



S.A.Nos.823 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.Nos.823 of 2007

Chinnasalem Weavers Co-Operative Society Limited,
E1349 represented by its Special Officer,
Chinnasalem.

... Appellant

- Vs -

1. The District Collector,
Villupuram.
2. The Revenue Divisional Officer,
RDO office,
Kallakurichi.
3. The Tashildar,
Kallakurichi,
Villupuram District.
4. The Executive Officer,
Town Panchayat,
Chinnasalem.

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.4/2004 on the file of Sub-Court, Kallakurichi and dated 29.08.2006 in reversing the judgment and decree in O.S.No.52/2000 on the file of I Additional District Munsif, Kallakurichi and dated 27.06.2003.



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For Appellant : Ms.R.Abirami

For Respondents : Mr.C.Sathish
Government Advocate for R1 to R4
Dr.S.Suriya
Additional Government Pleader for R4

JUDGMENT

The instant Second Appeal is arising out of a suit for permanent injunction in which, the Trial Court granted an order of injunction. Aggrieved with the same, the Government has moved a First Appeal and the First Appeal was allowed by dismissing the suit. Against which, the plaintiff is before this Court.

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

The brief facts, which give rise to the instant second appeal is as follows:-

3. The suit property, which consists of 5.28 acres belongs to the plaintiff. In which Survey No.247/2A was assigned to the plaintiff's Society by the Government vide G.O.Ms.No.1371 dated 28.03.1961. The said assignment is an open certain and completed assignment. The plaintiff received the said assignment and through which, it was allotted to its



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members, and 39 members had built house and enjoying the same. While so, the defendants trespassed into the suit property. Hence, the suit was filed seeking for an order of permanent injunction.

4. The suit was resisted by the defendants with the contention that the assignment was made with specific condition and with an intention and purpose for building houses for the weavers and not for any other purpose. It is the contention of the defendants that the said land was not used for housing purpose and the same was kept as vacant site. Therefore, the said land was shown as vacant Natham land in UDR records as per UDR Scheme. It is the further contention of the defendants that the suit property has been used by the plaintiff for commercial purposes.

Evidence, Documents and finding of the Court below:-

5. Before the Trial Court, the plaintiff examined one witness as PW1 and marked as many as 11 documents as Exs.A1 to A11. On behalf of the defendants, one witness was examined as DW1, no documents were marked.

6. After considering both oral and documentary evidence and having considered the submissions made by either side, the Trial Court ultimately decreed the suit. Aggrieved with the said finding, the defendants moved an appeal, wherein, the First Appellate Court has allowed the appeal. Thereby,



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dismissed the suit. Aggrieved with the same, the plaintiff has approached this Court by way of this Second Appeal.

Substantial Question of law:-

7. At the time of admission on 10.08.2007, this Court has formulated the following question of law:-

“A. Whether the lower appellate Court is right in dismissing the suit, when the possession and enjoyment of the property has been established in pursuance of the Government order?

B. Whether the findings of the lower appellate are not against the pleadings and evidence and is not perverse especially when the documents under Exhibits A.1, A.2, A.9 and A.11 were ignored and a finding returned against those crucial documents?”

Submissions of either side counsel:-

8. The learned counsel for the appellant would submit that the lower Appellate court has failed to see the allotment of the suit property to their members and that the members are in the occupation and enjoyment of the suit property. It is also the submission of the learned counsel for the appellant that in pursuance of the allotment, a sale deed has been executed



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and patta has also been granted under Ex.A1, as admitted by DW1. The learned counsel would also further contend that the plaintiff has established his legitimate right and possession and enjoyment over the suit property. Therefore, the denial of the relief of injunction is contrary to law. Hence, prayed to allow the Second Appeal.

9. However, the learned Government Advocate would strenuously submit that when the land was allotted to the Society, it was with specific condition to construct a house for the members of the Society and not for any other purpose. Contrary to the above condition, the Society has not allotted the land to their members for the construction of the house and the said lands are kept vacant. Therefore, they have violated the conditions. Hence, patta was cancelled. Therefore, the learned Government Advocate would submit that the order is perfectly in order, which was rightly considered by the First Appellate Court and dismissed the suit. Therefore, prayed to dismiss the Second Appeal.

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

Analysis of the submissions of both sides:-

11. The First Appellate Court has relied Ex.A1, wherein it is an admitted fact that the land in S.F.No.247/2A to an extent of 5.28 acres were



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allotted to the Society by virtue of G.O.Ms.No.1371 dated 28.03.1961 for the purpose of allotting the lands for their members to put up construction. Since from the date of such allotment, admittedly, no construction had taken place in the suit property. The First Appellate Court has also relied upon the material that since 1989, the land has been classified as Natham vacant site. Therefore, it is proved that, contrary to the conditions imposed by the Government, the land was not used for the purpose for which it was allotted. Therefore, this Court is of the view that the finding of fact recorded by the First Appellate Court is well merited and there are no grounds to deviate from the said findings.

12. In view of the above discussion, the substantial question of law are liable to be answered in favour of the respondents.

13. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

02.11.2023
(1/2)

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Sub Court,



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2. The I Additional District Munsif,
Kallakurichi.