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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2022

PRONOUNCED ON: 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.201 of 2016
and
C.M.P No.3001 of 2016

1.P.T.Chandrasekaran
2.P.T.Vijayalakshmi
3.P.T.Vivekanandan
4.P.T.Sethumadhavan
rep by POA.P.T.Chandrasekaran

...Appellants

Vs

1. The Special Deputy Collector (L.A)
Tamilnadu Urban Development
Project III
Chennai at Poonamallee,
Chennai-600 056.

2. C.S.Premkumar (died)
3. P.Gnanasundari
4. P.Krishnakumar
5. D.Rani
6. P.Sasikumar
7. P.Sampath Kumar

...Respondents

(R3 to R7 were brought on record as
L.Rs of the deceased 2nd respondent
vide Court order dated 9.12.2021,
made in CMP Nos.16957 & 16963
of 2021 in A.S No.201 of 2016)

Prayer:- This Appeal Suit has been filed, under Section 96 of Code of Civil Procedure r/w Order 41 Rule 1 of CPC, against the fair and decreetal order dated 06.08.2015 passed in L.A.O.P No.90 of 2013 by the VI Assistant Judge, City Civil Court, Chennai.



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For Appellant :M/s.Srinath Sridevan

For Respondents:Mr.Tamil Nidhi

Additional Government Pleader for R1

Mr.R.Krishnasamy for R3 to R7

R2-Died

JUDGMENT

(This case has been heard through Video Conferencing)

This appeal has been filed challenging the fair and decreetal order dated 06.08.2015 made in L.A.O.P No.90 of 2013, by the VI Assistant Judge, City Civil Court, Chennai.

2.A reference has been filed by the 1st respondent/Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, Poonamalee, Chennai, under Section 22(3) of the Tamilnadu Highways Act 2001, to decide the apportionment of compensation amount with regard to the land acquired for construction of Railways over bridge in GNT Road, in Award No.1 of 2011 dated 15.07.2011. The appellants are the claimants 2 to 5 and the 2nd respondent is the 1st claimant in the said LAOP.

3.After perusing the oral and documentary evidence, the learned VI Assistant Judge, City Civil Court, Chennai, held that only the 2nd respondent/1st claimant is entitled to receive the compensation amount as per the norms passed by the Referring Officer in Award No.1/2011, dated 15.07.2011 and the appellants / claimants 2 to 5 are not entitled to claim the award amount. Challenging the above fair and decreetal order, the present appeal has been filed by the appellants / claimants 2 to 5.

4.The case of the appellants/claimants 2 to 5 is that the property under reference is originally belonged to the uncle of the claimants 2 to 5 namely, P.C.T.Sambandham, who is none other than the elder brother of the claimants' father Thayumanavan. The claimants 2 to 5 are in exclusive possession and enjoyment of the property from the year 1982, while their father was alive and even after the demise of their father, they have been continuing their occupation in the acquired land and in the remaining property. The 1st respondent / 1st claimant had never been in possession of the acquired land. The claimants 2 to 5 have mortgaged the property twice in 1995 and again in 2001 and exercised their right over the acquired land. Hence, the 1st



claimant is not entitled to receive the compensation. The Court below, without considering the documents filed by the appellants to show that they have prescribed the title by way of adverse possession, has passed a fair and decreetal order in favour of the 2nd respondent/1st claimant. Challenging the same, the appellants are before this Court.

5. Pending this appeal, since the 2nd respondent/1st claimant died, his legal heirs were impleaded as the respondents 3 to 7.

6. This Court heard the learned counsel for the appellants as well as the learned counsel for the respondents 3 to 7.

7. The learned counsel for the appellants would submit that the appellants have prescribed their title by way of adverse possession since 1982 and to prove the said contention, the appellants have filed the documents in Ex.C8 to Ex.C18, but the same has not been considered by the Court below. Eventhough it is alleged by the 2nd respondent/1st claimant that he has given permission to the appellants to reside in the property, the same has not been proved by him. The onus is on the 1st claimant to prove that he has given permission to reside. The 1st claimant had never been in possession of the suit property. Further, he would submit that the appellants have mortgaged the property after they became the absolute owners of the property. Therefore, the findings of the Court below that the 1st claimant had perfected his title over the acquired land and is entitled to receive the compensation amount are erroneous in law and therefore, the fair and decreetal order passed by the Court below needs interference by this Court and hence, he prays to allow this appeal.

8. The learned counsel for the respondents 3 to 7 would submit that as per the settlement deed Ex.C1, the 2nd respondent/1st claimant is the owner of the property and his title was also admitted by the appellants/claimants 2 to 5. But, the appellants are in possession of the suit property without the knowledge of the true owner and therefore, they are not entitled to claim title by way of adverse possession. He would rely on the decisions reported in (i) (2017) 13 Supreme Court Cases 705 [Dagadabai (dead) by Legal Representatives vs. Abbas Alias Gulab Rustum Pinjari] and (ii) (2019) 15 Supreme Court Cases 756 [Mallikarjunaiah vs. Nanjaiah and others) and hence, the award passed by the trial Court is in accordance with law.



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9. This Court considered the submissions made on either side and also perused the materials placed on record. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.

10. The point for consideration is, as to whether the impugned fair and decreetal order of the Court below is sustainable or not?

11. On a perusal of Ex.C1, settlement deed dated 28.08.1980, it reveals that the acquired land was settled in favour of the 1st claimant, namely, C.S.Premkumar, by one P.C.Thirugnana Sambanda Muadaliar, who is his uncle. The said fact has also been admitted by the claimants 2 to 5. To prove the contention raised by the claimants 2 to 5 that they had perfected their title by adverse possession, they have filed Ex.C8 to Ex.C18. Even though the claimants 2 to 5 have marked the aforesaid documents, they have failed to prove that they are in possession and enjoyment of the acquired land without the knowledge of the true owner. Further, with regard to the contention of the claimants 2 to 5 that they have mortgaged the acquired land, they ought to have been proved under what right they have mortgaged the said property. But, they have miserably failed to do so. Moreover, the claimants 2 to 5 have not filed any documents viz., tax receipts and water tax receipts to prove their claim that they had perfected their title by adverse possession.

12. At the same time, the 1st claimant has marked Ex.C1, settlement deed and Ex.C2, patta and other documents to prove his claim that he is the owner of the acquired land. Though the 1st claimant is the owner of the property and it was also admitted by the claimants 2 to 5, but claiming right over the property without proving their title by adverse possession, is not correct.

13. In view of the above, this Court finds that the learned VI Assistant Judge, City Civil Court, Chennai, after a careful perusal of the oral and documentary evidence adduced by both sides, has rightly come to a conclusion that the 1st claimant is entitled for the compensation of award amount and hence, the order passed by the Court below does not warrants any interference by this Court and the present appeal is liable to be dismissed.



14. In fine, this Appeal Suit stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Assistant Judge,
City Civil Court, Chennai.

+1 cc to Mr.Srinath Sridevan Advocate sr26101

+1 cc to Mr.J.Karunanithi Advocate sr26198

A.S.No.201 of 2016

and

C.M.P No.3001 of 2016

ev(co)

aa08/06/2022