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[S.A.No.475 of 2024]

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 475 of 2024

and C.M.P.No. 14565 of 2024

1.Shenbagavalli

2.Ramachandran

... Appellants

Vs.

1.Tamil Nadu State

Represented by the District Collector,
Villupuram.

2.The Sub-Collector,
Tindivanam Taluk,
Tindivanam.

3.The Tahsildar
Tindivanam Taluk,
Tindivanam

4.The Director,
SIDCO, Cuddalore,
Cuddalore District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 25.09.2023 in A.S.No.31 of 2021 on the file of the Principal Subordinate Court, Tindivanam confirming the judgment and decree dated 03.08.2021 in O.S.No. 235 of 2014 on the file of the Principal District Munsif Court, Tindivanam.

For Appellants

: Dr.G.Prabhu

for Mr.S.Muthaiah



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For Respondents

: Dr.S.Suriya

Additional Government Pleader

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JUDGMENT

This appeal has been filed to set aside the judgment and decree dated 25.09.2023 in A.S.No.31 of 2021 on the file of the Principal Subordinate Court, Tindivanam confirming the judgment and decree dated 03.08.2021 in O.S.No. 235 of 2014 on the file of the Principal District Munsif Court, Tindivanam.

2.The case of the appellants is that Ayyathurai Kounder who is the father-in-law of the 1st appellant and grandfather of the 2nd appellant had converted the barren land in Survey No.121/2 situated at Venmaniyathur Village, Villupuram District into agricultural land and was doing agriculture. After the demise of Ayyathurai Kounder, the husband of the 1st appellant was using the land for agriculture purpose and in Survey No.119/3, he dug a well by spending Rs.3,00,000/- and in S.No.121/2 by spending huge money, he laid more than 500 ft PVC pipe for drawing water. Accordingly, the plaintiffs and their ancestors acquired possessory right over the property.

(ii). For the purpose of establishing Power station by Electricity Board and formation of SIDCO, the Surveyor, Mr. Murugesan, visited the



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land and submitted a report on 27.11.2012 to the effect lands are barren by concealing the portion of agricultural use. In this regard, the appellants made a petition to the District Collector (viz., Mrs.Rohini Ramadoss), who in turn visited the said land in person and ordered to acquire only the waste lands leaving the agricultural lands. After considering the documents of the appellants, she directed the concerned authorities to provide patta in favour of the appellants for the lands in possession of the plaintiffs, but no action has been taken till date.

(iii). On 03.12.2012, the appellants made a representation to the Chief Minister of Tamil Nadu and all other authorities concerned explaining the status of acquisition of the land for SIDCO. They also sent a notice to the respondents through registered mail on 04.12.2013. However, no action has been taken by the respondents. Hence, they filed a suit in O.S.No.235 of 2014 for declaration to declare the plaintiffs possessory title and for mandatory injunction prohibiting the Tamil Nadu Government from taking over the agricultural land which the appellants have been enjoying for a period of more than twelve years.

3. In the said suit, the respondents filed their written statement stating that the property situated in Survey No.121/2 measuring an extent of 2.36.5 and S.No.70/5 measuring an extent of 22.150 hectares, totalling 24.515



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hectares are barren lands and the said lands have been handed over by the 2nd and 3rd respondents to the 4th respondent/SIDCO in the year 2012.

Further, as against the Government order, the appellants have to file a writ petition before the High Court and without exhausting the said remedy, they filed the suit and therefore, the suit has to be dismissed. It is further stated that vide Letter No. 5640/N/2010 dated 09.09.2010, the Administrative Director, SIDCO addressed a letter to the District Collector, Villupuram who in turn by letter dated 05.04.2011 sent recommendation to the Government for transfer of the land in favour of SIDCO. After considering the recommendation of the 1st respondent, the Government issued G.O.No. 140 Revenue Department Ni.Mu.7(1) dated 19.04.2012 transferring the land right to SIDCO, thereby, fixing the value of the said land at Rs. 1,21,64,373/- which was paid by SIDCO to the Government Treasury on 12.11.2002 and land was handed over to SIDCO on 27.11.2012. In this regard, a plan was prepared by SIDCO and they got approval vide letter No. 289/2014/Vi.Mu. dated 05.12.2014. Therefore, the appellants have no right over the property and the respondents also sent reply to the appellants' representation dated 01.02.2014. At present, the said land is under possession and enjoyment of the SIDCO. Thus, the respondents prayed for dismissal of the suit.



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4. Before trial Court, the appellants examined three witnesses and marked nine documents. The respondents examined one witness and marked eight documents. Ex.C1 and C2 were marked as Court exhibits. Upon consideration of the oral and documentary evidence adduced by the parties, the Trial Court held that the suit property has been handed over to the 4th respondent/SIDCO and the appellants do not have any right over the property. Hence, dismissed the suit.

5. Aggrieved over that, the appellants preferred an appeal in A.S.No.31 of 2021 before the Principal Subordinate Court, Tindivanam, wherein, the lower appellate Judge after analysing the facts and evidence and came to the conclusion that the enjoyment of the property for about 70 years by the appellants and their ancestors is not acceptable in the absence of any proof to show their continuous enjoyment of the property. The learned Appellate Judge also stated that Advocate commissioner has been appointed and a plan has been submitted regarding the suit properties and in regard to 2nd item of the property, the Advocate Commissioner stated that the same was divided into 6 portions at the time of inspection, out of which, the portion was marked as 1, 2 and 3 heads are lying barren; 4 and 6 portions marked were found to have new crops and in the 5th portion was



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found to have planted green crops. The Appellate Judge observed that based on the report of the Advocate commissioner, it cannot be decided that the plaintiffs are in continuous possession and enjoyment of the property. Thus, the plaintiffs have failed to produce documents to show that they encroached upon the properties and possession of the same without interference from others. Accordingly, dismissed the appeal by confirming the trial Court's findings. Challenging the concurrent findings of the Courts below, the appellants have filed this Second Appeal.

6. Learned counsel for the appellants submitted that the suit properties are waste lands and the father-in-law of the 1st appellant and father of the 2nd appellant have worked hard day and night for converting the said barren land into agricultural land to some extent and cultivated the land by raising crops of millet, sorghum and corn. When the appellants dig well and laid PVC pipe line for drawing water for cultivation and are in enjoyment, suddenly the respondents prepared a document as if the property had been handed over to the 4th respondent that too without inspection or survey. The appellants who are third generation were in enjoyment of the suit property. According to the appellants, the Advocate Commissioner had stated about the appellants' possession. Therefore, handing over the property to the 4th respondent is untenable.



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7. Learned Additional Government Pleader appearing for the respondents argued that the appellants have admitted that the suit property is the property of the Government. While the appellants have stated in their case that they have been enjoying the suit property for more than 70 years, the relevant revenue documents by them filed before the Trial Court have not proved the fact that the appellants and their forefathers were enjoying the suit property. He would submit that by encroaching the suit property, the appellants have made cultivator. Therefore, the claim of the appellants is not tenable, as the properties have been handed over to the 4th respondent. If we look at the report filed by the Advocate Commissioner, the same will not be helpful to the case of the appellants. The subject property was required by the Government to start industries and the same was also notified in the Gazette and after following due process, the same was handed over to the 4th respondent/SIDCO. Hence, the Trial Court has rightly rejected the documents Exs.A1 to A3 with regard to the claim for utilising the subject property by the appellants.

8. The learned Additional Government Pleader further submitted that the Trial court held that it is not appropriate for the appellant to seek injunction against the real owner as the appellants have failed to file



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any documents to prove that the appellants have right over the suit properties. That apart, when a new industrial park is being set up on the suit properties by providing employment opportunities and the area in question has developed, it is unfair on the part of the appellants to claim injunction against the true owner. In the absence of documentary proof by the appellants, both the Courts below have dismissed the suit and interference is warranted.

9. Heard the learned counsel for the appellants and the learned Additional Government Pleader for the respondents and perused the materials available on record.

10. According to the appellants, the subject property was a barren land and they converted the same into a agricultural land. While so, the Government acquired the said land for setting up the small scale industries by SIDCO, which was admitted by PW.1. During the cross examination, P.W.1 stated that subsequent to the filing of the suit, the property was handed over to the SIDCO. Upon considering the oral and documentary evidences, the Trial court dismissed the suit filed by the appellants.

11. The learned Appellant Judge held as regards that first item of the suit property though appellants contented that they are in possession of the same for more than 70 years, no documents have been filed. The learned



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Appellate Judge further held that to know possession, Advocate Commissioner cannot be appointed. In respect of the second item, the same was acquired for establishing industrial park and handed over to the SIDCO through Ex.B5. There is no documentary evidence to show that the appellants are utilising the Well and drawing water through the PVC pipes as alleged by them. The appeal was dismissed by the Appellate Judge confirming the judgment of the learned Trial Judge after having gone through the entire materials, including the documentary proof.

12. Considering the submissions of the learned Additional Government Pleader for the respondents, in respect of the first item of the property, as per the revenue records, an extent of 51 cents in S.No.119/3 is recorded as Government punja 'tarisu' land and not in possession of anyone. After filing of this appeal, this Court directed the revenue authorities to submit a status report in respect of the S.No.119/3, 121/3. The revenue authorities have also filed the status report, which reveals that as per village accounts, the first item namely Survey No.119/3 is a Government Tarisu Poromboe land and second item namely Survey No.121/2 is also a Tarisu land not assessed by tax and the same was acquired for SIDCO and now SIDCO is in possession and enjoyment of the said property. In view of the the documentary evidence produced by the respondents, this Court is also of



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the view that the appellants have failed to prove their title over the suit property. Therefore, both the Courts are right in holding that the appellants are not entitled to the relief as sought for in the suit.

13. In such view of the matter, there is no necessity to interfere in the Judgment passed by the Courts below. Accordingly, the present second appeal is dismissed. It is the specific case of the appellants that the appellants are still cultivating crops by drawing water from the well situated at the item 1 of the schedule mentioned property. As per the revenue records, the well is in unused status. Therefore, liberty is granted to the appellants to approach the revenue authorities in respect of the Item No.1 of the schedule mentioned property in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
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Speaking order: Non-speaking order
Neutral Citation:Yes/No



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