



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.806 of 2008

1.The Tahsildar,
Sathankulam Taluk Office,
Sathankulam.

2.State of Tamilnadu
represented by its District Collector,
District Collector Office,
Thoothukudi.

...Appellant/Respondent/Defendants

Vs.

1.Rajakili Ammal
2.Murugesan
3.Ganesan

... Respondents/Appellants/Plaintiff

Prayer : Appeal filed under Section 100 of CPC to set aside the Judgement and decree dated 16.02.2006 made in A.S.No.143/04 of the file of the Sub Court, Thoothukudi, reversing the Judgment and Decree of the District Munsif Court, Sathankulam dated 31.01.2003 made in O.S.No.13/2002.

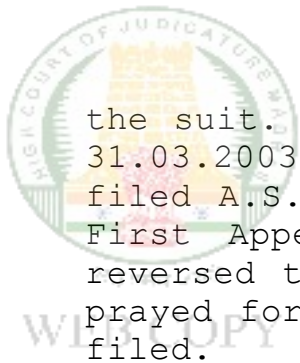
For Petitioners : Mr.K.Chellapandian
Additional Advocate General
Assisted by,
Mr.M.Rajarajan,
Additional Government Pleader

For respondents : Mr.V.Meenakshisundaram

JUDGMENT

Heard the learned Additional Advocate General appearing for the appellants and the learned counsel appearing for the respondents.

2.The respondents herein filed O.S.No.13 of 2002 on the file of the District Munsif Court, Sathankulam, seeking the relief of permanent injunction, restraining the defendants from interfering with their possession and enjoyment of the suit property. As regards the suit property, the petitioners had traced their title and possessory rights in a certain manner. The appellants who were shown as defendants in the suit filed written statement stating that the suit property had been declared as a Reserve Forest and notification was also published in the Government Gazette dated 30.06.1984. Therefore, the stand of the defendants



the suit. The learned Trial Munsif by Judgement and Decree dated 31.03.2003 dismissed the suit. However, the respondents herein filed A.S.No.143 of 2004 before the Sub Court, Thoothukudi. The First Appellate Court by Judgment and Decree dated 16.02.2006 reversed the decision of the Trial Court and decreed the suit as prayed for. Questioning the same, this Second Appeal came to be filed.

3.The following substantial questions of law arise for consideration in this Second Appeal.

a) Whether the instant suit is maintainable when it has been filed for the mere relief of permanent injunction without seeking a prayer for declaration.

b) Whether the jurisdiction of the Civil Court stands ousted in view of the provisions of the Tamil Nadu Forest Act (Tamil Nadu Act 5)1882.

4.As rightly contended by the learned Additional Advocate General appearing for the appellants, the Second Appeal deserves to be allowed by answering the first substantial question of law in favour of the appellants. It is seen that the suit has been filed for the relief of bare injunction. In the written statement, the defendants have categorically asserted that the suit property had been declared as a forest land way back in the year 1984. During the course of trial, the Gazette publication has also been marked as Ex.B1. That is why the learned Trial Munsif rightly dismissed the suit. The first Appellate Court has failed to note that when the title of the plaintiffs had been strongly contested, the maintainability of the suit has been put to issue. The first Appellate Court failed to note this elementary aspect. It has been held time and again that when the plaintiff's title over the suit property is under a cloud, then the plaintiff is obliged to ask for the primary relief of declaration of title. Failure to do is necessary fatal to the maintainability of the suit.

5.I have no hesitation to set aside the impugned judgment of the Lower Appellate Court and restore the judgment of the Trial Court, dismissing the suit. The Second Appeal is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Subordinate Judge, Thoothukudi.

2.The District Munsif, Sathankulam.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.D. NALLATHAMBI, Advocate (SR-16980[F] dated 15/09/2020)

+1 cc to The Special Government Pleader Sr.No.17129

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