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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2021

PRONOUNCED ON : 22.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.1055 of 2007

and

MP No.1 of 2007

Arulmighu Patteswarar
Devasthanam, Perur
rep. By its Executive Officer,
Coimbatore.

...Appellant/1st Defendant

vs.

1. Pushpavalli
2. District Collector,
Coimbatore - 641 018.

...1st Respondent/Plaintiff

...2nd Respondent/2nd Defendant

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 21.02.2007 made in A.S.No.153 of 2006 on the file of the Subordinate Judge, Coimbatore reversing the Judgment and Decree dated 04.04.2005 made in O.S. No.2411 of 2004 on the file of District Munsif, Coimbatore.

For Appellant : Mr.R.T.Doraisamy
For Respondents : Mr.C.V. Prasannan for R1
Dr. S. Suriya
Government Advocate for R2

JUDGMENT

(Heard video conference)

This Second Appeal has been filed challenging the reversal findings of the Lower Appellate Court by its Judgment and Decree dated 21.02.2007 passed in A.S. No.153 of 2006 reversing the findings of the Trial Court, which dismissed the suit O.S. No.2411 of 2004 by its judgment and decree dated 04.04.2005.

2. The appellant-Temple is the first defendant in the suit O.S.No.2411 of 2004. The suit was filed by the first respondent seeking for permanent injunction restraining the defendants from forcibly evicting her from the suit schedule property except under due process of law. The second respondent in this appeal is the second defendant in the suit.



3. It is the case of the first respondent /plaintiff as seen from the plaint filed in O.S. No.2411 of 2004 that she is in possession of the suit lands measuring 1.03 acres in S.F. No.400 and 0.27 acres in S.F. No.402/2 of Perur Village, Coimbatore for the past 30 years (hereinafter referred to as the suit schedule property).

4. It is the case of the first respondent / plaintiff that the appellant - Temple / first defendant made an attempt to auction the suit schedule property on 28.07.1998. Thereafter, the first respondent / plaintiff objected the same and she filed an application in Petition No.1 of 1998 under Section 145 (4) of Cr. P.C. before the Additional Collector and District Revenue Officer, Coimbatore. The Additional Collector by its order dated 02.04.1999 passed an order in Petition No.1 of 1998 and held that the Government is the owner of the suit property.

5. Aggrieved by the aforesaid order, the appellant-Temple / first defendant filed a Criminal Revision in Crl. R.C. No.1521 of 2002 before this Court. By order dated 28.10.2003, in Crl. Rc. No.1521 of 2002, this Court set aside the order of the Additional Collector, dated 02.04.1999 and held that both the first respondent / plaintiff and the appellant - Temple/ first defendant have to agitate their respective rights before a Civil Court.

6. It is the case of the first respondent / plaintiff that the District Collector, Coimbatore and others started disturbing her possession of the suit schedule property and hence she was constrained to file a suit in O.S. No.1251 of 2000 before the Principal District Munsif's Court, Coimbatore for permanent injunction against the District Collector, Tahsildar, Revenue Inspector and Village Administrative Officer.

7. By judgment and decree dated 08.11.2001 passed in O.S. No.1251 of 2000, the Principal District Munsif, Coimbatore granted permanent injunction in favour of the first respondent / plaintiff against the District Collector and others from interfering with the first respondent /plaintiff's possession without following the due process of law.

8. It is the case of the first respondent / plaintiff that thereafter the Officers of the appellant Temple /first defendant were trying to dislodge the first respondent / plaintiff's possession and hence she was constrained to file a suit in O.S. No.2411 of 2004 on 02.07.2004 before the Principal District Munsif, Coimbatore, against the appellant - Temple/ first defendant and the Government seeking for permanent injunction restraining the appellant Temple / first defendant



and the Officials of the Government from in any way disturbing the first respondent / plaintiff's possession and enjoyment of the suit schedule property on 02.07.2004.

9. The Trial Court by its judgment and decree dated 04.04.2005 dismissed the suit O.S. No.2411 of 2004 filed by the first respondent / plaintiff on the ground that she is in illegal possession of the suit schedule property.

10. Aggrieved by the judgment and decree dated 04.04.2005 passed in O.S. No.2411 of 2004, the first respondent / plaintiff preferred an appeal in A.S. No.153 of 2006 before the Sub Court at Coimbatore on 17.04.2006.

11. By judgment and decree dated 21.02.2007 passed by the Lower Appellate Court in A.S. No.153 of 2006, the appeal filed by the first respondent / plaintiff was allowed and the suit was decreed in her favour and a permanent injunction as sought for in O.S. No.2411 of 2004 was granted.

12. Aggrieved by the judgment and decree dated 21.02.2007 passed by the Lower Appellate Court in A.S. No.153 of 2006, the appellant / first defendant - Temple has preferred this Second Appeal.

13. At the time of the admission of this Second Appeal on 12.10.2007, this Court formulated the following substantial questions of law :

i) Whether the lower Appellate Court has committed an error of law in reversing the judgment and decree of the trial Court without recording independent reasons for disagreeing with the reasoning of the trial Court?

ii) Whether the plaintiff can maintain the present suit O.S.No.2411 of 2005 when the suit O.S. No.915 of 2002 filed by the plaintiff against the appellant temple for similar relief with reference to the same property was pending?

14. Heard the learned counsel on either sides and perused the materials and evidence placed on record.

Submissions of the learned counsels :

15. The learned counsel for the appellant-Temple drew the attention of this Court to the findings of the Trial Court in O.S. No.2411 of 2004 and would submit that the Trial Court has rightly dismissed the suit on the ground that the first respondent / plaintiff has not approached the Court with clean hands and she is in illegal possession of the suit schedule property. He would submit that as seen from the findings of the



Trial Court, no documentary evidence has been produced by the first respondent / plaintiff to prove that she is in lawful possession of the suit schedule property. He would also submit that the first respondent / plaintiff has suppressed the earlier suit O.S. No.1255 of 1998 filed by her husband against the officials of the appellant - Temple /1st defendant in the suit O.S. No.2411 of 2004. Therefore, he would submit that the Trial Court has rightly dismissed the suit filed by the first respondent / plaintiff.

16. The learned counsel for the appellant would further submit that the first respondent / plaintiff has also suppressed the earlier suit O.S. No.915 of 2002 filed by her in the suit O.S. No.2411 of 2004, which is the subject matter of the Second Appeal.

17. He then drew the attention of this Court to the findings of the Lower Appellate Court in A.S. No.153 of 2006, which is the subject matter of challenge in this Second Appeal and would submit that the Lower Appellate Court erred in granting decree in favour of the first respondent / plaintiff by relying upon Ex.A2, the order passed by the Additional District Magistrate and District Revenue Officer, Coimbatore, which was set aside by this Court in its order dated 28.10.2003 made in Crl. Rc. No.1521 of 2002.

18. The learned counsel for the appellant also drew the attention to the auction notice issued by the appellant / first defendant -Temple which were marked as Exhibits before the Trial Court and would submit that behind the back of the Temple who is having the right over the suit schedule property, the first respondent / plaintiff has obtained a judgment and decree for permanent injunction in O.S. No.915 of 2002 making the Government alone as party defendants in the said suit. Therefore, according to him, the judgment and decree dated 21.02.2007 passed in A.S. No.153 of 2006 by the Lower Appellate Court has been passed by total non application of mind to the evidence available on record and therefore, it has to be set aside.

19. Per contra, the learned counsel for the first respondent / plaintiff drew the attention of this Court to the Lower Appellate Court judgment passed in A.S. No.153 of 2006 and would submit that the Lower Appellate Court has clearly held that the suit schedule property is a poromboke land and the Government of Tamil Nadu is the owner of the property and the documents produced by the appellant-Temple did not prove its title. He would submit that the Government of Tamil Nadu has also not granted any patta to the appellant -Temple to enable the Temple to claim ownership of the suit schedule property. He drew the



attention of this Court to the judgment and decree dated 08.11.2001 passed in O.S. No.1251 of 2000 which has been filed before this Court in the Additional Typed set of papers. After referring to the same, he would submit that the possession of the first respondent / plaintiff is for more than 45 years as on date (30 years as on date of the filing of the suit) had been recognised after scrtunising "B" Memo, which has been marked as Exhibit.

20. He also drew the attention of this Court to the order dated 28.10.2003 passed by this Court in Crl. Rc No.1521 of 2002, in a revision filed by the appellant-Temple as against the order dated 02.04.1999 passed by the Additional District Magistrate and District Revenue Officer, Coimbatore under Section 145 Cr.Pc. Though the said order was set aside by this Court, the High Court by the aforesaid order dated 28.10.2003 directed the respective parties to agitate their respective claims before a Civil Court. He would therefore submit that the Lower Appellate Court has rightly allowed the appeal by reversing the erroneous findings of the Trial Court.

21. He would also draw the attention of this Court to the oral evidence of DW1, the appellant / first defendant's witness by name Velusamy and would submit that he himself has categorically admitted that there was a dispute with regard to the title between the appellant / first defendant Temple and the Government of Tamil Nadu. He would further submit that DW1 has also admitted that the appellant / first defendant Temple cannot take any action against the first defendant /plaintiff pursuant to the order of the High Court passed in Crl. RC. No.1521 of 2002 without recourse to due process of law. He would also submit that DW1 has admitted that the first respondent / plaintiff is in possession of the suit schedule property. Therefore, he would submit that the Lower Appellate Court has given a correct finding that the first respondent / plaintiff is in possession of the suit schedule properties and therefore, entitled for injunction as prayed for in O.S. No. 2411 of 2004.

22. Per contra, Dr.S.Suriya, learned Government Advocate appearing for the second respondent would submit that the Government of Tamil Nadu is the owner of the suit schedule properties and not the appellant Temple / first defendant. She drew the attention of this Court to the written statement filed by the second respondent before the Trial Court in support of her contentions.



Discussion :

23. It is not in dispute that the first respondent / plaintiff is in possession of the suit schedule property. The contention of the appellant / first defendant is that the first respondent / plaintiff is in illegal possession. However, it is the contention of the first respondent / plaintiff that she is in lawful possession for more than 45 years. As seen from the evidence available on record which is also admitted by the appellant / first defendant's witness, DW1 before the Trial Court that there is a dispute with regard to the title of the suit schedule properties between the appellant / first defendant Temple and the Government of Tamil Nadu. The first respondent / plaintiff in her plaint averments in O.S. No.2411 of 2004 has also pleaded that she has been paying "B" Memo penalty charges to the Government of Tamil Nadu in respect of her possession over the suit schedule property. Ex.A1 order dated 02.04.1999 also reveals that "B" Memo penalty charges were paid by the first respondent / plaintiff for occupying the poromoboke land, the same has also been noticed by the trial court

24. Section 145 (4) of Cr. P.C. proceedings were also initiated by the first respondent / plaintiff before the Additional District Collector and District Revenue Officer, Coimbatore in the year 1998. The Additional Collector passed an order dated 02.04.1999 in Petition No.1 of 1998 holding that the Government is the owner of the suit schedule property. However, the same was set aside by this Court in Crl. RC. No.1521 of 2002 filed by the appellant / first defendant -Temple and the relevant discussion and the operative portion of the said order reads as follows :

5) To begin with, the District Revenue Officer must have been subjectively satisfied about the imminent presence of threat for breach of peace. However, in the present case there appears to be no such apprehension in the minds of the DRO. Moreover, after the amendment, of the Cr.P.C. in 1973, it is made mandatory on the part of the Magistrate while dealing with an enquiry under Section 145 Cr.P.C. to necessarily record evidence and permit the other side to cross examine. Even if the respective parties remained - silent, it is for the enquiry officer to ask them to produce witness and enable the other side to cross examine them. I am afraid, that procedure has not been followed in this case. But the Learned Magistrate has decided the issue only on the basis of the documents. Therefore, in the circumstances, I have no other alternative than to set aside the order and quash the proceedings.

6) But as far as the other issues are concerned, the respective parties may agitate the claims in the Civil



Court for appropriate remedies. With this observation, the revision is disposed of. CrI. M.P. No.79132 of 2002 is closed.

25. As seen from the aforesaid order passed by the High Court, dated 28.10.2003, it is clear that since there are disputes as regards the title of the suit schedule property, the parties were directed to approach the Civil Court for the purpose of agitating their rights.

26. O.S. No.1251 of 2000 has been filed by the first respondent / plaintiff before the Principal District Munsif Court, Coimbatore for permanent injunction against the District Collector, Tahsildar, Revenue Inspector and Village Administrative Officer.

27. By judgment and decree dated 08.11.2001 passed by the Principal District Munsif Court in O.S. No.1251 of 2000, permanent injunction was granted in favour of the first respondent / plaintiff against the District Collector and others from interfering with their possession of the suit schedule property without following the due procedure of law.

28. In the present suit O.S. No.2411 of 2004, the second respondent viz., the District Collector, Coimbatore in his written statement has also pleaded that the Government of Tamil Nadu is the owner of the suit schedule property. Nowhere, they have admitted as seen from their written statement that the appellant /first defendant - Temple is the owner of the suit schedule property. However, as seen from the written statement filed by the second defendant, the second defendant has made it clear that the first respondent / plaintiff will be evicted only after issuing proper notices as contemplated under Land Encroachment Act, 1905 and by following the due procedure contemplated therein.

29. The judgment and decree dated 08.11.2001 in O.S. No.1251 of 2000 has also not been challenged by the second respondent viz., the District Collector and the findings contained therein has now become final. Admittedly, as seen from the evidence available on record, there is a dispute as to the title of the suit schedule property between Government of Tamil Nadu and the appellant -Temple/ first defendant. It is also an admitted fact that presently, the first respondent / plaintiff is in possession of the suit schedule property. According to the appellant - Temple, the first respondent / plaintiff is in illegal possession and not entitled for grant of injunction in her favour. As observed earlier, the High Court by its order dated 28.10.2003 in CrI. Rc. No.1521 of 2002, has directed the parties to approach the Civil Court to agitate their respective grievances.



30. Furthermore, the first respondent / plaintiff has also pleaded that she has been paying the "B" Memo penalty charges to the Government of Tamil Nadu for the suit schedule property and the Government of Tamil Nadu has also recognised her possession, as per their order dated 02.04.1999 which has been marked as Ex.A1 before the Trial Court in O.S. No.1251 of 2000.

31. The Lower Appellate Court has rightly relied upon the judgment and Decree dated 08.11.2001 passed in O.S. No.1251 of 2000 on the file of the District Munsif Court, Coimbatore as well as the order dated 28.10.2003 passed by this Court in Crl. R.C. No.1521 of 2002, wherein the parties were directed to approach the Civil Court to readdress their remedies.

32. The decision of the Hon'ble Supreme Court in the case of Rame Gowda (D) by LRs. V.M. Varadappa Naidu (D) by Lrs. and another reported in 2004 (3) LW 143 relied upon by the learned counsel for the first respondent / plaintiff supports the case of the first respondent / plaintiff. As per the said decision, it has been held that the settled possession or effective possession of a person without title would entitle him to protect his possession even as against the true owners.

33. The Hon'ble Supreme Court has also held in the aforesaid decision that the Law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands and also by restoring him in possession even from the rightful owner.

34. The Hon'ble Supreme Court further held in the decision referred to supra that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land. In such a case, unless, he is evicted in the due course of law, he is entitled to defend his possession, even against the rightful owner.

35. In the case on hand, admittedly, the first respondent / plaintiff is in possession of the suit schedule property for the past several years. There is also a dispute as regards the title of the suit schedule property that is whether it is owned by the Government of Tamil Nadu or by the appellant / first defendant Temple. The Government of Tamil Nadu has also made it clear in their written statement that only by following the due procedure contemplated under Land Encroachment Act by issuing proper notices, the first respondent / plaintiff will be evicted. The judgment and decree dated 08.11.2001 in O.S. No.1251 of 2000 is also in favour of the first respondent / plaintiff where a permanent injunction was granted. All the aforementioned



factors will clearly support the case of the first respondent / plaintiff and not the appellant /first defendant -Temple.

36. The Lower Appellate Court by its judgment and decree dated 21.02.2007 in A.S. No.153 of 2006 has rightly reversed the findings of the Trial Court.

37. The Substantial questions of law formulated by this Court at the time of admission of this Second Appeal are answered against the appellant / first defendant as the Lower Appellate Court has not committed any error in law in reversing the judgment and decree of the Trial Court as it has given sufficient reasons for disagreeing with the reasonings of the Trial Court and further, the plaint in O.S. No.1251 of 2000 was not marked as an Exhibit before the Trial Court and therefore, the Trial Court having not considered the same, the suit filed by the first respondent / plaintiff in O.S. No.2411 of 2004, which is the subject matter of the Second Appeal cannot be held to be not maintainable. The plaint in the suit O.S. No.915 of 2002 or the judgment in the said suit was not marked as an Exhibit before the Trial Court in O.S. No.2411 of 2004. Therefore, the question as to whether the suit O.S. No.2411 of 2004, which is the subject matter of this Second Appeal is similar to the relief sought for in O.S. No.915 of 2002 will not arise for consideration. Eventhough, the learned counsel for the appellant would submit that the husband of the first respondent / plaintiff had filed a similar suit in O.S. No.1255 of 1998, the outcome of the said suit is unknown. Though a copy of the plaint in O.S. No.1255 of 1998 has been filed by the first respondent / plaintiff in O.S. No.2411 of 2004 and has been marked as Ex.B2 before the Trial Court, since the outcome of the said suit and the oral and documentary evidence placed on record by the husband of the first respondent / plaintiff in the said suit were not marked as Exhibits before the Trial Court in O.S. No.2411 of 2004, the filing of O.S. No.1255 of 1998 by the husband of the first respondent / plaintiff will have no bearing for the disposal of this Second Appeal. Therefore, when there is no proof to show that there has been deliberate suppression of the earlier suit filed by her husband and when there is no evidence in support of the appellant's contention, the same has to be rejected and the Lower Appellate Court has also rightly rejected the said contention.

38. If at all the appellant -Temple /first defendant desires to evict the first respondent /plaintiff, they have to necessarily approach the Civil Court by filing a separate suit for eviction by making the second respondent as also a party defendant in the said suit.



39. For the foregoing reasons, there is no substantial question of law to be decided by this Court as the issues raised by the appellant / Temple / first defendant have been adequately and correctly considered by the Lower Appellate Court in its judgment and decree dated 21.02.2007 in A.S. No.153 of 2060 reversing the judgment and decree of the Trial Court, dated 04.04.2005 made in O.S. No.2411 of 2004 and there are no debatable issues of law involved in this Second Appeal and hence, there is no merit in this Second Appeal.

40. In the result, this Court does not find any infirmity or perversity in the findings of the Lower Appellate Court and accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Subordinate Judge, Coimbatore.

2. The District Munsif, Coimbatore.

+1 CC to Mr.C.R.Prasanan, Advocate, Sr 35217.

+1 CC to Mr.Doraisamy, Advocate, Sr 35146.

+1 Cc to The Government Pleader(CS), Sr 35346.

S.A.No.1055 of 2007

MG(CO)
LS(16/09/2021)