

In the Court of the Subordinate Judge, Ramanathapuram.
Present: Tmt. M.Breetha, M.L.,
Subordinate Judge, Ramanathapuram.
Friday, the 13th day of September 2019
A.S.No.1/2018

1. Devirajan

2. Muthuvel

3. Viswanathan

....

Appellants/Plaintiffs

Plaintiffs for themselves and as representatives of Therkuvadi people of Pamban Village.

.Vs.

1. Vairamani

2. Uthiravan

....

Respondents/Defendants

On appeal from the Judgment and Decree dated 20.11.2017 in O.S.No.20/2010, on the file of the District Munsif cum Judicial Magistrate, Rameswaram.

Between:

1. Devirajan

2. Muthuvel

3. Viswanathan

....

Plaintiffs

Plaintiffs for themselves and as representatives of Therkuvadi people of Pamban Village.

.Vs.

1. Vairamani

2. Uthiravan

....

Defendants

This appeal has been filed on 03.01.2018 and taken on file as A.S.No.1/2018 on the same day and on behalf of the appellants, Advocate Thiru.J.Mohamed Sultan and of Advocate Thiru.C.Ravichandran for the respondents and upon hearing the arguments on both sides and upon perusal of entire records and having stood over till this day for consideration, this Court delivered the following...

JUDGMENT

1) This appeal filed under Order 41 Rule 1 and Section 96 and 151 of Code of Civil Procedure against Judgment and Decree dated 20.11.2017 in O.S.No.20/2010, on the file of the District Munsif cum Judicial Magistrate, Rameswaram.

2) **Brief averments of the plaint:**

The plaintiffs have averred that the plaint scheduled property and a larger area consist of Periya Mariamman Kovil and its vacant site shown as ABCDEFGA in rough plan and it is enclosed by stone pillars coloured in white and saffron and consists of an auditorium in the south eastern side; a Mariamman temple with electricity service connection no.308-00801033, a stage, Athi tree and a Neem tree and that the property with an extent of 2 acres 54 cents comprised in survey no.1168/5 originally belonged to N.Rathinangitha Pandian and the same was purchased by Sri Periya Mariamman temple by virtue of a registered sale deed dated 21.12.1987 and that the vendor, Rathinangitha Pandian had filed O.S.No.263/1966 against Sethu Karuppiyah Ambalam and 12 others and that as per the Judgment and Decree dated 24.02.1970 passed in the above said suit, neither Rathinangitha Pandian nor his legal heirs had acquired the property and that the plaintiffs are in long, continuous and uninterrupted possession over the plaint scheduled property for more than the period prescribed under law hostile to the interest of defendants and others and that the defendants had lodged a false complaint before Pamban police station during the month of July 2010 and after enquiry the police officials gave due warning to the defendants and that subsequently, they lodged a complaint before District Crime Branch and that during enquiry, the police officials coerced the plaintiffs to execute a statement on 09.07.2010 with false contentions and that objecting the same, the plaintiffs had issued a notice on 22.07.2010 to Inspector of District Crime Branch, Ramanathapuram; Tahsildhar, Rameswaram and; Village Administrative Officer of Thangachimadam and that the defendants are attempting to encroach upon the plaint scheduled property on 20.07.2010 and the same was thwarted by plaintiffs and that the acts of the defendants could be restrained only by the decree of this Court and hence constrained to file this suit seeking relief of

permanent injunction restraining the defendants from interfering with plaintiffs' peaceful possession over the plaint scheduled property and pray to decree the suit.

3) **Brief contentions of the written statement filed by 1st defendant and adopted by 2nd defendant:**

The defendants have contended that the suit filed on behalf of the villagers of Therkuvadi of Pamban village is not maintainable and that the extent of the plaint scheduled property has not been described and the plaint scheduled property is not in possession of the plaintiffs and that the existence of Sri Periya Mariamman temple and Mullaipari building is admitted and that this suit filed without adding the administrators of the temple is bad for non joinder of necessary parties and that 2 acres 54 cents of land comprised in survey no.1168/5 originally belonged to N.Rathinangitha Pandian and he had filed O.S.No.263/1966 before the District Munsif Court, Ramanathapuram against Sethu Karuppiyah and others seeking relief of declaration and permanent injunction and that the suit was partly decreed in respect of the property comprised in survey no.1168/5 and was dismissed in respect of the property comprised in survey no.1168/3 and that aggrieved over the same, Rathinangitha Pandian had preferred appeal before Ramanathapuram Subordinate Court at Madurai in A.S.No.18/1971 and that the findings of the Trial Court in respect of the property comprised in survey no.1168/3 was reversed and that the title of Rathinangitha Pandian in respect of the property comprised in survey no.1168/3 was confirmed and that out of 2 acres 54 cents of land in survey no.1168/5, the defendants' father Rathinangitha Pandian had sold 50 cents of land and he had relinquished 5 cents of land in favour of Sri Periya Mariamman temple by virtue of a registered sale deed dated 21.12.1987 and that the defendants and their co-sharers had filed O.S.No.5/2004 before District Munsif Court, Ramanathapuram seeking partition and preliminary decree was passed and subsequently, final decree was also passed on 31.07.2007 and that in the above said final decree, it was directed to sell the property with an extent of 1 acre 53 cents comprised in survey no.1168/5A3 and to divide it and that in order to grab the property, the plaintiffs have come forward with this suit and that other than 55

cents of land sold to the plaintiff, the rest of the portion of the plaint scheduled property is in possession of the defendants and that the cause of action is illusory and prays for dismissal of the suit with costs.

4) Based on the above referred pleadings, the Trial Court has framed the following issues:

- I) Whether the plaintiff is entitled to the relief of permanent injunction respecting the entire property as prayed for?
- II) Whether the defendants are the owners of major portion of the suit property as contended by them?
- III) To what other reliefs, the plaintiffs and defendants are entitled to?

5) Before the Trial Court, on the side of the plaintiffs, PW1 to PW3 were examined and Ex.A1 to A9 documents were marked. On the side of the defendants, DW1 was examined and Ex.B1 to B6 documents were marked. The report and plan of the Advocate Commissioner were marked as Ex.C1 and C2.

6) Considering the oral and documentary evidences, the Trial Court has dismissed the suit without costs.

7) **Aggrieved over the above said Judgment and Decree, the unsuccessful plaintiffs have preferred this appeal as A.S.No.1/2018 amongst the following grounds:**

The Judgment and Decree rendered by the Trial Court is against law, weight of evidence and probabilities of case and that the issue framed by the Trial Court regarding the title of the defendant is not legally sustainable and that the Trial Court has failed to consider that the observation made by the Advocate Commissioner in his report and plan and that the Trial Court has failed to consider the principle that four boundaries would prevail over the extent of suit property and that the Trial Court has failed to consider that the defendants have failed to show the existence of 3 acres 60 cents in survey no.1168/5 and that the Trial Court has failed to consider

that the defendants have not produced the sale deed executed in respect of property which lies on the western side of the suit property and that the Trial Court has failed to consider that various sale deeds were effected in respect of portion of property in survey no.1168/5 and that the Trial Court has failed to consider that the defendants have no property in survey no.1168/5 and the decision arrived by the Trial Court is erroneous and prays to allow the appeal and consequently to dismiss the suit.

8) **The points for consideration in this appeal are as follows:**

- i) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
- ii) Whether the appeal deserves to be allowed?

9) **Point no.(i):**

The plaint scheduled property has been described as a property comprised in survey no.1168/5 in patta no.738. The plaintiffs have not described the extent of property. The four boundaries of the properties have been stated and a rough plan was annexed with the plan. In the oral evidence of PW1, he has deposed that he has filed the suit in respect of 2 acres 54 cents of land comprised in survey no.1168/5. Therefore, this Court is of the view that the plaintiffs have come forward with this suit seeking relief in respect of 2 acres 54 cents of land comprised in survey no.1168/5 in patta no.738 bounded by east-west road on the south; property of Seeniappa H.P.Sesalian Petrol Bunk on the west; east-west, north-south road and the property of Lakshmanan, community hall, womens club and water tank on the north and; property of Arumugam and government poramboke land on the east. Now, it is necessary to find out whether the plaintiffs have title over the above said property.

10) The plaintiffs claim title on the basis of Ex.A1 sale deed. Ex.A1 is the original sale deed dated 21.12.1987 executed by N.Rathinangitha Pandian in favour of Sri Periya Mariamman temple in respect of 55 cents of land with east-west measuring 262 link and north-south measuring 210 link comprised in survey no.1168/5 in

patta no.738. The above said sale deed was executed in respect of 55 cents of land out of 2 acres 54 cents of land comprised in survey no.1168/5. Therefore, it is very clear that Ex.A1 was executed in respect of portion of plaint scheduled property.

11) The plaintiffs set up their claim and try to succeed in his claim by establishing that the defendants who are the sons of Rathinangitha Pandian have no right over the property comprised in survey no.1168/5. But this Court is of the view that when the plaintiffs have sought for the relief of permanent injunction, it is for them to prove that they are in lawful possession over the plaint scheduled property based on valid title. Ex.A1 sale deed is confined only to 55 cents of land. The plaintiffs have not averred how they had acquired right over the rest of the portion of the property comprised in survey no.1168/5. Further, in the averments of the plaint, the plaintiffs have averred that 2 acres 54 cents of land comprised in survey no.1168/5 belonged to Rathinangitha Pandian and the same was purchased by Sri Periya Mariamman temple by virtue of Ex.A1 sale deed. In later portion of the plaint, it has been averred that as per the Judgment and Decree passed in O.S.No.263/1966 dated 24.02.1970, neither Rathinangitha Pandian nor his legal heirs have right over the plaint scheduled property. In the initial portion of paragraph-4, the plaintiffs have traced their title from N.Rathinangitha Pandian and in later portion they have denied the title of Rathinangitha Pandian. During the cross examination of DW1, it has been suggested that Rathinangitha Pandian was entitled to only 1 acre 27 cents of land. While considering the above said pleadings and averments, this Court is of the view that the plaintiffs' pleadings are contradictory.

12) Further, in the cross examination of DW1, the counsel for the plaintiffs has suggested that the portion of plaint scheduled property comprised in survey no.1168/5 was sold by Ayyasamy in favour of Velayutham by a registered sale deed; a portion of property was settled by one Ramachandran in favour of Tamil Nadu State Government by virtue of settlement deed dated 20.02.1997; a portion of property was settled by one Velayutham in favour of Tamil Nadu State Government by a registered gift/settlement deed dated 24.02.1997; a portion of property was

settled by Nambu Ambalam in favour of Tamil Nadu State Government by a registered Inam settlement deed dated 24.02.1997; a portion of property was sold by Ramachandran in favour of Muthumari by a registered Inam settlement deed dated 01.06.2004; a portion of property was sold by Puspavalli in favour of Murugeswari by a registered sale deed dated 28.07.2008; a portion of property was sold by Ramachandran in favour of Palanikumar by a registered sale deed dated 26.04.2010; a portion of property was mortgaged by Ramachandran and Palanikumar and was redeemed by them on 26.07.2010; a portion of property was settled by Ramachandran in favour of Vijayakumar by a registered Inam settlement deed dated 06.06.2012; a portion of property was settled by Ramachandran in favour of Sinthadurai by a registered settlement deed dated 06.06.2012 and; a portion of property was sold by Muthumari in favour of Velayutham by a registered sale deed dated 16.12.2013 and the counsel for the plaintiffs have vehemently contended that several portions of property comprised in survey no.1168/5 were sold to various persons and the defendants do not have any right over the plaint scheduled property.

13) While considering the above said suggestions put-forth by the counsel of the plaintiffs, this Court is of the view that various portions of the plaint scheduled property were transferred by way of sale and settlement to various other persons and the same was admitted by the plaintiffs. While being so, the plaintiffs have not stated how they have acquired title over the entire entire 2 acres 54 cents of land described as plaint scheduled property.

14) On the other hand, the defendants have contended that 2 acres 54 cents of land comprised in survey no.1168/5 belonged to their father, N.Rathinangitha Pandian and his right over the above said property was confirmed by the Judgment and Decree passed in O.S.No.263/1966 and A.S.No.18/1971 and after his death the same was inherited by the defendants. The defendants have produced Ex.B1 to B6 documents in support of their contention. Ex.B1 is the original sale deed dated 22.07.1913 executed in respect of plaint scheduled property and other properties in

favour of predecessor-in-title of Rathinangitha Pandian. Ex.B2 is the certified copy of Judgment passed in O.S.No.263/1966, on the file of Additional District Court, Ramanathapuram. From the findings in the above said Judgment, it could be seen that the above said suit was partly decreed by declaring the title of Rathinangitha Pandian in respect of portion of property comprised in survey no.1168/5 and the suit was dismissed in respect of portion of property comprised in survey no.1168/5 and 1168/3. Aggrieved over the above said Judgment and Decree, Rathinangitha Pandian has preferred appeal before the Ramanathapuram Subordinate Court at Madurai in A.S.No.18/1971. The Appellate Court by Ex.B3 Judgment dated 17.01.1997 has reversed the findings of the Trial Court and has declared the title of the plaintiff in respect of property comprised in survey no.1168/5. Ex.B5 is the certified copy of the Final Decree passed in I.A.No.50/2007 in O.S.No.5/2004. Ex.B4 is the Final Judgment passed in I.A.No.50/2007 in O.S.No.5/2004. Ex.B6 is the plan filed by the Advocate Commissioner.

15) Therefore, from the above said documents, it is clear that the defendants claim title over the plaint scheduled property excluding the property comprised in Ex.A2 sale deed on the basis of Ex.B1 to B6 documents. The plaintiffs have averred that they are in long, continuous and uninterrupted possession for more than a period prescribed under law hostile to the interest of defendants. Therefore, it is clear that the plaintiffs claim title on the basis of adverse possession and defendants claim title on the basis of Ex.B1 to B6 documents and it is also the case of the plaintiff that several portions of the plaint scheduled properties were transferred to various persons by sale and settlement deeds. When there is serious title dispute in respect of plaint scheduled property, this Court is of the view that this suit filed seeking relief of injunction without seeking relief of declaration is not maintainable.

16) Further, the counsel for the plaintiffs vehemently contended that the plaintiffs are in settled possession over the plaint scheduled property and has relied upon Ex.A3, A7 documents in support of their case. Ex.A7 is the series of receipts issued towards payment of electricity charges for the electricity service connection no.308-

00801033. The title and possession of the plaintiffs over the portion of property in Ex.A1 sale deed is not disputed. Ex.A7 receipts do not prove the possession of plaintiffs over the rest of the portion of the plaint scheduled property.

17) The plaintiffs tried to succeed in their claim on the basis of the report and plan filed by the Advocate Commissioner. The advocate commissioner has noted down the existence of Auditorium, Temple, peedam, Neem tree, Pipal tree. The existence of auditorium in the plaint scheduled property is admitted by the defendants. But they have contended that at the time of construction of the above said auditorium, the same was objected and a complaint was lodged during the year 2010. When the plaintiffs have failed to show their title over the plaint scheduled property and when the above said auditorium was said to be constructed during the year 2010, this Court is of the view that the existence of Kalai Arangam cannot be a factor to prove the settled possession of the plaintiffs. Therefore, for the above said reasons, this Court is of the view that the plaintiffs have failed to prove that they are in lawful possession over the entire 2 acres 54 cents of land comprised in survey no.1168/5.

18) Therefore, for the above said reasons, this Court is of the view that the plaintiffs are not entitled to the relief of permanent injunction as sought for. Point no.(i) is thus answered accordingly.

19) **Point no.(ii):**

In point no.(i), it has been found that the plaintiffs have failed to prove that they are in lawful possession over the entire 2 acres 54 cents of land comprised in survey no.1168/5 and therefore, they are not entitled to the relief of permanent injunction. The decision arrived by the Trial Court is based on valid oral and documentary evidence and nothing warranted by this Court to interfere with the Judgment and Decree rendered by the Trial Court and the appeal is liable to be dismissed. Point no.(ii) is answered accordingly.

20) In the result,

i) The appeal is dismissed by confirming the Judgment and Decree passed in O.S.No.20/2010 dated 20.11.2017, on the file of the District Munsif cum Judicial Magistrate, Rameswaram.

ii) Considering the nature of the suit, this Court is of the view, the parties shall bear their respective costs.

This Judgment is dictated by me to the steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 13th day of September 2019.

Sd/- M.Breetha
**Subordinate Judge,
Ramanathapuram.**