

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

S.A.No.417 of 2017

Kaval Nagar Narpani Mandram,
Rep by its President P.C. Gangadharan,
No.311, Police Colony,
Ganapathy,
Coimbatore - 641 006.

.... Appellant/Plaintiff

Vs.

1. The Chairman and Managing Director,
Tamil Nadu Police Housing Corporation Limited,
No.1, Whites Road, II Floor, Royapettah,
Chennai - 14.
2. The Commissioner of Police,
Hozur Road, Coimbatore - 18.
3. The Inspector of Police,
Law and Order,
B 9, Saravanampatti Police Station,
Coimbatore - 6.
4. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore - 1.

... Respondents/Defendants

PRAYER : The Second Appeal is filed against the Judgment and Decree dated 03.02.2006 made in AS.No.183 of 2005 on the file of Appellate Authority Forum / II Additional Sub Court, Coimbatore, confirming the Judgment and Decree dated 11.01.2005 made in OS No.1779 of 2001 on the file of III Additional District Munsif Court, Coimbatore.

For Appellant : Mr.P.Saravana Sowmiyan

ORDER

The plaintiff is the appellant in the present Second Appeal. According to the appellant, the appellant is the President of the appellant / plaintiff society. A housing

quarters of 432 houses, later named as Kavalar Nagar, was built in Survey Nos.62, 63, 65, 66 and 69. At the time of formation of layout, the first respondent had earmarked certain places for individual purposes and some places for public purposes namely school, playground, etc. On 08.03.1989, the said earmarked public places were gifted to the City Municipal Corporation, Coimbatore by valid registered deed bearing No.12911989 by the first respondent. A small portion of the land bearing Door No.311 was used for placing building materials, while the construction of the said quarters was made. After the construction was over, the said land was handed over to the petitioner society by the fourth defendant / fourth respondent. The appellant society is working in the said land for the welfare of the people of the quarters. As such, the plaintiff / appellant has been in possession of the property from 14.11.1987. The plaintiff/ appellant is paying property tax, electricity charges to the concerned authorities from the above date. As there was some threat from the respondents, the plaintiff / appellant filed a suit in O.S.No.1779 of 2001 for permanent injunction restraining the respondents from interfering with the peaceful possession of the suit property. After considering oral and documentary evidence adduced by the parties, by order dated 11.01.2005, the trial court dismissed the suit filed by the appellant stating that the appellant had already filed a writ petition in W.P.No.17989 of 2001 praying the same relief which was dismissed by this Court. Pursuant to the same, the appellant filed an appeal in A.S.No.183 of 2005 against the above Judgment and Decree. The appellate court has also confirmed the Judgment and Decree passed by the trial court. Hence, the appellant has filed this Second Appeal before this Court.

2. According to the learned counsel for the appellant, without considering the contention of the appellant that the appellant is in possession of the property from 1987, both the courts below have dismissed the suit which is unsustainable to law. Therefore, the second appeal has been filed.

3. Heard, the learned counsel for the appellant and perused the materials on record.

4. In the said land, the petitioner society is working for the welfare of the people of the quarters. Assuming that there was a threat from the defendants / respondents, the appellant filed the suit in O.S.No.1779 of 2001 on the file of III Additional District Munsif Court, Coimbatore for permanent injunction. In the above suit, the defendants / respondents had filed a counter affidavit denying the averments stated in the affidavit filed by the plaintiff/ appellant. Further, the defendants had stated therein that even though there was a

threat for handing over the possession of the property, the same was stopped at a later point of time. The defendants had stated in the counter affidavit that the writ petition filed by the plaintiff for the same prayer had been dismissed and hence the suit is also liable to be dismissed. Based on the contentions of the defendants, after considering oral and documentary evidences, the trial court dismissed the above suit. Further, the appellant filed an appeal in A.S.No.183 of 2005 before the II Additional Sub Court, Coimbatore. The appellate court has also rejected the contention of the appellant and dismissed the appeal. Further, the both the courts below have relied upon the Judgment of this Court in W.P.No.17989 of 2001 filed by the appellant for the same prayer. Moreover, the trial court has recorded a reason that during cross examination, appellant / plaintiff as PW1 admitted that they had filed the writ petition in WP.No.17989 of 2001 and the same was dismissed.

5. Therefore, Second Appeal cannot be entertained merely because the appellant is in continuous possession of the property and this Court comes to conclusion that the trial court had rightly dismissed the suit and that has been rightly confirmed by the appellate court. Hence, there is no question of law involved in the second appeal.

6. In view of the facts and circumstances of the case, there is no error or illegality in the Judgment and Decree passed by the courts below. Thus, the Second Appeal fails and accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Authority Forum /
II Additional Sub Court,
Coimbatore
2. The III Additional District Munsif Court,
Coimbatore.

+1cc to M/s.P.Saravana Sowmiyan, Advocate, S.R.No.46518
S.A.No.417 of 2017

SAI(CO)
CA(23/10/2017)