

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.829 of 2015

and

M.P.No.1 of 2015

M.Balasubramaniyan ... Appellant/Plaintiff

Vs

1.Tamil Nadu Government rep. by
the District Collector, Namakkal.

2.The Namakkal Tahsildar,
Mohanur Road,
Namakkal Taluk and District. Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 23.02.2015 made in A.S.No.91 of 2013 on the file of the Additional Subordinate Judge, Namakkal, confirming the judgment and decree passed in O.S.No.233 of 2009 dated 25.09.2013 by the Principal District Munsif, Namakkal.

For Appellant .. Mr.C.V.Shyam Sundar
for Mr.A.Murugaiyan Babu

For Respondents .. No appearance

JUDGMENT

The plaintiff is the appellant herein. Seeking to reverse the concurrent finding rendered by the Courts below, the present second appeal has been filed.

2.The suit has been laid for declaration, permanent injunction and mandatory injunction. It is the case of the plaintiff that the suit property belongs to him and his family members ancestrally and they have been in enjoyment over it for more than 100 years. The plea taken by the defendants is that the suit property is a water body and it has been classified so in the revenue records. It has been further stated in the written statement that the plaintiff is not in possession and enjoyment of the suit property. The Courts below dismissed the

suit in view of the revenue documents indicating that it is a water body. However, the lower appellate Court accepted Ex.A5 despite the correction made therein by drawing presumption in favour of the plaintiff, in the absence of the defendants producing the original. Incidentally, the suit was dismissed on the ground that in view of the provision contained under Section 3 (b) of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act'), vesting has taken place and thus the plaintiff is not entitled for the reliefs. Challenging the same, the present second appeal has been filed.

3. At the time of admission, the following substantial questions of law have been framed:

(i) Whether the Tamil Nadu Estate (Conversion into Ryotwari Land) Act, 1948 would be applicable to the present case when the Government claims that the land belongs to the Government and therefore there can be no vesting of the land on the Government?

(ii) Whether land could vest on the Government by provision of law when the Government already claims that it belongs to it?

4. Learned counsel appearing for the appellant submits that having accepted Ex.A5, the suit ought to have been decreed. The dismissal of the suit will not take away the right of the appellant from seeking compensation as per Section 18 of the Act. Thus the judgment and decree require interference.

5. Despite service of notice and the names of the respondents having been printed in the cause list, none appears for the respondents.

6. Both the Courts, on fact, found that the appellant is not entitled for the relief as sought for. As per Section 3 of the Act, vesting would take place by operation of law qua water body. It is not in dispute that the suit property is a water body. Even Ex.A5 reiterates the fact that it is a water body. Though Ex.A5 shows the name of the grandfather ('Kaliyannagoundan' Kuttai) of the plaintiff, on the right hand side of the same Register, it is shown as a Government water body. Therefore, looking from any angle, this Court is of the view that the judgment and decree rendered by the Courts below do not warrant any interference. Accordingly, the second appeal stands dismissed and the substantial question raised on this issue is answered accordingly.

7. Coming to the other issue with respect to the compensation, the same is not the subject matter of the suit. Thus it is well open to the appellant to file a suit for compensation, if so advised. As the appellant is pursuing the

present suit till now, this Court is inclined to grant further time of two months from the date of receipt of a copy of this order to file such a suit, seeking compensation.

8.In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Additional Subordinate Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.

+1cc to Mr.C.V.SyamSundar, Advocate Sr.8068

S.A.No.829 of 2015

kji[co]
srg 2/3/2017



WEB COPY