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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Second Appeal (MD) No.262 of 2019

The State of Tamil Nadu,
Rep. by the District Collector,
Kanyakumari District,
At Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

: Appellant/Appellant/Defendant

-Vs-

A.Yesudhasan Nadar

: Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the judgment and decree of the District Court, Kanniyakumari made in A.S.No.78 of 2005, dated 17.06.2009 confirming the judgment and decree of the II Additional Sub Court, Nagercoil, dated 16.04.2003 made in O.S.No.265 of 1999.

For Appellant : Mr.R.Sethuraman, Special Govt. Pleader

For Respondent : Mr.D.Saravanan

JUDGMENT

This Second Appeal is preferred by the defendant, namely, the State represented by the District Collector, Kanyakumari District, as against the judgment and decree in the appeal suit in A.S.No.78 of 2005 on the file of the District Court, Kanyakumari District confirming the judgment and decree of the trial Court in O.S.No.265 of 1999.

2.The respondent, as plaintiff, filed the suit in O.S.No.265 of 1999 for declaration of title and consequential injunction restraining the appellant from causing any dispossession or interfering with his possession regarding the suit property. It is the case of the plaintiff that he has purchased 10 cents and 875 sq. links of land in Old Survey No.3606 as per the registered sale deed dated 19.06.1954. The land has been classified as Dewasvom Othi. The respondent further states that he has been paying tax to the State for the property. Stating that his possession and enjoyment over the suit property was always in tact, it is stated



that based on some wrong entries in the revenue records, the petitioner's long enjoyment and possession was disturbed by the appellant and as a result, the suit came to be filed.

3. The appellant filed written statement. Though the averments in the plaint are denied by the defendant and the classification of the suit survey number is stated to be an assessed waste dry land in the written statement, how the property was classified as assessed waste is not disclosed. Once the property is classified as assessed waste, then it can be inferred that the land is a ryotwari land. The documents relied upon by the plaintiff were held to be in respect of the suit property and that therefore, the Court below declared the plaintiff's title in respect of the suit property and granted a decree for permanent injunction. Aggrieved by the same, the defendant filed an appeal in A.S.No.78 of 2005 on the file of the District Court, Kanniyakumari District. The appellate Court also confirmed the findings of the trial Court on all issues. It is pertinent to mention that there is no dispute with regard to the character of the suit property. It is the contention of the appellant that no suit will lie without notice under Section 80 of C.P.C. It is the further contention of the appellant that the suit is barred by limitation under Article 100 of the Limitation Act since the survey proceeding had completed as early as in 1973 with the knowledge of the plaintiff. The appellant also raised some other questions of law challenging the findings of the Courts below by saying that the plaintiff is not the absolute owner of the property and that the properties are poramboke lands even according to the plaintiff.

4. This Court has carefully considered the rival submissions of the counsels on either side. Even in the written statement, issuance of prior notice is admitted and hence, Section 80 of C.P.C. is not a valid defence. Suit property is in the enjoyment of plaintiff as held by Courts below and hence, no question of limitation. It is not in dispute that the property was earlier patta land but later classified as an assessed waste land. The land which is classified as an assessed waste during settlement is a property to be recognised as ryotwari land. If there is an assessment before the land was taken over either under the Act 26/1948 or by the subsequent enactments, the property which is classified as assessed waste would certainly indicate that the land was in the enjoyment of ryot paying land revenue or pattam to the land holder or an intermediary before it was taken by the Government. Hence, the contention of the appellant that the land was classified as poramboke land cannot be accepted in view of the findings of the Courts below as well the stand taken by the Government itself. This Court do not find any other substantial question of law challenging the findings of the Courts below. The Courts below have considered the pleadings and evidence. The findings of the Courts below are based on evidence and there is no illegality or infirmity in the findings. In such circumstances, the substantial questions of law raised by the appellant are



factual and without substance. Having regard to the pleadings and material evidence apart from the attendant circumstances considered by the lower appellate Court, this Court has no hesitation to hold that the findings are unassailable and the second appeal is, therefore, dismissed. No costs.

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Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

1.The District Court,
Kanniyakumari.

2.The II Additional Sub Court,
Nagercoil.

3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

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TR (23.07.2019) 3P 5C