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S.A.No.724 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.724 of 2021

1.Ramar
2.Govindasamy
3.Chittibai

... Appellants

Vs.

1.District Collector,
Krishnagiri.

2.Commissioner,
Panchayat Union, Krishnagiri.

3.President,
Panchayat Board,
Ittikkal Agaram.

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 against the Judgment and Decree in A.S.No.3 of 2010 dated 14.02.2013 on the file of the Principal Subordinate Court, Krishnagiri in confirming the appeal as against the Judgment and Decree in O.S.No.280 of 2005 dated 16.06.2008 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.C.Samivel

For Respondents : Mr.A.Anandan



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S.A.No.724 of 2005

Government Advocate
for R1

Mr.P.Harish
for R2 and R3

JUDGMENT

This second appeal has been filed by the plaintiffs in the suit O.S.No.280 of 2005 on the file of the District Munsif Court, Krishnagiri. The respondents are the defendants in O.S.No.280 of 2005. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for declaration and permanent injunction in respect of A schedule and B schedule properties. The plaintiffs claim that they are the absolute owners of the suit A schedule property, having got the same from their father. In so far as suit B schedule property is concerned, by long and continuous possession, almost eight years, by virtue of continuous possession and enjoyment, they claim ownership. However, the defendants in the written statement as well as in their deposition have stated that in so far as suit A schedule property is concerned, the plaintiffs are the owners, but, whereas, the suit B schedule property is a Government land and the



plaintiffs are not entitled to the same.

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3. Before the Trial Court, the plaintiffs filed documents which are marked as Exs.A1 to A5 in support of their contentions in the plaint. Two witnesses were also examined on the side of the plaintiffs as PW1 and PW2. On the side of the defendants, three documents were filed which were marked as Exs.B1 to B3. One witness was also examined on the side of the defendants viz., DW1.

4. The Trial Court viz., District Munsif Court, Krishnagiri in its judgment and decree dated 16.06.2008 passed in O.S.No.280 of 2005, based on the evidence available on record, had partly decreed the suit in favour of the plaintiffs by granting declaratory and injunction relief in so far as suit A schedule property is concerned, but, rejected the declaratory and injunction relief sought for by the plaintiffs in so far as suit B schedule property is concerned. While rejecting the relief in so far as suit B schedule property is concerned, the Trial Court has rightly held that the plaintiffs are not in legal possession of the suit B schedule property. Admittedly, the suit B schedule property is a Government land eventhough, the plaintiffs had filed a



resolution passed by the panchayat in the year 1954, which was marked as Ex.A4 by which the panchayat had agreed to issue Patta in favour of the plaintiffs' father. Admittedly, no patta was issued thereafter. Even the B memos which were marked as exhibits viz., Ex.A5 is not for the entire period till the date of the filing of the suit. Issuance of B memos by the Government will also not entitle the plaintiffs to claim absolute ownership. The defendants (Government) have the right to evict the plaintiffs who are encroachers by following the procedure established under law.

5. The Trial Court has rightly taken into consideration the aforementioned factors and only based on the evidence available on record has partly decreed the suit in favour of the plaintiffs by granting the declaratory and injunction relief in favour of the plaintiffs only in so far as suit A schedule property is concerned and has rightly refused the relief in so far as suit B schedule property is concerned as the said property admittedly belongs to the Government.

6. Aggrieved by the findings of the Trial Court in its judgment and decree dated 16.06.2008 passed in O.S.No.280 of 2005, the plaintiffs filed



first appeal before the Principal Sub Court, Krishnagiri in A.S.No.3 of 2010.

The lower appellate Court viz., the Principal Sub Court, Krishnagiri has also rightly confirmed the findings of the Trial Court by concurring with the reasons given by the Trial Court for not granting the reliefs sought for by the plaintiffs in the suit in so far as suit B schedule property is concerned. Aggrieved by the concurrent findings of the Courts below, the present second appeal has been filed.

7. This Court had admitted the second appeal on 28.10.2021 by formulating the following substantial question of law:

"Whether the lower appellate Court was correct in law in not granting a decree for injunction especially when the learned Judge had found the plaintiffs to be in possession of the suit property from 1972?"

8. This Court is of the considered view that both the Courts below, only based on the evidence available on record, and only due to the fact that the plaintiffs are not in legal possession of the suit B schedule property and admittedly, the suit B schedule property being a Government land, have



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rightly held that the plaintiffs are not entitled for a declaratory and injunction relief sought for by them in so far as suit B schedule property is concerned.

Therefore, the substantial question of law formulated by this Court while admitting the second appeal is answered against the plaintiffs by holding that the plaintiffs are not entitled for the declaratory and injunction reliefs sought for by them in the suit in so far as suit B schedule property is concerned.

9. In the result, there is no merit in this second appeal. Accordingly, this second appeal is dismissed. No Costs.

14.06.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Principal Subordinate Court, Krishnagiri.
2. The District Munsif Court, Krishnagiri.
3. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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