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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2019

PRONOUNCED ON : 04 .03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1493 of 2005

1. Mullayammal
2. Murugesan @ Sollappa
Vs. ...Appellants

1.State of Tamilnadu
Rep. by District Collector
Nagapattinam
2.The Tahsildar
Keezhvolur taluk
3.The Block Development officer
Keezhvolur taluk
...Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 21.06.2005 made in A.S.No.5 of 2005 on the file of the Additional Sub Court, Nagapattinam insofar as it is reversing the judgment and decree dated 30.09.2002 made in O.S.No.153 of 2000 on the file of the District Munsif Court, Nagapattinam.

For Appellants : Mr.Srinath Sridevan

For Respondents : Mr.N.Manikandan
Government Advocate (CS) for R1 & R2.
R3 - Set exparte
vide order dated 21.02.2019

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.06.2005 passed in A.S.No.5 of 2005, on the file of the Additional Subordinate Court, Nagapattinam, reversing the judgment and decree dated 30.09.2002 passed in O.S.No.153 of 2000 on the file of the District Munsif Court, Nagapattinam.



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2. The second appeal has been admitted on the following substantial questions of law.

"a) Whether a person is settled possession can be dispossessed by the Government without following the procedure established by law?

b) Whether the failure of the sub court to consider Ex.A1 will not vitiate its judgment?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. It is not in dispute that the suit properties belong to the Government. Now according to the plaintiffs, in respect of the first item of the plaint schedule properties, the first plaintiff has been enjoying the same by paying penal charges to the Government and accordingly he has also been given the assignment in respect of the extent of 4 cents and accordingly it is put forth by the plaintiffs that the suit properties as described in the plaint has been in their possession and enjoyment and the defendants are not entitled to disturb their possession and enjoyment without due process of law and on the otherhand, the defendants had endeavoured to put up certain construction in the suit property and accordingly it is put forth that the plaintiffs had been necessitated to lay the suit against the defendants for the relief of permanent injunction.

6. The defendants resisted the plaintiffs' suit contending that other than the 4 cents of land in the possession and enjoyment of the first plaintiff, the plaintiffs are not in the possession and enjoyment of the remaining portion of the suit properties and furthermore, according to the defendants, a proposal has been envisaged for putting up the primary health centre in survey No.365/D and accordingly necessary action had been initiated with reference to the same and therefore, the case of the plaintiffs that by way of the same, the defendants are attempting to interfere with their possession and enjoyment of the suit properties, as such, cannot be acceded to and accordingly prayed for the dismissal of the plaintiffs' suit.

7. The suit properties are described to be located in survey No.365/2B2 and 365/2B5 i.e. the first item and survey No.365/3 i.e. the second item of the plaint schedule properties within the specific boundaries. Now, it is found that as regards the 4 cents of land in the first item of the suit properties, the



plaintiff has been granted the assignment and the same has not been controverted by the defendants as such. Furthermore, considering the materials placed on record, it is seen that the suit properties, being the Government land, accordingly for the enjoyment of the same, it is found that the plaintiffs claim that they had been paying the penal charges in connection with the same and as regards the assignment of 4 cents of land, the first plaintiff is found to be paying kists with reference to the same and thus it is noted that the suit properties, as such, are claimed to be in the possession and enjoyment of the plaintiffs.

8. However, the materials placed on record, particularly, the documents marked as Exs.B1 to B4 read together, would only go to show that the defendants had put up the proposal to construct a primary health centre in survey No. 365/2D and accordingly had taken necessary steps with reference to the same and the same could be gathered from the abovesaid documents projected on the part of the defendants. In connection with the same, D.W.1 examined on behalf of the defendants has also tendered evidence and accordingly deposed that the sanction had been obtained only for putting up primary health centre in survey No.365/2D and not in the suit properties as sought to be made out by the plaintiffs and also putforth the case that inasmuch as the suit properties belong to the Government, and the plaintiffs who are only the occupants of the same by paying necessary penal charges, the Government would also be entitled to recover the same from the plaintiffs, if need be and accordingly stated that the construction of the primary health centre is being envisaged only in survey No.365/2D. In the light of the abovesaid materials placed on record by the defendants, as rightly determined by the first appellate court, the defendants are contemplating to put the construction of primary health centre only in survey No. 365/2D of the suit village and not in respect of the suit properties and accordingly it is seen that the plaintiffs, as such, have no cause of action to institute the suit against the defendants. As rightly determined by the first appellate court, if really the defendants had endeavoured to interfere with the plaintiffs' possession and enjoyment of the suit properties, necessary legal action would have been initiated against the defendants by the plaintiffs as per law. On the other hand, the plaintiffs observing and noting the works initiated by the defendants in putting up the primary health centre in survey No.365/2D and apprehending that by way of the same, the defendants would also interfere with their possession and enjoyment of the suit properties, are found to have come forward with the present suit. However, as determined by the first appellate court, when no such action is contemplated on the part of the defendants to put up any construction as on date in the



plaint schedule properties as such, furthermore, the defendants are also entitled to dispossess the plaintiffs from the suit properties in case of the need of the suit properties for them as per law and as on date when the proposed construction contemplated by the defendants is not to be put up in the suit survey numbers, but only in survey No.365/2D, in all, as rightly determined by the first appellate court, the plaintiffs are found to have instituted the present case in a hasty manner as if the defendants are also attempting to dispossess the plaintiffs from the suit properties one way or the other and on the other hand as determined by the first appellate court, on the date of the suit, it is found that the plaintiffs have no cause of action at all to institute the suit against the defendants and in such view of the matter, no relief could be granted in favour of the plaintiffs as prayed for.

9. In the light of the above discussions, when the plaintiff has failed to establish that the defendants are endeavouring or contemplating to dispossess them from the suit properties against the provisions of law and furthermore, when the defendants have also admitted that the first plaintiff had been granted the assignment of an extent of 4 cents of land in the plaint schedule properties, in such view of the matter, in my considered opinion, no interference is called for in the judgment and decree of the first appellate court rendered based on the appreciation of the factual matrix as projected by the respective parties in the matter. In my considered opinion, no substantial question of law is found to be involved in this second appeal. Be that as it may, the substantial questions of law formulated in the second appeal, are accordingly answered against the plaintiffs and in favour of the defendants.

10. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

bga



To

1. The Additional Sub Judge, Nagapattinam

2. The District Munsif, Nagapattinam.

Copy to

The Section Officer, V.R. Section,
High Court, Madras

+1cc to Special Government Pleader (CS) SR.No.19960

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CNR(CO)
GMY(17/10/2019)