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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.11.2021

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.1012 of 2021

Ashim Basha

... Appellant/Plaintiff

Vs.

1. The Special Commissioner
Madhavaram Milk Production &
Dairy Development Corporation
Madhavaram.

2. The Estate Officer,
Madhavaram Milk Production &
Dairy Development Corporation
Madhavaram.

...Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Subordinate Judge, Ponneri, Thiruvallur District, in A.S.No.61 of 2014 dated 16.04.2019 confirming the judgment and decree of the learned District Munsif, Thiruvotriyur, Thiruvallur District in O.S.No.184 of 2004 dated 30.08.2011.

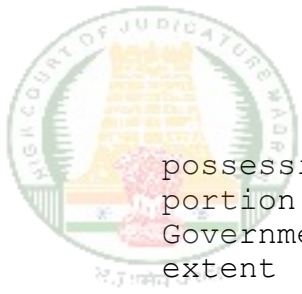
For Appellant : Mr.S.Nambirajan

JUDGMENT

This Second Appeal is directed against the judgment of the learned Subordinate Judge, Ponneri, Thiruvallur District in A.S.No.61 of 2014 confirming the judgment of the learned District Munsif, Thiruvotriyur in O.S.No.184 of 2004.

2. Appellant/plaintiff filed the suit seeking the relief of permanent injunction against the respondents, restraining the respondents, their men, agents, servants or any authority from forcibly occupying and putting up construction in the suit properties thereby interfering with the possession of the plaintiff and for costs.

3. The case of the appellant/plaintiff is that the suit property originally belongs to Aathma Rao Chettiar. He had 1.00acre in survey No.995 part at Madhavaram Village, Ambattur taluk. The southern western portion of 0.55acres is in



possession and enjoyment of Retart Laboratory Company and a portion of property measuring 0.03.0ars was taken by the Government for laying Madavaram Milk Colony Road. The remaining extent immediately to the West of Madhavaram Milk Colony Road was occupied by various persons together with plaintiff's ancestors for decades. The suit property was occupied by the plaintiff and his predecessors and they put up a hut with brick built wall. Sottima Bi, wife of the plaintiff executed a settlement deed dated 04.07.2002 and settled the suit property in favour of the plaintiff. Plaintiff is in absolute possession and enjoyment of the suit property by paying tax. He has voters identity card and ration card in the suit property. Defendants have no right in the suit property. In the third week of December 2003, the defendants threatened to interfere with possession of the plaintiff. Therefore, the suit was filed for the reliefs aforesaid.

4. Respondents/Defendants filed written statement, denying and disputing the claim of the appellant/plaintiff. The claim that the appellant is residing in the suit property is not true. The encroachments in survey No.995/2 were removed on 17.10.2003 by the Tahsildar and the suit property was handed over to the Government. The claim that suit property belongs to Aathma Rao Chettiyar is not true. An extent of 0.14.0hectare in survey No.995/2 was handed over to Dairy Development Corporation 40 years back. This land was acquired from Mohammed Yahiya Sahib as per award No.12 dated 14.12.1957 and was allotted to Madras Dairy and Milk Project. The Madras Dairy and Milk project is in possession of this suit property from 1957. There are entries in the revenue records to show that this property stands in the name of Dairy Development Department. The execution of settlement deed by Sottima Bi, in favour of the appellant without any prior title to the suit property is not acceptable and it is not legal and valid. One Raja filed Writ Petition No.14198/1997 claiming right in the suit property and the Writ Petition was dismissed confirming the title of the respondent. Similarly, Writ Petition filed by one Syed in W.P.No.29767/2003 was also dismissed. This is speculative suit filed without any basis and therefore, suit is liable to be dismissed.

5. On the basis of the above pleadings, Trial Court framed the following issues:

- i) Whether the plaintiff is entitled for the relief of permanent injunction?
- ii) to what other reliefs, plaintiff is entitled?

6. During the trial, PW1 was examined and Exhibit A1 to A6 were marked on the side of the plaintiff. DW1 was examined and Exhibit B1 to B11 were marked. On considering the oral and documentary evidence, the learned Trial Judge found that there



is no evidence produced by the appellant to show that suit property originally belongs to Aathma Rao Chettiyar; the plaintiff and his predecessors had been in possession and enjoyment of the suit property for decades; that appellant's wife has right to settle the suit property in favour of her husband. Finally, it was found that the appellant was not in possession of the suit property on the date of filing the suit. In this view of the matter, suit was dismissed. Appellant/plaintiff filed appeal against the judgment of the Trial Court. The learned Appellate Judge also found no reason to interfere with the judgment of the Trial Court, confirmed the judgment of the Trial Court and dismissed the appeal. Challenging the said dismissal of first appeal, this Second Appeal is preferred.

7. The learned counsel for the appellant submitted that appellant has produced documents to show that appellant has title and possession to the suit property. There are sub divisions in the suit property. There are sub divisions in survey No.995/2. Respondents are Government agencies and therefore, they are able to create documents in support of the respondents' case. The documents produced by the appellant proved that appellant was in possession and enjoyment of the suit property. Without considering these aspects, both the Courts below have wrongly dismissed the suit. Therefore, he prayed for entertaining this Second Appeal and set aside the judgment of the Court below.

8. Considered submissions of the learned counsel for the appellant and perused the records.

9. The perusal of the judgment of the Trial Court shows that appellant had produced Exhibit A1 to A6 documents. Exhibit A1 is the copy of the settlement register of Madhavaram Village. Exhibit A2 is the copy of the settlement deed executed by his wife in his favour and Exhibit A3 is the surveyor's survey. Exhibit A4 is property tax receipt, Exhibit A5 is voter's list and Exhibit A6 is the chitta. All these documents relate to the period from 2000 to 2002. This suit was filed in 2004. Respondents produced Exhibits B1 to B11 documents. Respondents also produced revenue records especially Exhibit B4 settlement register copy, Exhibit B6 encumbrance certificate, chitta and other records. As a dominus litigant, the appellant is excepted to prove his case on its own set of pleadings and evidence. It is claimed by the appellant in the plaint that suit property was originally belonged to Aathma Rao Chettiyar and it came to be enjoyed by the appellant and his predecessors. Then, his wife Sottima Bi executed settlement deed in respect of the suit property in his favour. It is found from evidence that appellant has not produced any material to show that the suit property



belonged to Aathma Rao Chettiyar and that the appellant and his predecessors has been in possession and enjoyment of suit property for decades. As already stated, the documents filed by the appellant relate only to the period 2000 to 2002. Appellant has not even filed documents to show that on the date of filing the suit, appellant was in possession and enjoyment of the suit property. The Courts below, especially the Trial Court has found from evidence that appellant was not in possession and enjoyment of the suit property on the date of filing the suit. Therefore, this Court is of the considered view that the appellant on his own pleadings and evidence has failed to establish his claim of title and possession in respect of the suit property.

10. When it is claimed by the appellant that his wife executed settlement deed dated 04.07.2002 in his favour, there is no evidence to show how his wife was entitled to this property. In the absence of any title deed in the name of appellant's wife Sottima Bi, the settlement deed dated 04.07.2002 executed by her in respect of the suit property in favour of the appellant will have no legal validity. On the other hand, it is specifically claimed by the respondents that the suit property was acquired by the Government from Mohammed Yahiya Sahib as per award No.12 dated 14.12.1957 and handed over to Madras Dairy and Milk Project and is in possession and enjoyment of this department from 1957. Revenue records produced by the respondent support this claim. Thus, from the oral and documentary evidence produced in this case, both the Courts below have concurrently found that appellant has not established the claim of title to the suit property and possession on the date of filing of the suit property. Therefore, the suit was dismissed.

11. Thus, this Court finds no reason to interfere with the judgment and decree of the Appellate Court confirming the judgment and decree of the Trial Court. There is no substantial question(s) of law arise for consideration in this Second Appeal. In this view of the matter, the judgment and decree of the learned Subordinate Judge, Ponneri, in A.S.No.61 of 2014 confirming the judgment and decree of the learned District Munsif, Thiruvotriyur in O.S.No.184 of 2004 is confirmed.

12. In fine, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

1. The Subordinate Judge, Ponneri,
Thiruvallur District.
2. The District Munsif, Thiruvotriyur,
Thiruvallur District.

S.A.No.1012 of 2021

EV (CO)

CT/28/12/2021