

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.283 of 2015 and
M.P.No.1 of 2015

R.Venkatappa @ Venkatesappa ... Appellant/Plaintiff

Vs.

1.The District Collector,
Dharmapuri.

2.Sub Collector,
Hosur.

3.The Tahsildar,
Hosur.

4.The Revenue Divisional Officer,
Hosur,

5.The Village Administrative Officer,
Hosur.

6.Ramakrishnan

7.Venkatesh

8.Sampangi

... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree in A.S.No.15/2008 on the file of the learned Subordinate Judge, Hosur dated 18.04.2009 in confirming the judgment and decree in O.S.No.160/2003 on the file of the learned District Munsif, Hosur dated 28.01.2008.

For Appellant	: Mr.V.Raghavachari
For RR 1 to 5	: Mr.J.Jayaramanraj, Government Advocate (CS)
For R.6	: Mr.V.Nicholas
For RR7 & 8	: Mr.V.Karthikeyan

JUDGEMENT

Though the miscellaneous petition is listed today, by consent of both parties, the second appeal itself is taken up for final disposal.

2.The plaintiff in O.S.No.160 of 2003 on the file of the learned District Munsif, Hosur is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration to declare the possessory title of the plaintiff over the suit property and for mandatory injunction to direct the defendants to restore the plaintiff's possession as it was on 24.09.2003 before demolition and for permanent injunction to restrain the defendants from disturbing the physical possession of the plaintiff.

3.The trial Court by decree and judgment dated 28.01.2008 dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.15 of 2008 on the file of the learned Subordinate Judge, Hosur. By decree and judgment dated 18.04.2009, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

4.This second appeal has come up today for admission. On 27.04.2015, this Court ordered notice to the respondents. On service of notice, the respondents have entered appearance through their respective counsel.

5.I have heard Mr.V.Raghavachari, learned counsel for the appellant; Mr.J.Jayaramanraj, learned Government Advocate (CS) appearing for the respondents 1 to 5; Mr.V.Nicholas, learned counsel for the sixth respondent and Mr.V.Karthikeyan, learned counsel for the respondents 7 and 8 and I have also perused the records carefully.

6.The case of the plaintiff in brief is as follows:-

The suit property admittedly is a poromboke land belonging to the Government. But, the plaintiff was in possession and enjoyment of the same along with his family members for about 40 years. He has constructed a superstructure on the same. Recognising his possession, the Tahsildar has issued "B" memo to the plaintiff and also collected penalty from him. But, without

following the procedure established under law, on 24.09.2003, the Tahsildar and other officials came to the suit property and removed the superstructure and evicted the plaintiff. This, according to the plaintiff is illegal. According to the plaintiff, he is entitled for possessory title and for other reliefs sought for in the plaint.

7. In the written statement filed by the third defendant, it was contended that the plaintiff was an encroacher of the Government land and hence, the same was removed by following the procedure established under law.

8. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, four witnesses were examined and as many as six documents were exhibited. On the side of the defendants, four witnesses were examined and seven documents were exhibited. During trial, an Advocate Commissioner was appointed and whose report was marked as Ex.C.1 and his plan was marked as Ex.C.2. Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

9. The learned counsel for the appellant would submit that it is an admitted fact that the plaintiff was in possession and enjoyment of the suit property for a long time and "B" memos were issued periodically to him. Thus, according to the plaintiff, he has got possessory title, the learned counsel contended. The learned counsel would further submit that without following the procedure established by law, i.e., without following the procedure contemplated in the Tamil Nadu Land Encroachment Act, the plaintiff has been evicted from the suit property.

10. In my considered view, it is a question of fact and the Courts below have found that the plaintiff being an encroacher has no possessory title for the suit property. The Courts below, on facts, have concurrently held that, since, the plaintiff was an encroacher, he was evicted lawfully by the Government. In the said finding, I do not find any perversity.

11. Above all, there is no question of law much less a substantial question of law at all involved in this matter so as to admit this second appeal. In such view of the matter, I do not find any merit at all in this second appeal.

12.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

To

1.The Subordinate Judge,
Hosur.

2.The District Munsif,
Hosur.

+1cc to M/S Raghavachari, Advocate sr.64475

+1cc to M/S.V.Karthikeyan, Advocate sr.64434

+1cc to M/S.Nicholas, Advocate sr.64334

+1cc to The Special Government Pleader Sr.64355

Second Appeal No.283 of 2015

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srg 17/12/2015

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