



S.A.(MD) No.895 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD).No.895 of 2008

Raju

... Appellant

-vs-

1.State of Tamilnadu,
rep.by District Collector,
Kanyakumari District at
Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

2.Savariaradimai

3.Stephen Varghese

... Respondents

PRAYER: Appeal against the judgment and decree, dated 17.03.2008, passed in A.S.No.55 of 2007 on the file of II Additional Subordinate Judge, Nagercoil, confirming the judgment and decree, dated 15.12.2006, passed in O.S.No.431 of 2004 on the file of Principal District Munsif, Nagercoil.



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For Appellant : Mr.VR.Shanmuganathan

For Respondents 1 : Mr.SRA.Ramachandran,
Additional Govt.Pleader.

For Respondents 2 & 3 : Mr.C.Dhanaseelan

JUDGMENT

The plaintiff in the suit is the appellant. The suit is laid for mandatory injunction, directing the first respondent to issue patta in favour of the plaintiff for plaint schedule property. The plaintiff also prayed for permanent injunction restraining the defendants from interfering with his possession. The plaintiff further prayed for mandatory injunction, directing the defendants 2 and 3 to remove the shed put up by them in a portion of the suit property and to surrender possession to the plaintiff. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the same, the plaintiff is before this Court.

2. According to the appellant/plaintiff, the suit properties were occupied by the plaintiff's predecessor – Thankiah Nadar 82 years back. He made improvement in the suit property by putting up boundaries, planting trees etc. The plaintiff has been in long and uninterrupted possession of the



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suit properties with an extent of 27 acres, described in two items. By virtue of long possession, the plaintiff is entitled to get patta for the plaint schedule properties. He issued a notice to the first respondent, requesting him to issue patta. The plaintiff has not received any favourable reply from the first respondent regarding his request for issue of patta. In the meantime, the respondents 2 and 3 attempted to interfere with the plaintiff's possession and, therefore, the above said suit was laid.

3. The first respondent – Government filed a written statement, claiming that the suit property was a Government Poramboke land. The plaintiff had been in possession of 2.38 Hectares of land and, in recognition of his possession, B-Memos were issued in the name of the plaintiff for unauthorised occupation of Government lands. It was further claimed by the first respondent that the suit property was a forest Poramboke land and the first respondent was the real owner of the suit property and hence there was no question of issuing patta to the plaintiff.

4. Before the trial Court, the plaintiff and another witness were examined as P.W.1 and P.W.2 and 9 documents were marked on the side of the plaintiff as Exs.A-1 to A-9. On behalf of the defendants, four witnesses were examined as D.Ws.1 to 4 and 24 documents were marked as Exs.B-1 to



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WEB COPY B-24. The Advocate Commissioner's Report and Plan were marked as Exs.C-1 to C-3.

5. The trial Court, on appreciation of the evidence available on record, came to a conclusion that the suit property was a forest land and hence the plaintiff was not entitled to maintain a suit for issuance of patta in his name. The trial Court also found that the plaintiff failed to lead acceptable evidence in support of his possession over the suit property and, consequently, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.55 of 2007 on the file of II Additional Subordinate Judge, Nagercoil. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

6. The learned counsel for the appellant mainly contended that even in the pleading, the first respondent admitted the possession of the appellant/plaintiff in respect of the portion of the suit property, namely, 2.38 Hectares and, in such circumstances, the Courts below ought to have granted a limited injunction, restraining the respondents from interfering with the appellant's possession except by due process of law.

7. The appellant came to the Court with a specific plea that the suit property has been in possession and enjoyment of his predecessor for the past



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82 years and there was an attempt by the respondents 2 and 3 to interfere with his possession. In fact, there is no plea in the plaint regarding the attempt to interfere with the plaintiff's possession by the first respondent. Both the Courts below, on appreciation of evidence on record, came to a factual conclusion that the suit property was a forest land, belonging to the first respondent. In view of the said factual finding, the plaintiff is not entitled to seek issuance of patta in his name. The said conclusion reached by the Courts below is in accordance with law.

8. Though in the written statement filed by the first respondent it was admitted that the plaintiff had been in possession of 2.38 Hectares of forest land, in respect of which B-Memo was issued, the plaintiff has not described the said 2.38 Hectares of land in the plaint schedule. The plaint first item is described as 19 acres of land in Survey No.1 in the suit village. The suit item 2 is described as 8 acres of land in the very same survey number with different boundaries. When the plaintiff failed to describe 2.38 Hectares of land, in respect of which B-Memo was issued in his name, he is not entitled to press for permanent injunction in respect of the property, which is not described properly. Further, when the first respondent issued B-Memo, recognising the unauthorised occupation of the property by the plaintiff, the very act of issuing B-Memo denotes the absence of any animus on the part of



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the first respondent to interfere with the plaintiff's possession by illegal means. When there is no evidence available on record to show that the first respondent is making an attempt to interfere with the plaintiff's possession over 2.38 Hectares of land, in respect of which B-Memo was already issued, there is no cause of action for the plaintiff to press for limited injunction, restraining the first respondent from interfering with the possession of the plaintiff, except by due process of law. As far as the other respondents are concerned, when the property, in respect of which B-Memo has been issued, is not properly described by the plaintiff in the plaint schedule, he is not entitled to a decree for injunction. Any decree for injunction without proper description of the subject matter of the property would create a confusion. Therefore, this Court is not inclined to accept the argument made by the learned counsel for the appellant in respect of the limited injunction.

9. Finding no question of law to interfere with the factual conclusion reached by the Courts below, this Second Appeal is dismissed. No costs.

12.06.2024

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

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To:

- 1.II Additional Subordinate Judge,
Nagercoil.
- 2.Principal District Munsif,
Nagercoil.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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