



S.A.No.1384 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1384 of 2007

and

M.P.No.1 of 2007

Sinnapayan

... Appellant

- Vs -

1.Tahsildar,
Kundha,
The Nilgiris.

2.State rep.by
The Collector of Nilgiris,
Nilgiris.

3.K.Sreenivasan

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.04.2007 made in A.S.No.1 of 2007 on the file of the Court of the Subordinate Judge of the Nilgiris at Uthagamandalam confirming the Judgment and Decree dated 30.08.2006 made in O.S.No.203 of 2002 on the file of the Court of the District Munsif, Uthagamandalam.



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For Appellant : Mr.B.Soundarapandian
For Respondents : Mr.C.Sathis [R1 and R2]
Mr.T.Girish [R3]

JUDGMENT

This second appeal has been filed at the instance of the plaintiff.

The respondents herein are the defendants before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

The brief facts which gives rise to the instant second appeal is.

that:

3. According to the plaintiff, he is the owner of the suit properties. However, the respondents 1 and 2 issued eviction notice dated 09.09.2002. Hence, he has come forward with the suit for declaration, to declare the eviction notice is null and void and also seeking for permanent injunction restraining the respondents from interfering with his



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possession.

4. The suit property is an extent of 1.30 acres in S.F.No.342/1B 1B in Ithalar Village. According to the plaint averments, the said land was allotted to the plaintiff in lieu of acquisition made for the construction of Emerald Dam. It is the further submission of the plaintiff that the defendants were allotted 2.60 acres in S.F.No.342/1B1B. It is also the submission of the plaintiff that since the 3rd defendant being influential person, the Revenue Authorities have offered helping hand to the 3rd defendant and favoured him. It is the submission of the plaintiff that Section 7 notice under the Land Encroachment Act is illegal. Hence prayed to decree the suit.

5. The suit was resisted by the defendants by contending that the suit property was allotted to him and he has been in peaceful possession and enjoyment of the same. The Official respondent has also filed its counter statement stating that originally the S.F.No.342/1B1B was the grass land and it was allotted to one Chandran. Since he refused to accept



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the land, the same was allotted to the plaintiff to an extent of 1.30 acres.

However, the plaintiff has not utilised the land assigned to him and he left from the land. Since the plaintiff has left from the land without occupying, one B.L.Bheeman had entered into the land and there was frequent dispute between Bheeman and the 3rd defendant and that a criminal case has also been filed before the Emerald Police Station. Therefore, it is the submission of the defendants that the plaintiff has not been in possession of the property.

Evidence and documents:-

6. Before the trial Court, the plaintiff has marked 9 documents as Exs.A1 to A9 and on behalf of the defendants, 8 documents have been marked as Exs.B1 to B8. On the side of the plaintiff two witnesses were examined as PW1 and PW2 and on behalf of the defendants six witnesses have examined as DW1 to DW6.

Finding of the both the Court below:-

7. It appears from the record that in the first round of litigation suit was disposed of on 31.01.2005 by decreeing the suit in favour of the



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8. Therefore, it is relevant to mention here that after the matter was remanded, the trial Court has rightly proceeded to find out the possession over the property. The trial Court by referring Ex.B5 and also taking into consideration the evidence of PW1, has found that the plaintiff was not in possession of the property. Aggrieved with the same, the plaintiff had approached the First Appellate Court and the First Appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Aggrieved with the same, the plaintiff is before this Court by way of this Second Appeal.

9. This Court while admitting the second appeal has framed the following substantial questions of law :

"1.Whether the Courts below construed and misapplied the provisions of Section 102 of Indian



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Evidence Act to decide the issue in question?

2. Whether the Courts below materially overlooked the vital document, Section 7 notice dated 04.09.2000 which clinches the issue that the appellant is in possession of the suit schedule property?

3. Whether the Courts below having held that Ex.A3 notice dated 09.09.2002 is illegal and the Appellant is entitled for a declaration to that effect, are legally correct in negating the relief of injunction?

4. Whether the findings of the Courts below are legally correct on the face of Ex.A6 which says that the officials are not in a position to identify the total extent of 6.33 acres? "

Submissions of either side counsel:-

10. The learned counsel for the appellant would vehemently submit that since the property was allotted in view of acquisition made against the land of the plaintiff and that even according to the Section 7 notice, under Land Encroachment Act, when the defendants 1 and 2 admits the



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possession of the plaintiff over the suit property, the finding recorded by the First Appellate Court that the plaintiff was not in possession of the property is contrary to the evidence. Hence, prayed to interfere with the concurrent findings of both the Courts below. It is also the submission of the learned counsel for the appellant/plaintiff that the plaintiff being an illiterate person, the official respondent has received the signature in certain documents, are that based on such documents, now the defendants are attempting to dispossess the plaintiff. Hence, the learned counsel prayed to allow the second appeal, thereby praying to grant permanent injunction.

11. However, the learned Government Advocate appeared on behalf of the defendants 1 and 2 after placing much reliance upon Ex.B1 and also admission made by PW1 through cross-examination contended the plaintiff is not in possession of the suit property.

12. The learned counsel for the 3rd respondent also supported the contention of the defendants 1 and 2, and would further submit that they



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13. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

14. As rightly found by the First Appellate Court, after the matter was remanded back to the trial Court, for fresh disposal, there was specific direction to Court below to find who is in possession of the property. Therefore, the validity of the Section 7 notice and other aspect is not at all relevant at this stage. Coming to the possession, the trial Court has relied upon Ex.B5. The Ex.B5 is the letter written by the plaintiff to the DRO, wherein, he categorically stated that the suit property is in the occupation of one Bheema Gounder and he has planted tea. Apart from that while cross-examining PW1, has stated as to who is in possession in the suit property. Only based upon such candid admission made by the plaintiff, the trial Court found that the plaintiff is not in possession of the property.



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15. The learned counsel for the plaintiff would contend that the very allotment of land in favour of the plaintiff is against the acquisition of the plaintiff land for construction of Emerald Dam, therefore, prays to issue some direction to the Government for allotment of some other land to the plaintiff.

16. While deciding the second appeal under Section 100 of CPC, this Court could not go in to all these aspects. Therefore, the findings recorded by both the Courts below about the factum of plaintiff's absence of possession over the suit property cannot be found faulted and the same is based on the materials on record qua Ex.B5 and the admission made by PW1. Therefore, this Court could not find any perversity over the said findings.

17. Thus, in view of the above discussion, the substantial question of law framed are decided in favour of the respondent.

18. In the result, this Second Appeal is dismissed and the the



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judgment and decree dated 25.04.2007 made in A.S.No.1 of 2007 on the file of the Court of the Subordinate Judge of the Nilgiris at Uthagamandalam confirming the Judgment and Decree dated 30.08.2006 made in O.S.No.203 of 2002 on the file of the Court of the District Munsif, Uthagamandalam are hereby confirmed. There shall be no order as to costs. Consequently, connected M.P.No.1 of 2007 is also closed.

20.11.2023

ssn

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



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C.KUMARAPPAN, J.,

ssn

To

1. The Subordinate Judge,
Nilgiris at Uthagamandalam.

2. The District Munsif,
Uthagamandalam.

S.A.No.1384 of 2007
and
M.P.No.1 of 2007

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