment dated 25.07.2005 which was marked as Ex.A15 had been given by the District Collector. The learned Principal District Judge has also examined Ex.A24 which is the “A” Register for Survey No.213 and Old Survey No.101/1, which had stood in the name of nine persons. Further, Ex.A25 was the patta granted to nine persons in Survey No.1213. The learned Principal District Judge also observed that the land had been reserved for communal purposes and therefore, the appellants had no right to encroach into the suit property and dismissed the Appeal Suit and confirmed the judgment and decree passed by the trial Court. Two months time was granted to remove the encroachments.

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16. The defendants 4 to 7 had then filed the present Second Appeal. The Second Appeal had been admitted on the following substantial questions of law:-

“1. Whether the Courts below have erred in law in not considering the admission of the defendants 1 to 3 as to the possession and enjoyment of the suit properties by the defendants 4 to 7?

2. Have not the Courts below erred in law in decreeing the suit by granting injunction in respect of the natham land ignoring law that the 1st occupier of the natham land is the owner of the land?”

17. Heard the arguments advanced by Mr.D.Rajagopal, learned counsel appearing for the appellants and Ms.D.Sathya for Mr.V.Rajesh for the respondent Nos.1 to 6 and Mr.G.Ameedius, learned Government Advocate appearing for the respondents 7 to 9.

18. Mr.D.Rajagopal, the learned counsel appearing for the appellants would submit that the plaintiffs are seeking a declaration that the suit property is to be reserved exclusively for the plaintiffs for



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permanent and communal purposes. The learned counsel further stated that both the plaintiffs and the defendant Nos. 4 to 7 belong to same Community and therefore, the property cannot be exclusively reserved for the plaintiffs alone to use it for communal purposes. If it is to be used as communal purposes, both the plaintiffs and the defendants are entitled to use the said property. The learned counsel further pointed out that the plaintiffs have sought the relief of permanent injunction restraining the defendants 4 to 7 from encroaching upon the suit property and they have also sought the relief of mandatory injunction to remove the encroachment. The learned counsel further stated that the suit suffers from seeking conflicting reliefs. It is the contention of the learned counsel appearing for the appellants that even the plaintiffs have no right in the suit property and that in the written statement filed by the third defendant, there is a clear admission that the defendants had put up construction about 30 years ago and are residing there for nearly 30 years. The further submission on behalf of the defendant Nos.1 to 3 is that they had commenced the procedure for grant of patta to the defendants 4 to 7 and therefore, the possession of the defendant Nos.4 to 7/appellants herein cannot be disturbed. The learned counsel insisted that the evidence



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had not been properly examined by both the Courts below and the suit has to be dismissed in view of conflicting reliefs sought in the plaint.

19. Ms.D.Sathya, the learned counsel appearing for the respondents 1 to 6 submitted that the suit property had been reserved for common and communal purposes and the appellants had encroached into the suit property and put up constructions. Objecting to the same, the suit had been filed by the plaintiffs who had also sent petition to the District Collector, Erode. The learned counsel further stated that both the trial Court and the First Appellate Court had properly appreciated the evidence and stated that the suit property had been reserved for common and communal purposes and the defendants have encroached upon the suit property without any right. The learned counsel further stated that the judgments of both the Courts below necessarily have to be confirmed by this Court and the Second Appeal has to be dismissed.

20. The learned counsel appearing for the respondents 7 to 9/defendants 1 to 3 had contended that the appellants herein are in



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possession of the suit property for over a period of 30 years and have put up constructions and are residing there. It was stated that the Government had commenced the process to grant patta to them and if any application for grant of patta is filed, it would be considered in the manner known to law.

21. I have carefully considered the submissions made by both sides and perused the materials available on record.

22. The appellants are the defendants 4 to 7 in the suit and the respondent Nos.1 to 6 are the plaintiffs. The respondents 7 to 9 are the defendants 1 to 3.

Substantial question of law No.(i):-

23. The substantial question of law No.(i) revolves around the admission of the defendants 1 to 3 about possession and enjoyment of the suit property by the defendant Nos.4 to 7. The defendants 1 to 3 are the District Collector, Erode, Thasildhar, Erode and Adi-Dravidar Welfare Thasildhar, Erode. In the written statement filed by the Adi Dravidar



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Welfare Thasildhar, Erode, it had been clearly stated that the defendants 4 to 7/appellants were in possession of the suit property having put up residential houses nearly 30 years back. It had been further contended that steps have been taken to grant patta and since the suit had been filed, further steps had been stopped. Therefore, it had been stated that if applications are made, patta would be granted.

24. It is to be pointed out here that oral evidence had not been adduced on behalf of the defendant Nos.1 to 3 and they have only filed their written statement. However, the Government counsel entered appearance and had advanced arguments before the trial Court.

25. According to the plaintiffs, the suit property measuring an extent 10,398.92 sq.ft. had been allotted for common and communal purposes. The plaintiffs are residents in neighbouring lands to the suit property. The Government had granted patta for 18 individuals who had also put up constructions and houses. It is the specific case of the plaintiffs that the defendant Nos. 4 to 7 had entered into the suit property and had put up constructions. This was objected to by the plaintiffs and



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other villagers. It had been stated by the plaintiffs that the land has been reserved for playground, temple, well, festival purposes and School. However, the Government had not put up any constructions.

26. It is the contention of the learned counsel appearing for the plaintiffs/respondent Nos.1 to 6 herein that the property should be reserved exclusively for communal purposes for the plaintiffs. However, both the plaintiffs and the defendants 4 to 7 belong to the same community. This question revolves around the admission of the defendants 1 and 3 that the defendants 4 to 7 have been in possession and enjoyment of the suit property for nearly about 30 years. This factor has not been considered by both the Courts below. Both the Courts below had considered only the fact that the land had been reserved for communal purposes and stated that the defendants 4 to 7 have no right to encroach into the property.

27. In the written statement filed by the third defendant, they had categorically stated that patta would be granted, after due enquiry to the defendants 4 to 7. The Courts below have not considered the



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admission of the defendants Nos.1 to 3 regarding possession and enjoyment of the property by the defendants 4 to 7. In view of these reasons, I would direct the defendants 2 and 3 in the suit, namely, the Thasildhar, Erode and the Adi-Dravidar Welfare Thasildhar, Erode, to demarcate the land in which the defendants 4 to 7/appellants have put up houses and grant patta in favour of the defendants 4 to 7 to that area alone, after conducting due enquiry, reserving the other vacant land for communal purposes. The substantial question of law No.(i) is answered in the aforesaid manner.

Substantial question of law (ii):-

28. This question is as to whether the suit could be decreed by granting injunction in respect of natham land ignoring the legal principle that the 1st occupier of the natham land is the owner of the land. But, however, in the written statement filed by the third defendant, it had been clearly stated that patta had been granted to 18 individuals after the land had been converted from the land belonging to Adi Dravidar Welfare Department to Natham Poramboke. The land in which the defendants 4 to 7 had put up construction is not natham poramboke and it had been



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reserved for common usage. Therefore, the issue of occupying Natham land will not arise. The defendants had entered into the land since it was vacant.

29. In the first substantial question of law, it had been held that the second and third defendants, namely, the Thasildhar, Erode and the Adi-Dravidar Welfare Thasildhar, Erode, should demarcate the residential portion of the buildings put up by the defendants 4 to 7 and after due enquiry, take a decision and grant patta or otherwise to that area alone, after conversion of the land into Natham Poramboke. The other area must be retained as reserved for communal purposes. Therefore, the fact as to whether the first occupier of the natham land should be considered as the owner of the land would not arise as the defendants had not encroached upon the natham land but the land reserved for Adi Dravidar Welfare Department. The substantial question of law No.(ii) question is answered in the aforesaid manner.

30. In view of the above reasons, this Court is inclined to issue the following directions:-



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(i) the second and third defendants in the suit are directed to demarcate the suit property and set aside the place where the houses have been built by the defendants 4 to 7 and grant patta to that area by following due procedure to the defendants 4 to 7. In any event, before grant of patta, notice must also be issued to the plaintiffs in the suit.

(ii) the remaining area should be used only for communal purpose.

(iii) this direction is issued since the suit property is substantial property measuring to an extent of 10,398.92 sq.ft and patta can be granted only after conducting due enquiry.

31. Accordingly, this Second Appeal stands partly allowed. The judgment and decree of the trial Court confirmed by the Appellate Court suffers as the mandatory injunction granted by the trial Court is set aside and under Order XLI Rule 33 C.P.C, the judgment and decree of the trial Court in O.S.No.3 of 2006 dated 29.12.2006 as confirmed by the First Appellate Court vide judgment and decree dated 20.07.2009 in A.S.No.42 of 2009 is modified and the aforesaid directions are issued.



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There shall be no order as to costs. Connected miscellaneous petition is closed.

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19.08.2025

Index: Yes
Speaking Order
NCC : Yes

ssb

To

1. The Principal District Court, Erode.
2. The Principal District Munsif Court, Erode.
3. The Section Officer,
Vernacular Section,
High Court, Madras.



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C.V.KARTHIKEYAN, J.

ssb

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