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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1694 of 2001

Tamil Nadu Tea Plantation
Corporation Limited,
by its Managing Director,
Shri.John Joseph.

...Appellant/Appellant/First Defendant

Vs.

K.R.Mohammed Rowther (since deceased) ...Plaintiff

1.The District Forest Officer,
Gudalur.

2.The Collector of Nilgiris
Ootacamund.

...2nd & 3rd Respondents/Defendants 2 & 3

3.Ismail Rowther

4.Abdul Salam Rowther

5.Pathumma

...Respondents/Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 19.06.2001 passed in A.S. No.71 of 1986, on the file of the District Court, Nilgiris, modifying the decree and judgment dated 22.08.1986 passed in O.S. No.99 of 1981, on the file of the District Munsif Court, Gudalur.

For Appellant : Mr.G.Anbumani

For R1 : Mr.T.Arunkumar
Additional Government Pleader
(Forest)

For R2 : Ms.S.V.Supraja
Government Advocate

For R3 to R5 : No appearance.



JUDGMENT

The appellant is the first defendant in O.S.No.99 of 1981 on the file of the District Munsif Court, Gudalur. The plaintiff K.R.Mohammed Rowther (since deceased) filed the said suit for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their ranking in the present appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:

The suit property originally belonged to Nilambur Kovilagam and it was leased out to the plaintiff on 20.11.1962. Ever since the date of lease, the plaintiff has been in possession and enjoyment of the same. After passing of Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969, the plaintiff had a right to claim patta in respect of the suit property and in fact he filed a petition for the same. The Government has not passed any orders in his petition. However, the defendants are attempting to interfere with the peaceful possession and enjoyment of the suit property and therefore, he filed the suit.

4. The suit was resisted by the defendants 1 to 3 on the following grounds :

- i. The suit property though originally belonged to Nilambur Kovilagam, was administered by a receiver appointed by Sub Court, Calicut, after the enactment of Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (hereinafter called "the Act").
- ii. The suit property has been classified as forest under Section 53 of the Act and vested with the Government.
- iii. The first defendant was also put in possession of the suit property on 22.09.1979.

They therefore prayed for the dismissal of the suit.

5. The trial Court after framing necessary issues and after full contest decreed the suit in favour of the plaintiff vide its decree and judgment dated 22.08.1986.

6. Aggrieved over the same the first defendant (present appellant) filed an appeal in A.S.No.71 of 1986 before the District Judge, Nilgiris at Ootacamandalam. The first appellate Court partly allowed the appeal and directed the Government not to evict the plaintiff with regard to the superstructure put up by him in the suit property bearing Door No.5/10 except under due process of law.



7. Now the present second appeal is filed by the first defendant on the following substantial questions of law :

- i. Whether the lower Courts are right in holding that the plaintiff was in possession of Door No.5/10 on the basis of the Ex.A27 voters list?
- ii. Whether the lower Courts are right in coming to the conclusion that voters list is a valid and conclusive proof of possession of a person?

8. During the pendency of the first appeal the plaintiff died and his legal heirs were impleaded as respondents 4 to 6 (respondents 3 to 5 herein). They filed a second appeal in S.A.No.1927 of 2001 against the decree and judgment passed by the first appellate Court. The said second appeal was dismissed as infructutuous by a single Judge of this Court on 03.01.2020.

9. To usher in land reforms, the state of Tamil Nadu passed the Gudalur Janmam Estates (Abolition and Conversion in to Ryotwari) Act, 1969 (hereafter called the Act) for the acquisition of the rights of janmies in the janmam estate in Gudalur and Pandalur Taluks of Nilgiris District and for introduction of ryotwari settlement in such estates. The Government of Tamil Nadu also framed rules under Section 60 of the Act titled "Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Rules, 1974 vide G.O.Ms.No.695 Commercial Tax and Religious Endowment Directorate dated 07.12.1974. By the 34th Constitution Amendment, the Act was inserted in the 9th schedule of the Constitution of India. Section 11 of the Act clearly states that no pattas can be granted in respect of an area or land which is found to be a forest. In the instant case, the suit property has been classified as forest, under Section 53 of the Act. The petition filed by the plaintiff for grant of patta in respect of the suit property was also rejected by the Government as evidenced by G.O.Ms.No.1148 dated 21.12.1978 (Ex.B1). However, the first appellate Court based on voters' list (Ex.A27) held that, since the plaintiff is in possession of the superstructure bearing door number 5/10, on the date of filing of the suit, he is entitled for a permanent injunction in respect of that superstructure till he is evicted under due process of law. He therefore, allowed the appeal in part.

10. When patta has not been granted in favour of the plaintiff as evidenced by G.O. M.S. No.1148 dated 21.12.1978 (Ex.B1) and the land had also been classified as forest land under Section 53 of the Act, the decree granted by the first appellate Court in favour of the plaintiff in respect of the superstructure put up by the plaintiff cannot be sustained. Moreover, as already observed, the legal heirs of the plaintiff had also made an endorsement in the appeal filed by them in S.A.No.1927 of 2001 that nothing survived for further adjudication and ultimately the second appeal was dismissed. Therefore, the suit in O.S. No.99 of 1981 is liable to be



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dismissed in toto.

11. In the result,
i. the second appeal is allowed. No costs.
ii. the decree and judgment dated 19.06.2001 passed in A.S. No.71 of 1986, on the file of the District Court, Nilgiris, and the decree and judgment dated 22.08.1986 passed in O.S. No.99 of 1981, on the file of the District Munsif Court, Gudalur, are set aside.
iii. The suit filed by the plaintiff in O.S. No.99 of 1981, on the file of the District Munsif Court, Gudalur, is dismissed with costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bga

To

1. The District Judge, Nilgiris.

2. The District Munsif, Gudalur, Nilgiris District.

Copy to:

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.G.Anbumani, Advocate SR. No. 10845

+1cc to Special Government Pleader (Forest) SR. No. 11389

S.A.No .1694 of 2001

NR (CO)

PR (20/04/2022)