



SA(MD)No.403 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 14/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

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- 1.Anjalai
- 2.Dharmaraj
- 3.Vasuki
- 4.Sasikala

: Non-Parties (L.Rs of the
Plaintiff deceased Ganesan)/
Non-Parties (L.Rs of the Appellant)/
Appellants

Vs.

- 1.Mahalingam
- 2.The Tahsildar,
Papanasam Taluk,
Thanjavur District.
- 3.The Commissioner,
Panchayat Union,
Ammapettai,
Papanasam Taluk,
Thanjavur District.
- 4.The State of Tamil Nadu,
Represented by
The District Collector,
District Collector's Office,
Court Road,
Thanjavur Town,
Thanjavur District.

: Respondents/Respondents/
Defendants

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 30/08/2005 of the Additional Subordinate Judge, Thanjavur and made in AS No.48 of 2005 of his file, confirming the judgment and decree of Thiruvaiyaru, dated 30/12/2004 and made in OS No.126 of 2003 on his file.



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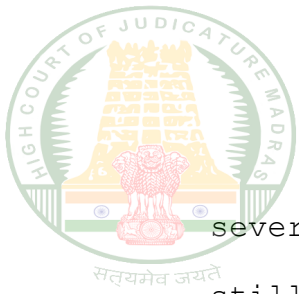
For Appellant : Mr.K.N.Thampi
For 1st Respondent : Mr.M.Jothi Basu
For R2 to R4 : Mr.N.Ramesh Arumugam
Government Advocate

J U D G M E N T

This second appeal is preferred against the judgment and decree, dated 30/08/2005 passed by the Additional Subordinate Judge, Thanjavur in AS No.48 of 2005, confirming the judgment and decree of the District Munsif, Thiruvaiyaru made in OS No.126 of 2003, dated 30/12/2004.

2.The plaint:- The suit property is a pond poramboke land. It was dry land originally. The plaintiff made the property cultivatable and doing nursery cultivation. He was issued with 'B' memo by the Government. The 1st defendant is the Village Panchayat President. Now, he tries to encroach upon the property. He attempted to purchase the property failed. So, he tried to trespass the property, on 28/08/2003. That was prevented. Hence, the suit for permanent injunction, costs.

3.The first defendant filed written statement contending that the property was never under the cultivation of the plaintiff. It is a pond poramboke for



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several years and the villagers are using the pond. It is still existing as poramboke pond and never under the enjoyment of the plaintiff.

4.The State Government filed the written statement contending that the suit property is in the common enjoyment of the village people. Even now, it is existing as pond.

5.On the basis of the pleadings of both sides, the following issues were framed by the trial court:-

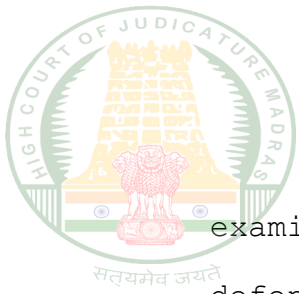
(1)Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(2)Whether the suit pond is the common enjoyment of the villagers?

(3)Whether the suit is bad for non-joinder of necessary parties?

(4)To what other relief, the plaintiff is entitled to?

6.On the side of the plaintiff, 4 witnesses were



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examined and 9 documents marked. On the side of the defendants, 3 witnesses were examined and 4 documents marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

7.At the conclusion of the trial, the suit was dismissed by the trial court. Against which, appeal was preferred in AS No.46 of 2005. The appellate court concurred with the decree and judgment of the trial court and dismissed the appeal.

8.Against which, this second appeal is preferred by the appellants.

9.At the time of admission, the following substantial questions of law were framed:-

(1)Whether in view of Exhibits A1 to A9 and the proviso to Section 7 of the Tami Nadu Land Encroachment Act, 1905, the Courts below are correct in holding that the plaintiff has not proved that she was in occupation of the suit property at the time of institution of the suit?

(2)Whether the Lower Appellate



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Court is correct in holding that Respondents 2 to 4 are unnecessary parties to the suit, without at all considering the matter, that too, when the suit property is Government poramboke, belonging to the Government?

10.Heard both sides.

11.Second substantial question of law is taken up for discussion first. It is a simple suit for permanent injunction on the basis of the settled possession for several years. Now the plaint reads that the suit property is a tank poramboke, but, in their occupation from **20.06.1981**, request made by the plaintiff/appellant seeking assignment was negatived by the revenue Authorities. This is the averment in paragraph Nos.1 and 2. But, in paragraph No.3, it has been stated that the defendant has no right over the properties. Probably, the plaint refers to the first defendant namely Mahalingam. So according to paragraph No.3, the first defendant alleged to have demanded the sale to him, which was refused, attempting to disturb his possession.

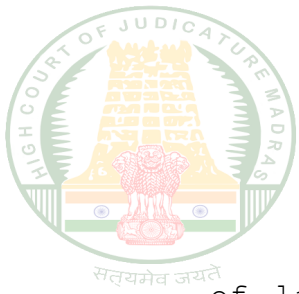
12.The first defendant, who was the Village President at that time, filed the statement stating that suit properties are tank poramboke, never in the



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occupation of the plaintiff or the person mentioned by him in the plaint. The property is in the enjoyment and use of the Villagers. The defendants 2 to 4 namely the State Government and the Revenue Authorities adopted the statement filed by the first defendant. So when the plaintiff says that she is in possession of the property for several years, for deciding the same, the presence of the defendants 2 to 4 are necessary parties. It was held so by the trial Court. That finding was affirmed by the appellate Court in A.S.No.48 of 2005. But, a stray sentence was made by the appellate Court in its Judgment in page No.10 in Paragraph No.2, that since the defendants 2 to 4 did not make any trouble to the appellant's possession, no relief can be granted against them. But, this will not mean that the defendants 2 to 4 are not necessary parties. As mentioned above, it is admitted that the suit properties are tank poramboke. So naturally, defendants 2 to 4 are necessary parties to decide the possession of the plaintiff. So this second substantial question of law is answered that this does not arise. By misconstruing the observation made by the appellate Court, this ground is raised by the appellant. So it is made clear that the defendants 2 to 4 are necessary parties to decide the issue.

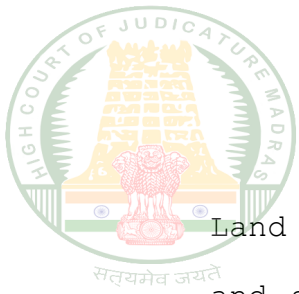


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13.Now, we will go to the first substantial question of law. There is a clear finding by the trial Court as affirmed by the appellate Court that it was not established on the side of the appellant that she was in possession on the date of the suit. This concurrent finding is challenged by the plaintiff contending that Ex.A1 to Ex.A9 were not properly considered by the trial Court as well as the appellate Court. Now we will go to the documents produced by the appellant. Ex.A1 is the notice issued by the Revenue Authority under Section 5 of the Tamil Nadu Land Encroachment Act, 1905, wherein, we find that survey number is mentioned as 21/1 and the plaintiff encroached the property and cultivated paddy. This is dated 28.12.1995. Ex.A2 is dated 20.10.1993 for S.No.21/2. Ex.A3, A5, A6, A7, A9 and A10, are not related to the suit property. Those documents were miscellaneous kist receipts paid by the appellant. As mentioned above, Ex.A1 is dated 28.12.1995. The suit was filed on 05.09.2003, much after long time of B memo issued to the appellant under Ex.A1 and Ex.A2. Now, the appellant also says that still she is being in possession.

14.The learned counsel for the appellant would submit that since no eviction proceedings were initiated against the plaintiff as per the provisions of Tamil Nadu



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Land Encroachment Act, she is deemed to be in possession and she can be evicted only as per the provisions of the said Act. So according to him, when the trouble is made by the first defendant, the suit was rightly filed and possession must be protected till evicted lawfully. In substance his argument is that the appellant may be granted limited injunction restraining the respondent herein not to evict her otherwise than under due process of law. According to him, that limited prayer can be granted.

15. But, I am unable to agree to these lines of argument for the simple reason that B memos are being issued to the person, who is in unauthorised encroachment or occupation. They are liable to be evicted by following due process of law. Simply because she was issued a B memo on a particular year, that will not confer any right upon the appellant to remain in possession for ever till evicted through the provisions of law.

16. Now it has been more or less well settled that a person in illegal occupation or encroacher is not entitled for any injunction against the true owner. Here as mentioned above it is admitted that the property is a tank poramboke. A tank poramboke is to be used by the



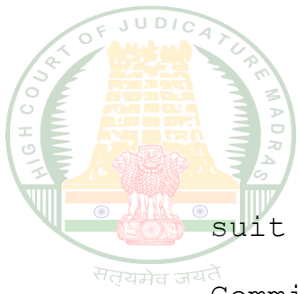
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Villagers commonly. By encroaching upon that common tank the plaintiff has committed illegality. That illegality cannot be allowed to be perpetuated by way of any decree.

17.The learned counsel for the appellant would rely upon the Judgment of the Honourable Division Bench of this Court made in the case of **V.K.Rajan Vs. The District Collector, Kancheepuram District and another** reported in **2017 (2) CWC 218** for the purpose of the above said argument. A question of eviction does not arise at all since it was not established on the side of the plaintiff that he was in possession of the disputed property on the date of plaint. Occasional possession is not sufficient to hold that it is a settled possession. So when the foundational facts are not established by the plaintiff, appellants are not entitled for any sort of injunction.

18.The Commissioner was appointed to note down the physical features. The Commissioner visited the property and filed the report, which is marked as Ex.C1 and Ex.C2, wherein, he has stated that on the date of his visit he found major portion of the property under water. The depth was noticed as 4 feet on the southern side and half feet in another portion and northern portion covered with bushes. So this itself does indicate that on the date of



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suit no cultivation was made by the plaintiff. The Commissioner Report is dated 20.12.2004. So, the physical feature also does indicate that the plaintiff was not in possession on the date of the suit.

19.So, I find that neither the trial Court nor the appellate Court have committed any error in appreciation of the evidence. So, I find no reason to interfere into the concurrent judgment of dismissal passed by the trial Court and the appellate Court.

20.In the result, this second appeal fails and **dismissed** with costs, confirming the concurrent judgment and decree passed by the courts below.

14 /03/2025

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Additional Sub Judge,
Thanjavur.
- 2.The District Munsif,
Thiruvaiyaru.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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