



WEB COPY

SA No. 1283 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

SA No. 1283 of 2013

M. Venkatachalam

Plaintiff/Appellant/
Appellant

Vs

1. The Keerambur Panchayat Board
Rep. By Its President,
Keerambur Taluk, Namakkal District.
2. M. Venkatachalam
S/o Marappa Gounder Kolathu Salai
Keerambur Post Namakkal Taluk & District.

Defendants/
Respondents/

..Respondents

PRAYER: This Second Appal filed under Section 100 C.P.C., against the judgment and decree dated 29.07.2011 made in A.S.No.45 of 2011 on the file of the Additional District Court, Namakkal, confirming the judgment and decree dated 12.12.2007 made in O.S.No.225 of 2007 on the file of the Principal District Munsif Court, Namakkal.

For Appellant(s): Mr.Sam Jayaraj Houston
For M/s.Sarvabhauman Associates

For R2 Mr. K.J.Nithyanandam

For R1 Mrs.Aswini Devi, AGP



JUDGMENT

Heard.

2. This Second Appeal is filed by the plaintiff in O.S.No.225 of 2007, against the judgment and decree dated 29.07.2011 passed in A.S.No.45 of 2011 by the Additional District Court, Namakkal, whereby the decree of dismissal dated 12.12.2007 made in O.S.No.225 of 2007 on the file of the Principal District Munsif Court, Namakkal, came to be confirmed.
3. For the sake of convenience, the parties are referred to as they are arrayed before the trial Court.
4. Plaintiff's case: The suit in O.S.No.225 of 2007 was laid for bare permanent injunction in respect of a portion of S.No.364, Keerambur Village, Namakkal District described as "cart-track poramboke", and measuring about 60 feet (North-South) × 220 feet (East-West). The plaintiff averred continuous possession and enjoyment for three decades of the suit portion by planting coconut saplings, keeping haystack and tethering cattle; and that the Government, recognising such enjoyment, had collected penal charges/B-memo charges along with kist for his



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adjoining lands; that he had approached the revenue authorities for patta and the petition was pending; and that owing to hostility, particularly after the second defendant (his paternal cousin) became Panchayat President, there were threats and an attempted interference (including an incident stated as 10.03.2007), compelling the suit for injunction to protect possession.

5. The first defendant/Panchayat denied the plaint allegations and pleaded that the property is Government land classified as cart-track poramboke in S.No.364, that the Panchayat is charged with its maintenance/administration, and that the plaintiff is an admitted encroacher in wrongful possession, not entitled to injunction and cannot maintain a suit against the authority charged with maintaining the cart-track; that the plaintiff's documents relate to other survey numbers and do not establish possession over S.F.No.364; It was asserted that sporadic acts like haystack or tethering cattle do not constitute lawful possession; that on villagers' objections the Tahsildar had initiated action and by proceedings dated 16.11.2005 the encroachment was removed; and the plaintiff was no longer in possession; and that the suit was also defective for non-joinder of the Government.



6. The Trial Court dismissed the suit. The First Appellate Court, in A.S.No.45 of 2011, confirmed the dismissal. The plaintiff has preferred the present Second Appeal.

7. The Trial Court, on Ex.B5 (Tahsildar memo dated 16.11.2005), the Trial Court did not accept it at face value, noting the plaintiff's contention that the Advocate Commissioner's report/plan (Ex.C1–C2) showed coconut saplings and haystack and therefore rendered Ex.B5 “unbelievable/cannot be accepted”. However, the Trial Court simultaneously held that the Commissioner's report cannot prove juridical possession, since a Commissioner cannot decide who is in possession and the Court cannot conclude possession solely from such report. The Trial Court then recorded a clear and categorical finding that the plaintiff failed to establish possession as on the date of suit, chiefly because (i) penal/B-memo/kist receipts were only up to 2004, (ii) the suit was filed in 2007, and (iii) both PW1 and DW2 (Deputy Tahsildar) confirmed that no B-memo was issued after 2004, hence there was no contemporaneous documentary proof of possession at suit time; therefore, the claim for injunction was rejected. The Court further reasoned that S.No.364 stood classified as cart-track poramboke and, in that setting, the plaintiff's possession was not established and thereby injunction refused.



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8. The First Appellate Court correctly addressed the suit as one for bare injunction, where the decisive enquiry is whether the plaintiff proved possession warranting protection. It noticed the defence case based on official action and the plea that encroachment had been removed. Crucially, in the appeal, the plaintiff himself relied upon an additional document, Ex.A6, and the Appellate Court recorded, on that basis, that the plaintiff was dispossessed on 07.10.2009. Having regard to this admitted/accepted factual position emerging from the plaintiff's own reliance, the Appellate Court held that where the plaintiff is not in possession, the decree for permanent injunction to protect possession cannot be granted, and therefore affirmed dismissal of the suit.

9. In Second Appeal, the appellant sought to urge that dispossession was not in accordance with "procedure established by law" and that reliance on Ex.B5 is erroneous and further assert that Ex.A6 would show the plaintiff's possession in the year 2009.

10. The Trial Court dismissed the suit on the categorical finding that the plaintiff had failed to prove possession as on the date of the suit. The defendants relied on Ex.B5 to contend that the plaintiff had been



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dispossessed in the year 2005. The suit was disposed of in 2007 and the appeal came to be filed only in 2011. Significantly, while the plaintiff, in appeal, questioned the Trial Court's conclusion (which had adverted to Ex.B5), he himself produced an additional document, Ex.A6, which evidences that he was dispossessed on 07.10.2009—i.e., after disposal of the suit and before the filing of the appeal. The First Appellate Court, therefore, correctly proceeded on the plaintiff's own reliance on Ex.A6 and held that, once dispossession on 07.10.2009 is established, the plaintiff is not entitled to a decree of permanent injunction. The plaintiff continues to remain out of possession; and no injunction to protect possession can be granted in favour of a plaintiff who is not in possession.

11.It was contended in the grounds and during arguments that the plaintiff was dispossessed otherwise than in accordance with the procedure established by law and, therefore, the appeal is maintainable. However, once the plaintiff's dispossession is admitted/established, the prayer for bare injunction to protect possession becomes infructuous. In such circumstances, the plaintiff ought to have sought appropriate consequential relief by amending the plaint and pursuing restoration of possession, including the summary remedy contemplated under Section 6 of the Specific Relief Act, 1963, within the prescribed period of six



months. Thus no substantial question of law arises for consideration under Section 100 CPC.

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12. Accordingly, the Second Appeal is dismissed at the admission stage. No costs. Consequently, connected Civil Miscellaneous Petition, if any, is closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MFA



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To

1. Additional District Court, Namakkal
2. Principal District Munsif Court, Namakkal,



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DR.A.D.MARIA CLETE, J

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