



S.A.No.2005 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

SA.No.2005 of 2004

K.P.Mohamed

.. Appellant

Vs.

Tamilnadu Tea Plantation Corporation Limited,
a Body Corporate represented by its Chairman
and Managing Director,

Esses Lodge,

Coonoor,

Nilgiris District.

.. Respondent

PRAYER: Second Appeal is filed under section 100 of Civil Procedure Code, against the Judgment and Decree of the Learned District Judge of Nilgiris at Uthagamandalam in A.S.No.30 of 1990, dated 18.06.2004 reversing the judgment and decree of the Learned District Munsif of Gudalur in O.S.No.59 of 1982, dated 14.12.1988.

For Appellant : Mr.Rooban Chakravarthy
for M/s.K.Kumarasamy

For Respondent : Mr.Anbumani



S.A.No.2005 of 2004

JUDGMENT

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This Second Appeal arises against the suit for bare injunction filed by the appellant against the respondent in O.S.No.59 of 1982. The claim of the plaintiff is that he is in possession of the suit schedule mentioned property as a lessee under Nilambu Kovilagam. According to him, he was paying pottom to the said Kovilagam till 1977 and was rising Tea and Coffee Plants. He would state that the Forest Officials came to dispose the same and hence, he filed W.P.No.5081 of 1981. Alleging that in the Writ Petition he had been benefited with the order of stay, he presented a suit for permanent injunction not to interfere with the possession.

2.The suit was resisted by the respondent/defendant stating that the plaintiff is not in possession of the suit schedule mentioned property. It was alleged that the respondent/Tamil Nadu Tea Plantation Corporation Limited had taken possession of the property much before the presentation of the suit on 26.06.1981. As the defendant had taken possession way before the presentation of the plaint, he sought for dismissal of the suit.

3.Before the trial Court, the plaintiff examined himself as PW1 and



S.A.No.2005 of 2004

an official of the defendant by name Uralin had been examined as DW1.

The plaintiff had filed an interim order passed by this Court, dated 15.10.1981 and the proceeding of the Forest Settlement Officer, dated 25.02.1987. Apart from these two evidences, the Court also marked the report and the plan filed by the Advocate Commissioner as Exhibits C1 to C3. The trial Court decreed the suit on 14.12.1988. Against which, an appeal was preferred by the respondent herein in A.S.No.30 of 1990. The appeal suit was allowed on 18.06.2004. Against the reversal judgment, the present Second Appeal has been filed.

4.This Second Appeal had been admitted on the following substantial questions of law :-

“1. Whether the lower appellate Court is justified in holding that no documentary evidence is produced by the appellant to prove his possession of the suit lands, overlooking Exs.A1 to A3 which would conclusively prove that the appellant is in possession of the suit lands.

2. When the appellant's possession and enjoyment of the suit land is recognised by the statutory authorities, is the lower appellate Court justified in holding that the possession of the suit land by the appellant is not proved.”



S.A.No.2005 of 2004

WEB COPY

5.Heard Mr.Rooban Chakravarthy, learned counsel for Mr.A.K.Kumarasamy, learned counsel appearing for the appellant and Mr.Arun Anbumani, learned counsel for the respondent.

6.On going through the records that have been filed by the plaintiff in order to prove the possession, I only find that there are two documents which have been filed, one is the copy of the interim order passed by this Court. Originally, the plaintiff had obtained an order of stay, and that had been vacated. The order of stay was modified into an order of status quo, pending disposal of the writ petition in W.P.No.5099 of 1981. The final order passed by this Court in the said Writ Petition had not been marked before the trial Court or before the lower Appellate Court. The other document that had been filed by the plaintiff is a copy of the Forest Settlement Officer, dated 25.02.1987. The said order does not state that the plaintiff is in possession of the property.

7.At the appellate stage, with the permission of the Court, the plaintiff had presented Exhibit A3 namely, a document dated 30.06.1990. On going through the said order, it is clear that no assignment had been



S.A.No.2005 of 2004

created in favour of the appellant. All that the order reads is that application for assignments were pending with the Forest Settlement Officer and therefore, the order was passed to that effect on 30.06.1990.

8.In a suit for injunction, it is the duty of the plaintiff to prove that he is in possession of the property on the date of presentation of the plaint. Orders of the Court cannot create a new right in the party. They only recognise an already existing right in the parties. Neither the Pottom that was granted by the Nilambu Kovilagam family was filed before the Court, nor is there any proof that the appellant was paying them the pottom fees regularly.

9.As per the Gudalur Janmam Abolition Act, the plaintiff should have proved that he is in possession of the property from 1967, that is, three years prior to the taking over of the Janmam.

10.The documents, not having been provided before the Court, I am not able to conclude that the plaintiff was in possession of the property on the date of presentation of the plaint.

11.I should also add another fact which is brought to my notice by



S.A.No.2005 of 2004

way of application filed under Order 41 Rule 27 of the Civil Procedure Code. The documents filed along with the CMP relate to a larger extent of property, which includes the suit schedule mentioned property in field Survey No.92. Opportunity was granted to the appellant to file a counter to the same, but he has not gone on record by way of a counter.

12.The documents that have been filed in the CMP are official proceedings of the Government of Tamil Nadu. They have come into existence pending this appeal. Hence CMP.No.19744 of 2023 is allowed. They are received on record and marked as document Nos.B1 to B2.

13.The documents would show that the Government had accepted the proposal of the respondent and had directed an extent of 276.78 hectares of Forest Land at Gudalur, leased to the respondent, be handed over to the Forest Department. This order was passed on 21.05.2019. Exhibit B2 is a document, which shows that the respondent had physically handed over the property to the Forest Department. Field No.92 is found at Page No.3 at Serial No.6. The reference to the Exhibits B1 and B2 make it clear that the property has been taken over by the



S.A.No.2005 of 2004

Forest Department. Neither the appellant nor the respondent are in possession of the same.

14.Consequently, the substantial questions of law framed are answered against the appellant. The appellant has failed to prove that he is in possession of the property on the date of presentation of the plaint. No documents worth its name have been filed in order to substantiate the same. Consequently, Second Appeal stands dismissed. CMP.No.19744 of 2023 stands allowed.

15.In fine, the judgment and decree of the Court of the learned Principal District Judge at Nilgiris in A.S.No.30 of 1990, dated 18.06.2004 in reversing the judgment and decree in O.S.No.59 of 1982, dated 14.12.1988 on the file of the learned District Munsif, Gudalur stands confirmed. No costs.

13.09.2023
(1/2)

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
MKN 2/vs

V.LAKSHMINARAYANAN,J.



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To

- 1.The Learned District Judge,
Nilgiris at Uthagamandalam
- 2.The Learned District Munsif,
Gudalur



S.A.No.2005 of 2004

MKN 2/vs

SA.No.2005 of 2004

13.09.2023

(1/2)