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(2007) 07 KL CK 0088

High Court Of Kerala

Case No: Regular Second Appeal No. 372 of 2007

The Plantation Corpooration of Kerala	APPELLANT
Vs	
Damodaran	RESPONDENT

Date of Decision: July 20, 2007

Hon'ble Judges: Sasidharan Nambiar, J

Bench: Single Bench

Advocate: T.N. Arunkumar, for the Appellant; No Appearance, for the Respondent

Final Decision: Dismissed

Judgement

M. Sasidharan Nambiar, J.

Plaintiff in O.S. 437/1998 on the file of Munsiff Court, Hosdurg is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint A schedule property along with other extent in the same survey sub division originally belonged to one George Thomas Kottukappalli and in the ceiling case initiated before Taluk Land Board, the property was found to be surplus land and Government took possession of the property as per Government Order M.S. No. 741/77/RD dated 13.6.1977 and thereafter transferred a total extent of 1268.74 acres including 313.60 acres in the suit survey number and Assistant Superintendent of Cheemeni Estate of the appellant obtained possession of the property on 29.7.1977 and a mahazar was also prepared at that time and the respondent attempted to trespass into the plaint schedule property and he has no right to do so and therefore he is to be restrained by a permanent prohibitory injunction from trespassing into the property. Respondent in his written statement disputed the claim of the appellant contending that this is not a property which originally belonged to George Thomas and it was not a portion of the surplus land found by the Taluk Land Board and it was not taken possession by the Government and was not handed over possession to the appellant and therefore appellant is not entitled to the decree sought for. It was also

contended that an extent of two acres in R.S. 260/1A1A of Cheemeni village including plaint schedule property was obtained by him on oral lease about 35 years back and he has been in possession of the property and he purchased jenm right from the Land Tribunal as per order in O.A. 12561/1975 and purchase certificate was also obtained and he has sold 22 cents of that property as per registered sale deed to T.V. Haridas and another 5 cents to Paleri Kannan as per registered sale deed dated 18.3.1988 and the balance is in the possession of the defendant and appellant is not in possession of the property and therefore appellant is not entitled to the decree sought for. Learned Munsiff framed necessary issues. On the evidence of PW1, DW1 and Exts.A1 to A4, B1 to B5 and C1 and C2, learned Munsiff found that appellant failed to establish that the plaint schedule property is a portion of the property obtained possession under Ext.A1 mahazar and as the appellant failed to establish the identity or the possession, the suit was dismissed. Appellant challenged the decree and judgment before Sub Court, Hosdurg in A.S.32/2005. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned Counsel appearing for the appellant was heard.

3. The argument of learned Counsel is that plaint schedule property is a portion of a large extent of property having a total extent of 1268.74 acres and in such circumstance identity of the plaint schedule property cannot be established and in such circumstance, courts below should have granted a decree. In a suit for perpectual injunction unless plaintiff establishes the factum of possession on the date of suit, a decree cannot be granted. Plaintiff must also establish the identity of the property. What is claimed by appellant is that plaint schedule property was surplus land which was taken possession along with the remaining large extent of property transferred to the appellant Corporation by the Government and obtained possession under Ext.A1 mahazar. The only witness examined was PW1 who has no personal knowledge with regard to the mahazar of the factum of possession. Though Commissioner has submitted Ext.C1 report and C2 plan, the report of the Commissioner does not establish that plaint schedule property is portion of the property covered under Ext.A1. PW1 also admitted that to the west of Kayyur road several persons are in possession of properties and appellant does not claim possession of those properties and if possession was taken under Ext.A1 it cannot be the case. It was therefore found that appellant did not establish possession also. On the basis of the findings, courts below found that appellant is not entitled to the decree sought for. In the light of the concurrent factual findings, no substantial question of law arises in the appeal. The appeal is dismissed.