



S.A.(MD)No.289 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.289 of 2008

C.Lawrance

...Appellant

-Vs-

1.State of Tamil Nadu,
represented by the District Collector,
Kanyakumari District, Nagercoil.

2.Mulagumoodu Town Panchayat,
Mulagumoodu, represented by its
Executive Officer.

3.The President,
Mulagumoodu Town Panchayat,
Mulagumoodu (P.O)

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Subordinate Judge, Padmanabhapuram, dated 04.07.2007 made in A.S.No.114 of 2006 confirming the judgment and decree of the learned Principal District Munsif, Padmanabhapuram, dated 27.06.2006 made in O.S.No.507 of 2004.



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For Appellant : Mr.V.M.Balamohan Thampi

For Respondents : Mr.SRA.Ramachandran
Additional Government Pleader

JUDGMENT

The plaintiff in the suit is the appellant. The suit is for declaration of title and injunction. The suit as well as the first appeal filed by the plaintiff were dismissed. Aggrieved by the concurrent findings, the un-successful plaintiff is before this Court.

2.According to the plaintiff, the suit “A” schedule property was purchased by Chella Kannu Nadar, father of the plaintiff on 22.03.1955. The suit “B” schedule property is situated on the east side of the suit “A” schedule property and the same is a Government poramboke land. It was claimed by the plaintiff that immediately after purchase of the suit “A” schedule property, his father trespassed into the suit “B” schedule property and he has been in possession and enjoyment of the same along with suit “A” schedule property, as one block. It was also claimed that in both the properties, the plaintiff's father reared coconut trees and has been in



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enjoyment of the same. The plaintiff further claimed that his father died in the year 1977 and thereafter, the suit properties were allotted to his share under oral partition among the legal heirs of his father. Thus, claiming continuous and un-interrupted possession from 1955, the plaintiff sought for declaration of his title and injunction against the defendants in respect of suit “B” schedule property.

3.The second defendant filed a written statement and the same was adopted by the first defendant. In the written statement, it was claimed by the second defendant that the suit “B” schedule property was a tank poramboke and 2C patta has been granted to the plaintiff's father to enjoy the usufructs of the trees standing thereon. It was also claimed that as a 2C patta holder, the plaintiff was only a permissive occupant and he could not claim any title against the Government by way of adverse possession. It was also claimed that the second defendant had been maintaining the suit “B” schedule property and the Government has got every right to re-enter the property. Thus, denying the right of the plaintiff in respect of the suit “B” schedule property, the defendants sought for dismissal of the suit.



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4.The third defendant filed a separate written statement contending that the suit “B” schedule property was a Government land and hence, the plaintiff had no right or possession over the same.

5.Before the trial Court, the plaintiff was examined as PW-1 and one independent witness was examined as PW-2 and on behalf of the plaintiff, 10 documents were marked as Ex-A1 to Ex-A10 and on behalf of the defendants, two witnesses were examined as DW-1 and DW-2 and six documents were marked as Ex-B1 to Ex-B6. The Advocate Commissioner's report and plan were marked as Ex-C1 and Ex-C2.

6.The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiff failed to prove his plea of adverse possession against the defendants and consequently, dismissed the suit. Aggrieved by the same, the plaintiff preferred a first appeal in A.S.No.114 of 2006 and the same was also dismissed by concurring with the findings of the trial Court. Aggrieved by concurrent judgments against him, the plaintiff is before this Court.



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7. At the time of admission, this Court formulated the following substantial questions of law, by order, dated 29.02.2008:

“Whether the judgment and decree of the Court below is erroneous on account of its failure to consider the categorical admission made by DW.1 and DW.2 with regard to the possession of the property by the appellant as well as the report and plan submitted by the Advocate Commissioner in Exs.C1 and C2?”

8. It is the case of the plaintiff that his father purchased suit “A” schedule property in the year 1955 and he has been in possession and enjoyment of the suit “B” schedule property along with suit “A” schedule property, as one block. The defendants filed a written statement stating that suit “B” schedule property is a tank poramboke and 2C patta has been issued in favour of the plaintiff's father to enjoy the usufructs of the trees standing thereon. When DW-1 was cross examined, he admitted that there are age old coconut trees in the suit “B” schedule property. When he was questioned whether he could deny the suggestion that the plaintiff had been in possession and enjoyment of the suit “B” schedule property, he answered in negative. By relying on the answer given by DW-1, the learned Counsel for the appellant submitted that the possession of the plaintiff is admitted by the defendants and therefore, the Courts below were not justified in dismissing



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the suit in entirety. The learned Counsel further submitted that the Courts below based on the admission made by DW-1, at least, should have granted a limited injunction restraining the defendants from interfering with the plaintiff's possession over suit "B" schedule property, except by due process of law.

9.The defendants filed "A"register relating to suit "B" schedule property as Ex-B1. A perusal of the same would suggest that suit "B" schedule property in S.No.426 is classified as water tank (Aarottu Kulam). Ex-B2, is the adangal extract for suit "B" schedule property. A perusal of the same would suggest that 2C patta has been issued in respect of suit "B" schedule property in favour plaintiff's father Chella Kannu for 14 coconut trees and one palmyra tree. Therefore, Ex-B1 and Ex-B2 probabalize the case of the defendants that suit "B" schedule property is a Government poramboke and the plaintiff was issued with 2C patta in respect of the trees standing thereon. These exhibits shall be considered along with the admission of DW-1. When a suggestion was put to DW-1 in cross examination, whether he could deny the possession of the plaintiff, he



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answered in negative. Therefore, there is considerable evidence on record to suggest that the plaintiff has been enjoying the usufructs of the trees standing in the suit “B” schedule property. The possession of the plaintiff based on 2C patta issued to him cannot be termed as the one adverse to the real owner, namely, the Government. Even otherwise, both the Courts below concurrently found that the plaintiff failed to lead any acceptable evidence to prove his hostile possession for more than statutory period. Therefore, the decree sought for by the plaintiff seeking declaration of his adverse title was rightly negated by the Courts below.

10.As far as the relief of injunction is concerned, there is no categorical admission by DW-1 and DW-2 with regard to the physical possession of the plaintiff over suit “B” schedule property. However, in their pleadings, the defendants clearly admitted that the plaintiff was issued with 2C patta for enjoying usufructs of the trees standing thereon. The said plea was also admitted by the defendants' side witnesses, when they were examined. Therefore, it is clear that the plaintiff has been enjoying the usufructs of the trees standing in the suit “B” schedule property. In such



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circumstances, this Court feels that the plaintiff is entitled to a limited injunction restraining the defendants from interfering with the rights of the plaintiff to enjoy the usufructs of the trees standing in the suit “B” schedule property, except by due process of law. The question of law framed at the time of admission is answered accordingly.

11.In view of the answer to the substantial question of law framed at the time of admission, the Second Appeal is partly allowed by granting a decree for injunction restraining the defendants from interfering with the plaintiff's right to enjoy the usufructs of the trees standing in the suit “B” schedule property in respect of which 2C patta has been issued in favour of plaintiff's father, except by due process of law. It is made clear that suit “B” schedule property is classified as “water tank” in the “A” register and it is always open to the Government to take appropriate action for removal of encroachment, if any, in accordance with law. However, the Officers of the Government, namely, the defendants are not entitled to take the law into their hands and interfere with the right of the plaintiff to enjoy the usufructs, as stated above, except by due process of law. The judgments and decrees



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passed by the Courts below are modified accordingly.

12.In nutshell:

(a)The Second Appeal is partly allowed

(b)The judgments and decrees passed by the Courts below dismissing the suit in respect of the prayer for injunction is modified and the defendants are restrained from interfering with the plaintiff's right to enjoy the usufructs of the trees standings in the suit "B" schedule property in respect of which 2C patta has been issued in favour of plaintiff's father, except by due process of law.

(c)In all other aspects, the judgments and decrees passed by the Courts below are confirmed.

(d)In the facts and circumstances of the case, there would be no order as to costs.

13.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cmr

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To

- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The Principal District Munsif, Padmanabhapuram.
- 3.The District Collector,
State of Tamil Nadu,
Kanyakumari District, Nagercoil.
- 4.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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