



S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 30.10.2024

Pronounced On : 08.05.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)Nos.624 & 625 of 2015
and 152 & 153 of 2018

S.A(MD)No.624 of 2015:

R.Pandy

... Appellant /
Appellant /
Plaintiff

Vs.

M.K.Gopal

... Respondent /
Respondent /
Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to allow this Appeal and decree the suit entirely by modifying the judgment and decree dated 14.08.2015 made in A.S.No.5 of 2014 on the file of Sub Court, Sivagangai confirming the judgment and decree dated 25.09.2013 on the file of the Principal District Munsif Court, Manamadurai made in O.S.No.92 of 2009.

For Appellant : Mr.V.P.Rajan



S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

For Respondent : Mr.R.Suriyanarayanan

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S.A(MD)No.625 of 2015:

Nagammal (Died)

1.R.Pandy

2.Chinnasamy

3.Murugan

4.Nagarajan

5.Chellammal

... Appellants /
Appellants /
Defendants 2 to 6

Vs.

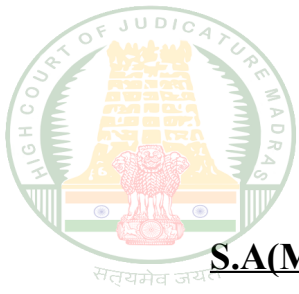
M.K.Gopal

... Respondent /
Respondent /
Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to allow this Appeal and decree the suit entirely by modifying the judgment and decree dated 14.08.2015 made in A.S.No.16 of 2014 on the file of Sub Court, Sivagangai confirming the judgment and decree dated 25.09.2013 on the file of Principal District Munsif Court, Manamadurai made in O.S.No.85 of 2009.

For Appellants : Mr.V.P.Rajan

For Respondent : Mr.R.Suriyanarayanan



S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

S.A(MD)No.152 of 2018:

M.K.Gopal

... Appellant /
Appellant /
Defendant

Vs.

R.Pandy

... Respondent /
Respondent /
Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 14.08.2015 made in A.S.No.07 of 2014 on the file of Sub Judge, Sivagangai confirming the judgment and decree dated 25.09.2013 made in O.S.No.92 of 2009 on the file of Principal District Munsif, Manamadurai, by allowing this Appeal.

For Appellant : Mr.R.Suriyanarayanan

For Respondent : Mr.V.P.Rajan

S.A(MD)No.153 of 2018:

M.K.Gopal

... Appellant /
Appellant /
Plaintiff

Vs.

1.R.Pandy

2.R.Chinnasamy

3.R.Murugan

3/16



S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

4.R.Nagarajan

5.Chellammal

... Respondents/
Respondents/
Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 14.08.2015 made in A.S.No.10 of 2014 on the file of Sub Judge, Sivagangai confirming the judgment and decree dated 25.09.2013 made in O.S.No.85 of 2009 on the file of Principal District Munsif, Manamadurai, by allowing this Appeal.

For Appellant : Mr.R.Suriyanarayanan

For Respondents : Mr.V.P.Rajan

COMMON JUDGMENT

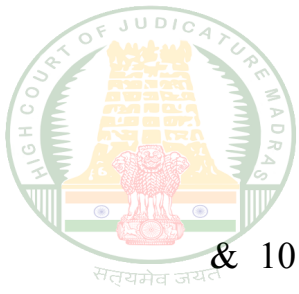
M.K.Gopal / appellant in S.A(MD)Nos.152 and 153 of 2018 filed in O.S.No.85 of 2009 on the file of the Principal District Munsif, Manamadurai seeking relief of permanent injunction to restrain the defendants from interfering with his possession and enjoyment of the suit property. The suit items are 3 in number. The plaintiff claimed title over item nos.1 and 2. Regarding the 3rd item, he claimed only possessory title and conceded that it is a poramboke. Item no.3 is adjacent to item nos.1 and 2.



S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

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2.O.S.No.92 of 2009 was filed by Pandey claiming permanent injunction to restrain M.K.Gopal from interfering with the possession and enjoyment of the suit property. The suit schedule in O.S.No.92 of 2009 contains four items. He claimed to be a cultivating tenant in respect of items 1 and 2 and claimed possessory right over items 3 and 4. Items 3 and 4 are poramboke lands. Items 3 and 4 correspond to item no.3 in O.S.No.85 of 2009. In view of the commonality of the suit schedules, both the suits were tried together. M.K.Gopal examined himself as PW1 and marked Ex.A1 to Ex.21. Pandey examined himself as DW1 and another witnesses as DW2. Ex.B1 to Ex.B42 were marked on his side. An Advocate Commissioner was appointed and his report and plan was marked as Ex.C1 and Ex.C2. After consideration of the evidence on record, the trial Court partly decreed both the suits. M.K.Gopal was held entitled to permanent injunction in respect of suit items 1 and 2. Likewise, Pandey was held entitled to permanent injunction in respect of the suit items 3 and 4. Both the suits were disposed of vide judgment and decrees dated 25.09.2013. Challenging the same, Pandey filed A.S.No.5 of 2014 and M.K.Gopal filed A.S.Nos.7



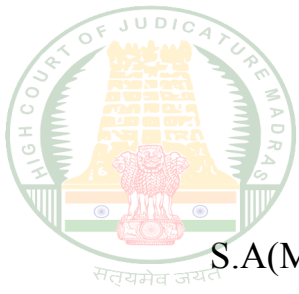
S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

& 10 of 2014 before the Sub Court, Sivagangai. Pandey and other defendants in O.S.No.85 of 2009 filed A.S.No.16 of 2014. The first appellate Court by judgment and decree dated 14.08.2015 dismissed all the four appeals. Challenging the same, M.K.Gopal filed S.A(MD)Nos. 152 and 153 of 2018 while Pandey filed S.A(MD)Nos.624 and 625 of 2015. S.A(MD)No.152 of 2018 was admitted on 04.06.2018 on the following substantial questions of law:

“(1) Whether the Courts below are correct in rejecting Ex.A17, an unregistered release deed of possessory right, dated 17.10.1972, which is admissible for collateral purpose of proving possession in an injunction suit as under Section 49 of the Indian Registration Act?

(2) Whether the respondent is estopped from claiming possessory right over Item Nos.3 and 4 as because his father was a witness in Ex.A17, when he claim the said right through him?

(3) Whether the Courts below right in holding that the 1st respondent is in possession and enjoyment of the suit Item Nos.3 and 4 on the basis of 2C patta, Ex.B2, which is admittedly not a title to the land, but given for enjoying the tree in the poramboke land only?”



S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

S.A(MD)No.153 of 2018 was admitted on 04.06.2018 on the following substantial questions of law:

“(1) Whether the Courts below are correct in rejecting Ex.A17, an unregistered release deed of possessory right, dated 17.10.1972, which is admissable for collateral purpose of proving possession in an injunction suit as under Section 49 of the Indian Registration Act?

(2) Whether the respondents are estopped from claiming possessory right over Item No.3 as because his father was a witness in Ex.A17, when he claim the said right through him?

(3) Whether the Courts below right in holding that the 1st respondent is in possession and enjoyment of the suit Item No.3 on the basis of 2C patta, Ex.B2, which is admittedly not a title to the land, but given for enjoying the fruit of the tree in the poramboke land only?”

S.A(MD)No.624 of 2015 was filed raising the following substantial questions of law:

“a) Whether the Courts below are correct without considering the right of the lawful cultivating tenant under Tamil Nadu Cultivating Tenancy Rights Act, 1969?



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S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

b) Whether the Courts below are correct without looking the Advocate / Commissioner report under Order 26 Rule 9 of Civil Procedure Code is correct or not?

c) Whether the Courts below are correct without considering the ingredient of actual possession is correct or not?

d) Whether the I Appellate Court is correct in confirming the judgment and decree of Trial Court in O.S.No.92 of 2009 without any discussion?”

S.A(MD)No.625 of 2015 was filed raising the following substantial questions of law:

“a) Whether the Courts below are correct without considering the right of the lawful cultivating tenant under Tamil Nadu Cultivating Tenancy Rights Act, 1969?

b) Whether the Courts below are correct without looking the Advocate / Commissioner report under Order 26 Rule 9 of Civil Procedure Code is correct or not?

c) Whether the Courts below are correct without considering the ingredient of actual possession is correct or not?

d) Whether the I Appellate Court is correct in confirming the judgment and decree of Trial Court in O.S.No.92 of 2009 without any discussion?

e) Whether the Courts below is in right in not



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S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

considering the fundamental principle that the case of the plaintiff must stand or fail on its own merits de-horse weakness in the defence? ”

3.The learned counsel appearing for M.K.Gopal reiterated all the contentions set out in the grounds of appeal and called upon this Court to answer the substantial questions of law in favour of M.K.Gopal and allow S.A(MD)Nos.152 and 153 of 2018 and dismissed S.A(MD)Nos. 624 and 625 of 2015.

4.Per contra, the learned counsel appearing for Pandey and others submitted that S.A(MD)Nos.624 and 625 of 2015 should be allowed and S.A(MD)Nos.152 and 153 of 2018 should be dismissed.

5.I carefully considered the rival contentions and went through the evidence on record.

6.The case of M.K.Gopal is as under:

The suit items 1 and 2 belonged to his mother Indhumathiammal who purchased the same in the year 1972. Indhumathiammal passed away on 17.10.1995 and following her demise on 17.10.1995, the suit property

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S.A(MD)Nos.624 & 625 of 2015 and 152 & 253 of 2018

devolved on him. The plaintiff is doing personal cultivation. The service connection stands in the name of Indhumathiammal. The revenue record also reflect the name of Indhumathiammal. While so, Indhumathiammal took assistance of one Ramu Ambalam, husband of Nagammal / first defendant and father of Pandey. For arranging agricultural labour, Ramu Ambalam was only assisting the plaintiff and his mother in matters relating to cultivation. He never claimed to be a cultivating tenant in respect of the suit property. But after his lifetime, his legal heirs particularly Pandey began to tendency claim over the suit properties. Hence, he was constrained to institute O.S.No.85 of 2009.

7.The case of Pandey is as follows:

Indhumathiammal purchased items 1 and 2 in the year 1972. She leased out the said lands in favour of Ramu Ambalam in 1972 itself. Ramu Ambalam personally cultivated the said lands. He was giving 7 bags of paddy per fasli year. Items 3 and 4 are lying adjacent to the items 1 and 2. They are poramboke lands and they were also in possession of Ramu Ambalam. After Ramu Ambalam passed away, his legal heirs continue to be in possession and enjoyment of the suit items. Since M.K.Gopal



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was interfering with his possession and enjoyment of suit property, he was constrained to institute O.S.No.92 of 2009.

8.As already mentioned, the Courts below upheld the claim of M.KGopal in respect of item 1 and 2 and sustained the claim of Pandey in respect of the poramboke lands. It is not in dispute that item nos.1 and 2 were purchased by the mother of the plaintiff vide Ex.A1 and Ex.A2 dated 17.10.1972. Pandey and the other legal heirs of Ramu Ambalam concede that items 1 and 2 belonged to Indhumathiammal. Ex.A4 is the patta passbook reflecting Indhumathiammal's name. Ex.A5 to Ex.A9 are the kist receipts stand in the name of Indhumathiammal. Ex.A10 is the adangal extract for the fasli years 1413 to 1416. Items 1 and 2 are having electricity service connection (S.C.No.237). It also stands in the name of Indhumathiammal. Ex.A14 is the computerized patta. In the face of such over whelming evidence, the appellants in S.A(MD)Nos.624 and 625 of 2015 have produced only a few kist receipts in favour of Pandey. Ex.B33 and Ex.B35 are the statement particulars of Sakthi Sugar Factory and Sugarcane cutting order. The Courts below have rightly preferred the title documents and the revenue records which favour M.K.Gopal



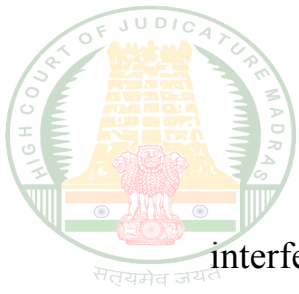
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over the documents produced by Pandy Ambalam. Of course, Ex.C1

Commissioner's report is in favour of Pandy Ambalam. But the Courts below have rightly held that the factum of possession can never be determined by the report of Advocate Commissioner.

9.Pandy Ambalam's case is that his father Ramu Ambalam was a cultivating tenant and that after his demise he was cultivating the suit items. If Ramu Ambalam was actually a cultivating tenant, his name should have been entered in the record of tenancy. No such entry extract has been produced. Even if Ramu Ambalam was a cultivating tenant, still that right was not heritable. It is not in dispute that Pandy Ambalam is a practising lawyer. His brother is a Government servant. Therefore, it is improbable that they could be contributing their physical labour and personally cultivating suit items 1 and 2. That is why, the Courts below came to the conclusion that M.K.Gopal is in physical possession and enjoyment of the suit item 1 and 2 and hence he is entitled to the relief of injunction.

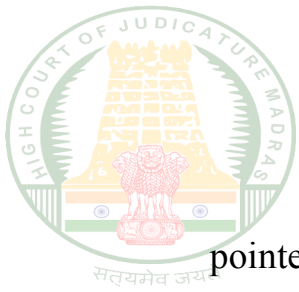
10.The concurrent findings of the Courts below do not call for any



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interference. They are well grounded on facts. The legal requirements have been correctly applied. When the title of M.K.Gopal over the item nos.1 and 2 is admitted and when all the revenue records stand in his favour, the Courts below were justified in granting the relief of permanent injunction. In this view of the matter, the substantial questions of law formulated in S.A(MD)Nos.624 and 625 of 2015 are answered against the appellants therein and in favour of M.K.Gopal. S.A(MD)Nos.624 and 625 of 2015 are dismissed.

11.M.K.Gopal has title only over the items 1 and 2. Item No.3 in O.S.No.85 of 2009 corresponds to Item Nos.3 and 4 in O.S.No.92 of 2009. It is a poramboke land. The entire claim of M.K.Gopal is based on Ex.A17. M.K.Gopal would claim that the said item was sold to his mother Indhumathiammal through an unregistered document, namely, Ex.A17. It is conceded that since Ex.A17 is an unregistered document, it is inadmissible. But the claim of the learned counsel for M.K.Gopal is that the said document can be considered for collateral purpose to find out who is in possession. He relies on the decision reported in **2014 (6) CTC 773 (R.Munusamy Vs G.Krishttappillai & Others)**. It is also



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pointed out that Ramu Ambalam was the attester in Ex.A17. The learned counsel would further contend that Pandu Ambalam is only having what is known as 2C patta. The said patta would enable the holder to enjoy the usufructs of the trees standing in the poramboke lands and nothing more. Issuance of 2C patta does not mean recognition of possession over the land.

12.I am not swayed by the said contentions. When item nos 3 and 4 are poramboke lands, the executant of Ex.A17 could not have released her so called interest or right in the lands. Ex.A17 is a worthless piece of paper. The Courts below were justified in refusing to look into its contents. That is why the trial Court refused to mark Ex.A17. The first appellate Court also declined to consider the same when it was sought to be admitted as additional evidence. Once Ex.A17 is eschewed, there is no evidence to sustain the claim of M.K.Gopal over the items 3 and 4. Pandu on the other hand had established his possession over the poramboke land under Ex.B2, Ex.B7, Ex.B29 to Ex.B31. When the Courts below have concurrently found that Pandu is in possession of items 3 and 4, it is not open to this Court in exercise of jurisdiction under



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Section 100 of CPC to interfere the same. The substantial questions of law framed in S.A(MD)Nos.152 and 153 of 2018 are answered against the appellant and S.A(MD)Nos.152 and 153 of 2018 are dismissed. No costs.

08.05.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To:

- 1.The Sub Court, Sivagangai.
- 2.The Principal District Munsif Court, Manamadurai.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

MGA

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