

S.A.(MD)No.1222 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

S.A.(MD)No.1222 of 2005

Seeni Thangam

...Appellant/Appellant/Plaintiff

-Vs-

1.The State of Tamil Nadu,
Rep. by District Collector,
Tanjavur.

2.The Tahsildar,
Pattukiottai.

3.Commissioner,
Corporation of Pattukkottai,
Pattukkottai.

4.The Regional Engineer (Road),
Tanjavur.

5.Assistant Regional Engineer(Road),
Pattukkottai.

6.M.Ayyakannu

...Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 31.03.2005 passed in A.S.No.31 of 2004 on the file of the Sub Judge, Pattukkottai confirming the Judgment and Decree, dated 26.02.2004, passed in O.S.No.146 of 2003 by the District Munsif Court, Pattukkottai.



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For Appellant : Mr.C.Dhanaseelan
For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R1, R2, R4 and R5
No appearance for R3 & R6

* * * * *

JUDGMENT

This Second Appeal has been filed against the Judgment and Decree dated 31.03.2005 passed in A.S.No.31 of 2004 on the file of the Sub Judge, Pattukkottai confirming the Judgment and Decree dated 26.02.2004 passed in O.S.No.146 of 2003 by the District Munsif Court, Pattukkottai.

2.For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The plaintiff in O.S.No.146 of 2003 on the file of the District Munsif Court, Pattukottai is the appellant herein.

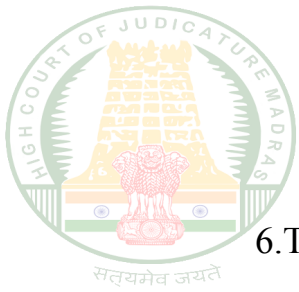
4.The fact of the case is that the plaintiff has filed a suit for declaration and for permanent injunction against the defendants. The plaint schedule properties are originally owned by one Muthusamy Thevar. The plaint schedule



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properties in S.No.225 to an extent of 1 acre 16 cents. In that property, many people have constructed a house, though it is classified in the revenue records as Government Poromboke. From Munusamy Thevar, the plaintiff's husband P.K.Srinivasan has purchased the plaint schedule property by way of sale deed, dated 24.09.1977. After purchase, they constructed a house and also running a shop. Since, the sixth defendant and his brothers have attempted to interfere in the plaintiff's possession, he filed a suit in O.S.No.52 of 1985 against the sixth defendant and his brothers. In the suit, a decree has been passed in favour of the plaintiff's husband for one cent.

5.In such circumstances, the plaintiff's husband died on 14.01.1994 leaving the plaintiff as legal heir and the plaintiff was enjoying the property. In the plaint schedule property, he constructed one Vinayaga Temple. It is also maintained by them. The Municipality has also fixed the taxes for the house and collected the taxes and assigned Door No.172/1 and old Door No.172/A. He enjoyed the property by obtaining electricity connection and in this circumstances, the defendants/respondents have attempted to interfere. Hence, he has filed a suit for declaration and for permanent injunction.



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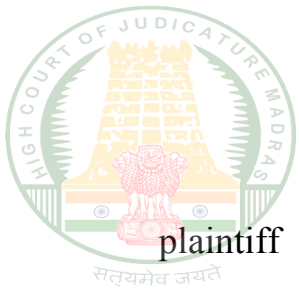
6.The defendant has filed the written statement and contested the suit that the plaintiff schedule property belongs to the Highways Department. It is a Government poromboke. In the total extent, one ares of land was in occupation by the plaintiff. The Government has taken action to remove the unauthorised occupation of the plaintiff. Since, the property is the Government poromboke land, the plaintiff has no right on the title over the suit schedule property and he is not entitled for declaration and for injunction and hence, he seeks to dismiss the suit.

7.On the basis of the above said pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:-

1)Whether this Court has jurisdiction to hear the case or not?

8.Before the trial Court, on the side of the plaintiff, no witnesses were examined and 54 documents have been marked as Ex.A1 to Ex.A54. On the side of defendants, no witnesses were examined and 2 documents have been marked as Ex.B1 and Ex.B.2.

9.Upon considering the evidence on record, the trial Court dismissed the suit with costs. Aggrieved by this Judgment and Decree of the trial Court, the



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plaintiff has filed an appeal in A.S.No.31 of 2004 on the file of the Sub Court, Pattukottai. The first appellate Court has also confirmed the Judgment and Decree of the trial Court. Aggrieved over the same, the plaintiff has filed a Second Appeal before this Court.

10.While admitting the Second Appeal, this Court has framed the following substantial questions of law:-

a)Whether the suit, seeking declaration of plaintiff's title and consequential injunction will amount to questioning an action contemplated and taken under Section 14 of the Tamil Nadu Land Encroachment Act, 1905?

b)Whether the lower Courts are legally correct in dismissing the suit holding that the same is hit by Section 14 of the Tamil Nadu Encroachment Act, 1905?

11.The learned Counsel appearing for the appellant submitted that the plaintiff's husband was in possession and enjoyment of the property. Recognising his possession and enjoyment, the Revenue Divisional Officer, Pattukottai by its proceedings, dated 23.02.2004 ordered to issue patta in favour of the plaintiff's wife. The learned Counsel appearing for the appellant further submitted that before the trial Court, the proceedings of the Revenue Divisional



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Officer, Pattukottai was not produced. Therefore, he filed I.A.No.1 of 2005

before the first appellate Court to receive additional documents. The learned judge received two additional documents filed in I.A.No.1 of 2005, by its order dated 25.02.2005. But he failed to discuss and consider the additional documents filed by the plaintiff and dismissed the appeal without assigning any reason. Hence, he seeks to remand the matter for considering the additional documents filed by the plaintiff/appellant and also seeks to remand the matter to the first appellate Court to consider his additional documents to pass orders on merits.

12.The learned Additional Government Pleader appearing for the respondents supported the order of the trial Court as well as the first appellate Court had contended that the Government is taking action to remove the unauthorised occupation by the plaintiff, since the properties belong to the Highways department and classified as Government poromboke and the civil Court has no jurisdiction to interfere with the proceedings of the Government in order to take eviction from the unauthorised occupation and thus, pleaded to dismiss the appeal as it has no merits.



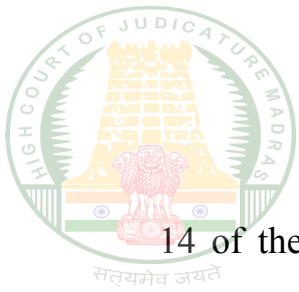
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13.I have considered the matter in the light of the submissions made by the learned counsels on both sides and perused the materials available on records carefully.

14.On perusal of the records, the facts reveal that the plaintiff is in possession of the plaint schedule properties by constructing a house and further, on perusal of the records, it is noticed that the plaintiff has filed Ex.A1 to Ex.A38 to show her possession. On perusal of Ex.A1 to Ex.A38, it is noticed that the plaintiff has failed to pay the property tax from the year 1997. It is evidence from Ex.A6 to Ex.A38. Apart from that, his possession has proved, by the notice issued by the Pattukottai Municipality, it is evidence by Ex.A7. On perusal of the documents and evidence show that the plaintiff is in possession and enjoyment by constructing a house and his possession is evidence by the Municipal notice and demand notice i.e., the property tax and payment of the property tax.

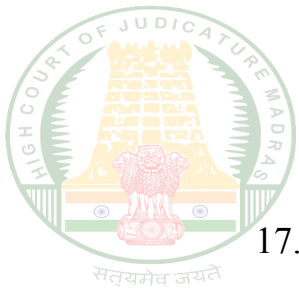
15.The trial Court by its Judgment in Para No.25, relying upon Section 14 of the Tamil Nadu Land Encroachment Act, 1905 dismissed the suit on the ground that it has no jurisdiction to entertain the suit. No doubt, under Section



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14 of the Tamil Nadu Land Encroachment Act, 1905, the proceedings of the Government by issuing notice under Section 14 of the Tamil Nadu Land Encroachment Act cannot be challenged before the civil Court. But in this case, admittedly, no notice has been issued by the Government under Section 14 of the Tamil Nadu Land Encroachment Act, 1905 for eviction to the plaintiff. Under these circumstances, by relying upon this provision, holding that the civil Court has no jurisdiction for considering his prayer for injunction is illegal.

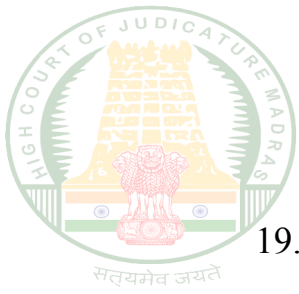
16. Further, on perusal of the first appellate Court's judgment, it is noticed that before the first appellate Court, the plaintiff filed I.A.No.1 of 2005 to receive additional documents of the proceedings issued by the Revenue Divisional Officer, Pattukottai, dated 23.02.2004 and the judgment copy of the learned District Munsif, Pattukottai in O.S.No.52 of 1985. On perusal of these documents, it is noticed that the Revenue Divisional Officer, Pattukottai by its proceedings in Ni.Mu.1486/2004/A4, by an order dated 23.02.2004, ordered patta in favour of the plaintiff. This document has been received by the first appellate Court by its order dated 25.02.2005. Unfortunately, while passing the judgment, the first appellate Court has not discussed about the additional documents received by the Court in I.A.No.1 of 2005 simply confirmed the judgment and decree of the trial Court. That too, not considered.



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17.No notice has been issued by the Government against the plaintiff under Section 14 of the Tamil Nadu Land Encroachment Act, 1905. In the absence of any notice under Section 14 of the Tamil Nadu Land Encroachment Act, 1905, a suit for injunction based upon the possession is well maintainable and the civil Court has jurisdiction. Therefore, dismissal of the suit on the ground of want of civil Court jurisdiction is unsustainable and liable to be set aside. The first appellate Court without considering the legal aspects, confirmed the Judgment and Decree of the trial Court and it is liable to be set aside. Besides though the first appellate Court received the additional documents of the Revenue Divisional Officer proceedings, issuing of patta has not considered and discussed. Therefore, the judgment and decree of the first appellate Court is perverse and not considered the documents on records. Therefore, it is liable to set aside.

18.When the first appellate Court received the additional documents under Order 41 Rule 27 has failed to follow the procedures as contemplated under Order 41 Rule 28, wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to sent it when taken to the Appellate Court.



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19. In this case, the first appellate Court has not followed the procedure as contemplated under Section Order 41 Rule 28 and also not discussed about receiving of additional documents. Therefore, the Judgment and Decree of the first appellate Court is liable to be set aside. Accordingly, it is set aside and the matter is remanded back to the first appellate Court to rehear the matter by following the procedures under Order 41 Rules 27 and 28 C.P.C and to consider the additional documents filed by the plaintiff, after giving opportunity to both the parties. The first appellate Court is hereby directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

20. Accordingly, this Second Appeal stands disposed of. No costs.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR



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To

- 1.The Sub Court, Pattukkottai.
- 2.The District Munsif Court, Pattukkottai.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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V.SIVAGNANAM. J,

RJR

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