

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.798 of 2017
and C.M.P.No.20070 of 2017

1. State of Tamil Nadu
Rep by District Collector
Erode, Erode District.
2. Tahsildar, Bhavani
3. Revenue Inspector, Anthiyur
4. The Village Administrative Officer,
Anthiryur 'B' Village.
5. Assistant Divisional Engineer (Highways)
Projects, Bhavani
- In the place of
Anthiyur Assistant Divisional Engineer(Highways)
Tamil Nadu Agricultural Development Scheme,
Bhavani
6. Assistant Engineer,
Public Works Department, Bhavani
7. Assistant Engineer (Highways)
Projects, Bhavani

In the place of

Assistant Engineer
Sugarcane Road Development Scheme,
Bhavani ... Appellants/Respondents/Defendants

..vs..

Perumal ... Respondent/Appellant/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 25.02.2004 made in A.S.No.92 of 2003 on the file of the Subordinate Court, Bhavani, which was reversed by the judgment and decree dated 26.06.2002 made in O.S.No.281 of 1999 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mrs.M.Jayashree
Additional Government Pleader(CS)

J U D G M E N T

The State, which has lost before the lower Appellate Court in a suit for declaration and for permanent injunction, has filed the above Second Appeal.

2. The suit property which is at Door No.15 originally belonged to the defendants. The plaintiff had occupied the land which is classified as Government Poramboke land as per the revenue records about 35 years back and put up a house and was running a tea stall. On the Eastern side of the road, lands were acquired and new roads were formed. Therefore, the Government had issued patta for about 40 people living on the East and West of the road. As the plaintiff has been in occupation of the suit property for more than 35 years, he has claimed the title by adverse possession. The plaintiff has also been paying the property tax and obtained electricity connection. The property of the plaintiff is in no way disturbing the free flow of the traffic. While so, at the instance of the owner on the western side of the suit property, the defendants tried to vacate the plaintiff from the suit property. As the plaintiff has been living there in the suit property for more than the required statutory period, the suit has been filed for the above said reliefs.

3. The suit was resisted by the defendants stating that the plaintiff himself has accepted that the property belonged to the 6th defendant. The properties on the East and West of the suit lands are "Natham Poramboke". Several occupants have been issued with patta. The defendants also denied the long occupation of the plaintiff and that the plaintiff has been paying B-Memo. As the property is now required for the sixth defendant for public purpose, the plaintiff cannot continue to encroach on the suit property. Hence the defendants prayed for dismissal of the suit.

4. Before the Trial Court, on the side of the Plaintiff, the plaintiff himself examined as P.W.1 and one more witness was examined as P.W.2 and Exhibits A1 to A9 were marked. On the side of the defendants, one Mr.Kubendran, Assistant Engineer, National Highways Department, Bhavani was examined as D.W.1 and Exhibits B1 to B6 were marked. Apart from these documents, Exs.C-1 to C-2 were marked as Court documents.

5. Based on the oral and documentary evidence, the trial Court had dismissed the suit. On appeal by the plaintiff in A.S.No.92 of 2003, the Lower Appellate Court had allowed the appeal and decreed the suit. Aggrieved by the same, the above Second Appeal has been preferred by the defendants.

6. Heard the learned Additional Government Pleader (CS) for the appellants and perused the materials available on record.

7. In this case, the plaintiff had produced the house tax receipts, licence for running a petty shop issued by Anthiyur Panchayat Union, and electricity receipts to show his possession. It is admitted by both the parties that the property is the Government Poramboke land and that the plaintiff has been in occupation for more than 35 years. The defendants had sent notice on 06.01.1999 directing the plaintiff to vacate the premises. It is also stated that the other encroachers were also issued with notice to vacate the portions encroached by them. It has not been established by the defendants as to whether other encroachers were evicted from the premises in occupation. Though the defendant had stated that the plaintiff was paying B-Memo charges, the plaintiff had denied the same and there is no evidence let in by the defendants to substantiate the same. It is also not made clear whether it is the land belonging to the Government as Poramboke land or to the Highways Department. The lower Appellate Court has also found that the plaintiff has been residing in the suit property and running a tea shop for more than the required statutory period.

8. Considering the long possession of the plaintiff and that no action has been taken by the defendants till today, this Court is of the view that the decree granted by the lower appellate Court, to be confirmed. It is also to be placed on record that the Appellate Court Judgment was delivered on 25.02.2004, whereas, the Second Appeal was filed only in the year 2006 and the same has come up for admission only in the year 2017. The Government also does not seem to have taken any other action after the decree passed by the lower appellate Court.

9. In the light of the above, the Second Appeal is dismissed and the judgment and decree of the lower appellate Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge Bhavani

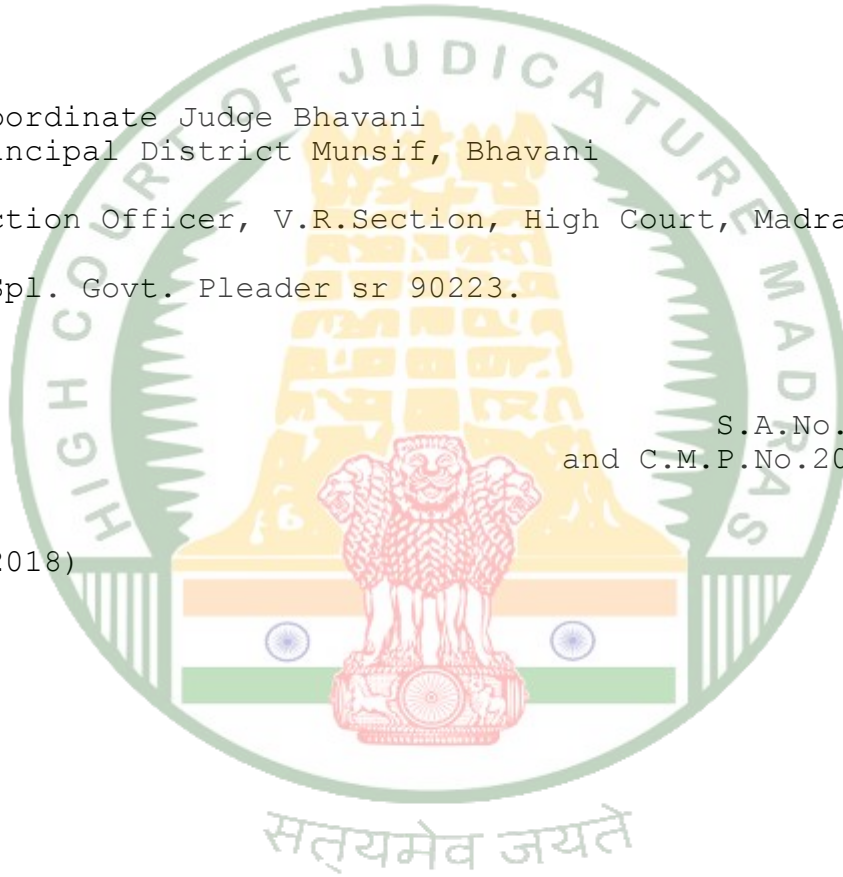
2. The Principal District Munsif, Bhavani

3. The Section Officer, V.R.Section, High Court, Madras(2 copies)

+1 CC to Spl. Govt. Pleader sr 90223.

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NRJK (CO)
SP(22/01/2018)



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