



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.842 of 2010

V.Murugan

... Appellant/Appellant/Plaintiff

-Vs-

Kattalangulam Panchayat
Through its President
Kattalangulam
Sawyerpuram via
Tuticorin Taluk,
Tuticorin District.

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed by the learned Subordinate Judge, Tuticorin in A.S.No.103 of 2007, dated 29.01.2010 confirming the judgment and decree made in O.S.No.281 of 2006 on the file of the learned Principal District Munsif, Tuticorin, dated 14.06.2007.

For Appellant : Mr.R.R.Kannan
For Respondent : Mr.N.Muthu Vijayan
Special Government Pleader

JUDGMENT

The plaintiff in O.S.No.281 of 2006 on the file of the Principal District Munsif Court, Tuticorin is the appellant in this second appeal.

2. The suit was filed for declaration and permanent injunction. The case of the plaintiff is that the plaintiff's great grandmother Muthammal had purchased the suit first item from her mother under a sale deed dated 19.01.1945. It was later settled under a gift deed dated 28.10.1957 in favour of the plaintiff's grandmother Petchiammai Ammal. Petchiammai Ammal also annexed the suit second schedule and put up a pial and also projection over the same in the year 1960. The plaintiff's family have been in uninterrupted possession and enjoyment of the annexed portion for more than 45 years. While so, the defendant Panchayat passed a resolution for demolishing the pial and projection described as the suit 3rd schedule. Hence, the said suit was instituted with the aforesaid reliefs. The Panchayat filed written statement controverting the plaint averments. Based on the divergent pleadings, issues were



framed. The power agent of the plaintiff examined himself as P.W.1 and one Backianathan was examined as P.W.2. Ex.A1 to Ex.A7 were marked. On the side of the defendant, one Panchayat Official was examined. Ex.B1 to Ex.B6 were marked. After consideration of the evidence on record, by judgment and decree dated 14.06.2007, the suit was dismissed. Aggrieved by the same, the plaintiff filed A.S.No.103 of 2007 before the Sub Court, Tuticorin. By the impugned judgment and decree dated 29.01.2010, the appeal was dismissed and the decision of the trial court was confirmed. Challenging the same, this second appeal came to be filed.

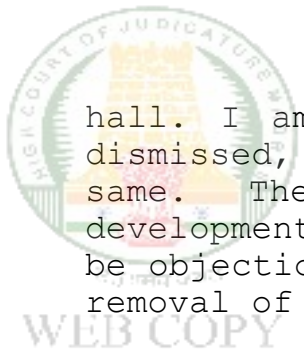
3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit the second appeal and take it up 'for disposal' later.

4. Per contra, the learned Special Government Pleader appearing for the respondent Panchayat submitted that no substantial question of law arises for consideration and pressed 'for dismissal' of the suit.

5. I carefully considered rival contentions and went through the evidence on record.

6. The relief has been sought in respect of the 3rd plaint schedule property. Even according to the appellant, the disputed portion was not covered under the title deeds which have been marked in the suit. The relief of declaration is sought on the basis of adverse possession. According to the plaintiff, since 1960, the 3rd schedule property is in exclusive possession and enjoyment of the plaintiff's family. The courts below have rendered a concurrent finding that the plea of adverse possession has not been established. Therefore, as rightly contended by the learned Special Government Pleader, this being a pure question of fact, there is no scope for interference in exercise of jurisdiction under Section 100 of C.P.C. That apart, the issue can be approached from another angle. The encroached portion is not a mere government land. Even according to the plaintiff, it is a threshing floor. A threshing floor apart from being contiguous to the road is meant for communal use. In other words, all the villagers are entitled to use the said land. Grazing ground, road, threshing floor and other lands earmarked for common purposes or communal purposes cannot be the subject matter of adverse possession. Therefore, the impugned judgment and decree do not call for any interference.

7. However, I must make one observation. It appears that the demolition of the 3rd schedule was proposed by the Panchayat in order to enable putting up a community hall in front of the plaintiff's house. Now, during the pendency of these proceedings, a pucca community hall had already been constructed. In fact, the



hall. I am sure that merely because, the second appeal has been dismissed, the defendant will not take any step for removal of the same. The defendant will definitely take note of the subsequent developments. Only if the encroachment of the plaintiff is found to be objectionable or offends public interest, steps will be taken for removal of the same.

8. With these observations, this second appeal is dismissed.
No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Subordinate Judge, Tuticorin.
- 2.The Principal District Munsif, Tuticorin.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

- +1 CC to M/s.RR.KANNAN, Advocate (SR-13792[F] dated 23/03/2022)
+1 CC to M/s.SPL GP (SR-14250[F] dated 24/03/2022)

Judgment made in
S.A. (MD) No.842 of 2010
23.03.2022

USK/19.04.2022/3P/7C