

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.552 of 2017
and
C.M.P.No.13491 of 2017

R.Subramani ... Appellant/Plaintiff

vs

V.Abdul Zaffar Sahib (died)

1. V.Abdul Kalic Sahib
2. V.Abdul Kareem Sahib
3. M.Asina Be
4. M.Samiulla Sahib ... Respondents/Defendants 2 to 5

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.04.2017 made in A.S.No.10 of 2013 on the file of the Sub Court, Gudiyattam, Vellore District confirming the judgment and decree dated 19.02.2013 made in O.S.No.562 of 2004 on the file of the learned District Munsif Court, Gudiyattam, Vellore District.

For Appellant : Mr.N.Manokaran

JUDGMENT

The unsuccessful plaintiff before the Courts below has preferred the above Second Appeal in a suit for permanent injunction not to evict the plaintiff unless by due process of law.

2. It is the case of the defendants that though the property originally belonged to one Abdul Samath Sahib and Abdul Jaffar Sahib, the father of the plaintiff had taken the property for lease even in the year 1969 and has been in possession as a cultivating tenant. After the death of the plaintiff's father, the plaintiff continued to be in possession of the suit property. It is further stated that he has been paying lease rent to the defendants and there is no arrears as on date. However, the defendants, who are the legal heirs of Abdul Samath Sahib and Abdul Jaffar Sahib, are trying to evict the

plaintiff from the suit property by force. Hence, the suit has been filed.

3. The defendants have denied all the facts relating to the cause of auction for the suit and stated that it is only in the year 2004 when the defendants went to Mecca with his family, they had allowed the plaintiff to be a watchman for the suit property. Taking advantage of this situation, he had transferred the electricity service connection in his name and claimed to be a lessee. Therefore, he prayed for dismissal of the suit.

4. Based on the above facts and after considering the oral and documentary evidence available on record, both the Courts have concurrently held that there is no evidence to prove that the plaintiff had been in possession of the property from the year 1969 (i.e) from when his father left him.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. It is admitted by the defendants that the plaintiff was allowed to be in the suit property as a care taker of the property when they left for mecca with the family. Therefore, the Courts below have found that there was absolutely no evidence for the continuous possession of the plaintiff as a lessee and he was only in permissive occupation. As the plaintiff has not proved his case and come up with false claim that he is the lessee of the property, the Courts below have concurrently rejected his claim. However, considering the fact that the suit relief is for permanent injunction, restraining the defendant to dispossess the plaintiff unless by due process of law and that admittedly, the plaintiff is in possession, learned counsel for the appellant prayed for granting the relief.

7. It is settled principle that even if the possession of a person is that of a trespasser, he shall be entitled to retain his possession until deprived of it by a judgment according to law. It is contended that even if the plaintiff was put in possession as a security/ caretaker when his settled possession of the property belonging to the rightful owner is admitted he can be evicted only by a due process of law. Though it is contended that D.W.1 has admitted the possession of the plaintiff, a careful reading of the same would reveal that there is no such admission, instead the possession of the plaintiff is categorically denied. The defendant had only stated that the plaintiff was taking care of the suit property without being in possession. Therefore, the plaintiff cannot have any indulgence

from the Court claiming to be a person being in settled possession. In such circumstances, it is open to the defendant to deal with his property as per law. In the light of the above, the judgment and decree of the Courts below are confirmed.

8. Accordingly, the Second Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS V)

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Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Gudiyattam, Vellore District
2. The District Munsif Court, Gudiyattam, Vellore District.
3. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.N.Manokaran, Advocate SR.No.73199/17

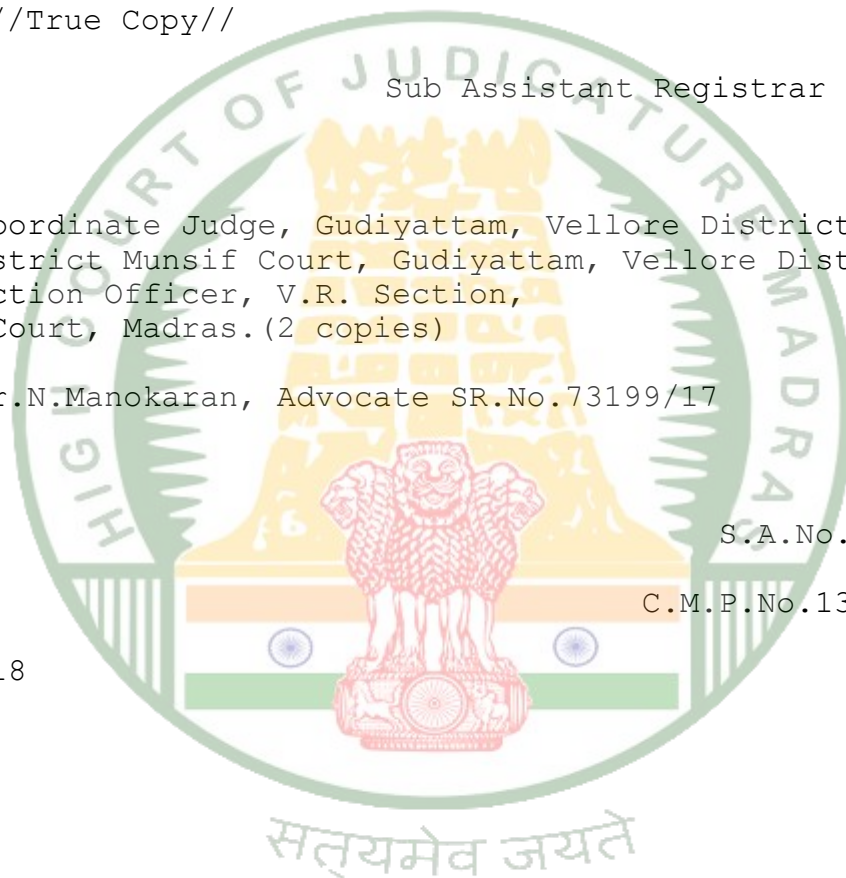
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