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S.A.No.12 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.12 of 2017
and C.M.P.No.207 of 2017

J.Samuvel Narson (Died)

1.Reena (Died)

2.Selina

3.Daisy Poofsin

4.Ravi Narson

... Appellants

(A1-Died, A2 to A4, who are already on record are the legal representatives of the deceased A1, memo recorded vide Court order dated 11.10.2022 made in C.M.P.No.11516 of 2019 and C.M.P.No.207 of 2017 in S.A.No.12 of 2017)

VS.

1.J.Chandran @ J.N.Chandran

2.State of Tamil Nadu,
Rep. by the Collector of Nilgiris,
Ootacamund.

3.The Tahsildar,
Taluk Office, Ootacamund,
District of Nilgiris.

... Respondents



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PRAYER: Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the Judgment and Decree dated 24.11.2015 made in A.S.No.2 of 2012 passed by the learned Subordinate Judge, Ootacamund, Nilgiris District confirming the Judgment and Decree dated 16.08.2011 made in O.S.No.82 of 2008 passed by the learned District Munsif, Ootacamund, Nilgiris District.

For Appellant : Mr.S.Arulandhan
For R1 : Dr.R.Gouri
For R2 and R3 : Mr.C.Sathish
Government Advocate

J U D G E M E N T

The 3rd defendant in the suit is the appellant. The 1st respondent herein filed a suit for declaration of title that he is the Toda permit holder of the suit property by way of inheritance, succession, continuous possession and enjoyment through Narshon Jeyaraj and Jeevaraj Narshon and for consequential permanent injunction. The suit was decreed by the Trial Court and the appeal filed by the appellant was also dismissed. Hence, he is before this Court.



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2. It was claimed by the 1st respondent/plaintiff, he was son of late Jeevaraj Narshon and he was Toda of the Nilgiris by birth. He claimed possession and enjoyment of toda agricultural land with an extent of 2.80 acres out of 5.85 acres in Old Survey No.70, R.S.No.719 in Nanjanad Village No.2, Udhagamandalam, The Nilgiris District. According to him, the Government of Tamil Nadu issued Toda Permit in favour of his grandfather. The Forest Department had encroached an extent of 3.05 acres. Therefore, 2.80 acres of Toda agricultural land alone had been in his continuous possession and enjoyment with specific boundaries described in the plaint schedule. It was claimed by the 1st respondent that appellant herein filed a suit against the 1st respondent in O.S.No.133 of 2005 on the file of the District Munsif, Udhagamandalam and the appellant also filed an interim injunction application in I.A.No.420 of 2005 against the 1st respondent herein. The said interim injunction application filed by him in I.A.No.420 of 2005 was dismissed. The appeal filed by him challenging the said order in C.M.A.No.10 of 2005 on the file of Subordinate Court, Nilgiris was also dismissed. The civil revision filed by appellant against the said order was also dismissed. The respondents 2 and 3 in collusion with deceased appellant Samuvel Narson initiated proceedings for eviction of the



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1st respondent. In these circumstances, he was constrained to file a suit for above said relief against the respondents 2 and 3 and appellant herein.

3. The respondents 2 and 3 filed a written statement denying the claim of the 1st respondent that he was entitled to possession and enjoyment of the suit property as a Toda Permit Holder. It was averred in the written statement filed by the respondents 2 and 3 that appellant herein and one Thirumathi Lembadevi were permitted to cultivate 1 acre of land in suit survey number for one year from 01.05.1976 to 30.06.1977. It was also claimed that 1st respondent was not the owner of the property and suit property vested with the Government.

4. The appellant/contesting 3rd defendant also filed a written statement and claimed that in the year 1968, Toda permit was granted for 1 acre of land in favour of Jeevaraj, father of 1st respondent in S.No.90. One Narshon Jeyaraj was granted Toda Patta in respect of 1 acre in suit Survey No.70 under the very same permit. Subsequently, as per the proceedings of District Collector, dated 12.05.1976, Toda Patta was granted to appellant by reallocoting 1 acre of Toda Patta granted in favour of Narshon Jeyaraj. It was



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his claim that he had been in possession and enjoyment of 1 acre of land in suit Survey No.70. It was also claimed that 1st respondent's father Jeevaraj was not allotted any extent of land in suit Survey No.70 in the proceedings of District Collector dated 12.05.1976. Hence, the 1st respondent could not claim any right over suit Survey No.70. The right and possession of the 1st respondent over the suit survey number was specifically denied by the appellant.

5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that 1st respondent herein had been in possession and enjoyment of 2.80 acres of land in Old S.No.70/R.S.No.719 and he was entitled to declaration and injunction as prayed for. The Trial Court also found the appellant herein was not entitled to declaration of his title over 1 acre of land in the suit survey number and consequently, dismissed the suit filed by him in O.S.No.107 of 2010.

6. Aggrieved by the same, the appellant-Samuvel Narson preferred an appeal in A.S.No.2 of 2012 on the file of the Subordinate Judge, Nilgiris and the First Appellate Court on appreciation of evidence available on



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record, came to the conclusion that 1 acre of land allotted to appellant under Ex.B3 lies on the southern side of the suit survey number and the same was part of 3.05 acres encroached by Forest Department. Thus, the First Appellate Court rejected the contention of the appellant that Exs.B2 and B3 were not properly taken into consideration by the Trial Court and consequently, dismissed the appeal. Aggrieved by the same, the unsuccessful 3rd defendant has come by way of this second appeal.

7. This Court at the time of admission formulated the following substantial questions of law:-

“(i) Whether the Courts below are right in granting a declaration decree in favour of 1st respondent overlooking Exs.B2, B3 and B7?”

“(ii) Whether the final conclusion reached by the Courts below that 1st respondent is entitled to declaration of his Toda permit right in respect of 2.80 acres of land in S.No.70 is based on no evidence?”



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8. The learned counsel appearing for the appellant submitted that under Ex.B2, 1 acre of land in suit survey number was allotted to the share of late Lamdevi Kiskar in the year 1968. Likewise, another 1 acre in suit S.No.70 was allotted to Narshon Jeyaraj under Ex.B2. The father of the 1st respondent Jeevaraj was allotted 1 acre in S.No.90 under Ex.B2. Therefore, the father of the 1st respondent was not allotted with any portion of the land in suit survey number. He further submitted that under Ex.B3 dated 12.05.1976, 1 acre of land allotted to Narshon Jeyaraj was reallocated to appellant-Samuvel Narson. Therefore, the appellant has got 1 acre of land in the suit survey number and the same has not been properly taken into consideration by the Courts below. The learned counsel also referred to Ex.B7-Letter by District Forest Officer stating that 3.05 acres of land in suit Survey No.70 had been under their occupation as a forest land and same was not fit for grant of Toda Patta for other purposes. The learned counsel further submitted that the 1st respondent failed to establish his right over 2.80 acres of suit property in Survey No.70 under Toda Permit.

9. The learned counsel appearing for the 1st respondent by taking this Court to the judgment passed by the Courts below, submitted that 1 acre



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over which the appellant claimed right lies on the southern side of the suit survey number, which was encroached by the Forest Department. The learned counsel further submitted that Ex.A10 clearly proves 2.80 acres on the northern side is a cultivable land in possession of the 1st respondent/plaintiff.

10. The 1st respondent/plaintiff filed a suit seeking declaration that he is the permit holder of suit property by way of inheritance, succession, continuous possession and enjoyment through Narshon Jeyaraj (Grandfather of the plaintiff) and Jeevaraj Narshon (father of the plaintiff) under Toda Permit issued by the Government of Tamil Nadu and for consequential injunction. It is settled law the person seeking declaration of right must win his case based on his own strength and he cannot rely on weakness of the defendant. In the case on hand, the 1st respondent/plaintiff failed to produce any Toda Permit issued in favour of his Grandfather Narshon Jeyaraj or his father Jeevaraj Narshon. However, the document filed by the appellant/3rd defendant Ex.B2 would suggest 1 acre of land in suit Old Survey No.70 was allotted to Grandfather of the plaintiff namely Narshon Jeyaraj under Toda Permit Scheme by District Collector. The said permit issued on 23.04.1968



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was valid only upto 31.12.1968. A further perusal of Ex.B2 would suggest that the father of 1st respondent Jeevaraj was allotted with 1 acre of land in Old Survey No.90, but not in the suit survey number. The 1st respondent has not produced any document to show that Toda Permit issued in favour of his Grandfather Narshon Jeyaraj for 1 acre of land in Old Suit Survey No.70 was extended beyond the period of 31.12.1968. However, Ex.B3 produced by the appellant would suggest that he was allotted with 2 acres of land in Suit Survey No.70 and another Survey No.90. The Ex.B3-Toda Permit in favour of appellant was valid from 01.05.1976 to 30.06.1977. The appellant also failed to produce any document to show that the said Toda Permit was subsequently extended. Therefore, the 1st respondent miserably failed to produce Toda Permit issued in favour of his father or grandfather in support of his claim for declaratory relief. However, Ex.B2 produced by appellant would indicate that Toda Permit issued in favour of the 1st respondent's grandfather was not extended beyond 31.12.1968.

11. When 1st respondent failed to lead any evidence in support of his declaratory prayer to establish his right over suit survey number, the Courts below without proper appreciation of Exs.B2 and B3, which clearly prove



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Toda Permit granted in favour of 1st respondent's grandfather was not extended beyond 31.12.1968 on an erroneous view granted a decree for declaration as prayer for. The said conclusion of the Courts below is not supported by any documentary evidence to show that 1st respondent had right to occupy the suit property under Toda Permit on the date of filing of the suit. Hence, the decree in respect of declaratory relief granted by the Courts below is liable to be set aside and the questions of laws 1 and 2 are answered accordingly in favour of the appellant and against the 1st respondent.

12. Though this Court has come to the conclusion that the 1st respondent failed to produce any evidence in support of his claim to occupy 2.80 acres of land in suit survey number as a Toda Permit Holder, the documents filed by him namely Exs.A5, A6, A8, A11, A15, A16 and A20 would establish his possession over 2.80 acres of land in suit Old Survey No.70. The Courts below factually came to the conclusion out of total extent of 5.85 acres in suit Old Survey No.70, 2.80 acres are cultivable land lies on northern side and 3.05 acres of land on the southern side is under the control of Forest Department as a forest land. Ex.A8 is a letter dated 28.05.2003 by



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District Scheduled Caste and Scheduled Tribes Welfare Officer to District Forest Officer, Udthagamandalam wherein he mentioned that 1st respondent was in possession of 2.80 acres of the land in Old Suit Survey No.70 and New Suit Survey No.719. He also requested the Forest Department to give alternative land to 1st respondent in respect of 3.05 acres occupied by Forest Department. Ex.A11 is a letter by District Forest Officer, Udthagamandalam dated 16.02.2005 wherein it was mentioned that 1st respondent was allotted 2.80 acres of land in suit Survey Number for cultivation. Ex.A15 is a certificate issued Village Administrative Officer, dated 24.01.2003 wherein he certified that 1st respondent had put up a small hut in Suit Survey Number. Ex.A16 is also a certificate issued by the Village Administrative Officer dated 02.06.2005 wherein it was mentioned the 1st respondent had got a house in the suit Survey Number. Ex.A20 is a proceedings by District Revenue Officer, The Nilgiris District, dated 21.12.2007 whereunder it was observed that 1st respondent was in illegal occupation of suit survey number and hence, eviction proceedings should be initiated against him. These documents would show the 1st respondent is in possession of the suit property. Though he failed to produce any Toda Patta issued in his favour or his fore-fathers to enable him to occupy and cultivate the suit property on



the date of filing of the suit, he succeeded in establishing his possession over the suit property.

13. I do not say the 1st respondent has established his *de jure* possession over the suit property. However, he established his defacto possession over the suit property as discussed above. It is settled law even real owner of the property cannot take law into his own hands and disturb the settled possession of a trespasser. In this regard, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in ***Rame Gowda vs. M.Varadappa Naidu*** reported in ***MANU/SC/1044/2003 : (2004) 1 SCC 769***. The relevant observation of the Hon'ble Apex Court reads as follows:-

“11. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. v. Delhi Administration - MANU/SC/0072/1967 : 1968CriLJ806 , Puran Singh and Ors. v. The State of Punjab - MANU/SC/0184/1975 : AIR1975SC1674 and Ram Rattan and



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Ors. v. State of Uttar Pradesh - MANU/SC/0160/1976 : 1977CriLJ433. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is, entitled to defend his possession even against the rightful owner."

14. In fact both the Courts below observed that the respondents 2 and 3/defendants 1 and 2 are entitled to take lawful action against the 1st respondent in respect of the suit property. In such circumstances, I hold it would be appropriate to grant a limited injunction in favour of 1st respondent/plaintiff restraining the appellant and other respondents from interfering with 1st respondent's peaceful possession and enjoyment of the suit property except by due process of law. The judgment and decree passed by the Courts below are modified accordingly. In view of the discussions made earlier, the Second Appeal is partly allowed as indicated above.



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In Nutshell:-

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- (i) The Second Appeal is partly allowed by setting aside the judgment and decree passed by the Courts below in respect of declaratory prayer.
- (ii) The suit filed by the 1st respondent is dismissed in respect of prayer for declaration.
- (iii) The decree passed by the Courts below by granting a limited injunction restraining the appellant and other respondents from interfering with 1st respondent's possession except by due process of law is confirmed.
- (iv) Consequently, the connected civil miscellaneous petition is closed.
- (v) In the facts and circumstances of the case, there shall be no order as to costs.

22.12.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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To

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- 1.The Subordinate Judge,
Ootacamund,
Nilgiris District.
- 2.The District Munsif,
Ootacamund, Nilgiris District.
- 3.The Collector of Nilgiris,
State of Tamil Nadu,
Ootacamund.
- 3.The Tahsildar,
Taluk Office, Ootacamund,
District of Nilgiris.



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S.SOUNTHAR, J.

dm

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