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S.A.(MD)No.384 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A.(MD)No.384 of 2023

and

C.M.P(MD)No.8236 of 2023

S.Venmathi

... Appellant/Plaintiff

Vs.

Kumbakonam Municipal Council,
represented by its Commissioner,
Kumbakonam Municipality,
Kumbakonam Taluk,
Thanjavur District.

... Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to allow this Second Appeal by setting aside the judgment and decree made in A.S.No.72 of 2018 dated 15.12.2020 by the Additional Subordinate Judge, Kumbakonam, confirming the decree and judgment passed in O.S.No.11 of 2012 dated 09.04.2018 by the Additional District Munsif, Kumbakonam.

For Appellant : Mr.A.George Stephen



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JUDGMENT

This Second Appeal is filed against the judgment and decree dated 15.12.2020 made in A.S.No.72 of 2018 on the file of the Additional Subordinate Judge, Kumbakonam confirming the judgment and decree dated 06.04.2018 made in O.S.No.11 of 2012 on the file of the Principal District Munsif, Kumbakonam.

2. The brief facts of the case:

The appellant is the plaintiff in O.S.No.11 of 2012 on the file of the Principal District Munsif Court, Kumbakonam. She has filed the said suit against the respondent/Municipality seeking permanent injunction. The respondent filed a detailed written statement. Both sided let in evidences. After hot contest, the Trial Court dismissed the said suit. Aggrieved by the judgment and decree of the Trial Court, the appellant/plaintiff has filed first appeal in A.S.No.72 of 2018 before the First Appellate Court/Additional Subordinate Court, Kumbakonam. The First Appellate Court, after considering both side arguments and both side evidences, dismissed the appeal and confirmed the judgment and decree of the Trial Court. Aggrieved by the same, the appellant has come up by way of this Second Appeal.



3. Heard the learned counsel for the appellant and perused the records.

4. The learned counsel for the appellant/plaintiff has argued that the plaintiff's brother in law (husband's brother) was running a small scale concern by availing loan from the Tamil Nadu Small Scale Industries Corporation in the suit property. He was running the concern for 40 years. The suit property is classified as Vaikkal poramboke. The plaintiff's brother-in-law put a thatched house at the said property. The plaintiff also put a thatched house near his thatched house and she has been in possession and enjoyment of the same. The respondent/defendant passed resolution to construct public toilets and the official of the respondent/defendant tried to remove the fences and thatched house of the plaintiff. Therefore, she filed suit before the Trial Court and she let in oral and documentary evidences. Court Commissioner was also appointed and his report was also marked. The Trial court without proper appreciation of evidences dismissed the suit. She preferred appeal before the First Appellate Court, which also dismissed the appeal. Both Courts below failed to consider that the plaintiff and her brother-in-law have been in possession more than 40 years i.e., statutory period with the knowledge of the defendant. The appellant/plaintiff has fair chance to



succeed in second appeal. Therefore the second appeal may be admitted to file.

5. On hearing the learned counsel for the appellant and on perusal of records, it is clear that the appellant/plaintiff herself has admitted that the suit property is classified as Vaikkal poramboke. The appellant/plaintiff has clearly admitted in her cross examination that her brother-in-law is an occupier in the suit property and he had not obtained any licence for the firm in the suit property and the suit filed by her brother-in-law ended against him and that she has filed the present as a benami of her brother in law. On perusal of evidence of plaintiff as P.W.1 she has clearly admitted in her cross that as per the surveyor report, the suit property is a vaikkal poramboke, which is absolutely belonged to the respondent/Municipality. Plaintiff has examined P.W.2, who also categorically deposed that there is no connection between the appellant/plaintiff and the suit property. Further, the appellant/plaintiff has not filed any documents to substantiate her case. The documents marked on her side all are related to the suit in O.S.No.412 of 1990 filed by the appellant/plaintiff's brother-in-law. Admittedly, the said suit ended in dismissal upto appeal. In such circumstances, the appellant/plaintiff has no valid ground to file suit against the



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respondent/defendant, which is absolute owner of the suit property being vaikkal poramboke. Considering the facts, there is *prima-facie* no substantial question of law arisen in this second appeal against the concurrent findings of the Court below. Therefore, considering the above facts and circumstances, this Court is of the opinion that this Second Appeal is liable to be dismissed in the admission stage itself.

6. In the result, as there is no substantial question of law involved in this appeal, this Second Appeal is dismissed at the admission stage itself. No costs. Consequently, connected Miscellaneous Petition is closed.

27.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsd

To

- 1.The Additional Subordinate Judge,
Kumbakonam.
- 2.The Additional District Munsif,
Kumbakonam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

ORDER MADE IN
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