



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

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CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1597 of 2011

- 1.The Junior Engineer,
Public Works Department,
WRO., R.C. Sec.No.1,
Karur.
- 2.The Assistant Divisional Engineer,
Public Works Department,
WRO., R.C. Section,
Kulithalai,
Trichy District.
- 3.The Divisional Engineer,
Public Works Department,
WRO., R.C.Section,
Trichy.

... Appellants / Defendants

Vs.

V.S.Arumugam

... Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 24.08.2005 made in A.S.No.6 of 2005 on the file of the First Additional Subordinate Judge,



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Erode in so far as reversing the judgment and decree dated 10.12.2004 made in O.S.No.39 of 2002 on the file of the District Munsif Court, Kodumudi.

For Appellants : Dr.S.Suriya, AGP

For Respondent : Mr.N.Umapathi

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 24.08.2005 made in A.S.No.6 of 2005 on the file of the First Additional Subordinate Judge, Erode in so far as reversing the judgment and decree dated 10.12.2004 made in O.S.No.39 of 2002 on the file of the District Munsif Court, Kodumudi.

2. Heard Dr.S.Suriya, learned Additional Government Pleader for the appellants and Mr.N.Umapathi, learned counsel for the respondent and perused the materials available on record.

3. The brief facts of the plaint runs as under:

The suit property is a poromboke land situated at S.F.No.671 of Kodumudi Village. The plaintiff was in possession and enjoyment of the suit property as a tenant, measuring 16 feet on the south, 35 1/2 feet on the



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north south on the east 70 feet east west on the north and 17 1/2 feet on the north south on the west which is marked as 'ABCDEF' in the plaint plan.

The property situated at the north of central water board office was occupied by the plaintiff and he put up a bunk shop initially. Thereafter, the plaintiff leveled the uneven vacant sites situated on the south of Pillayar Koil and the vacant site situated on the south of bunk shop upto A.G. portion, the plaintiff erected a tea shop and on the west of the bunk shop, he put up a thatched shed for residential purpose and a front yard to be cattles, store manure etc. Hence, the entire suit property has been enjoyed by the plaintiff as a tenant by paying the lease amount to the defendants every year. The electricity connection has been given to the said property to the plaintiff. The plaintiff was paying licence fees to the Kodumudi Town Panchayat for having the tea shop. He has been paying the lease amount also regularly.

3.1. On 13.05.2002, the first defendant came to the suit property and demanded the plaintiff to vacate the premises on or before 30.06.2002. Since the defendants tried to vacate the plaintiff illegally, the plaintiff has filed the suit for seeking the relief of permanent injunction against the



defendants and to protect his peaceful possession and enjoyment in the suit property.

4. The averments made in the written statement filed by the defendants are as under:

It is false to state that the plaintiff was in enjoyment of the suit property for more than 35 years. The plaintiff has trespassed the property. The plaintiff should have applied for a license for temporary enjoyment before the competent authority. The plaintiff cannot consider himself as a tenant and there is no subsisting lease in his favour. The license was actually granted to one R.Murugavel, for an extent of 10' x 10' feet (100 Sq.ft) in the year 1986 to 1987. The plaintiff has encroached the land adjacent to the office of the Central Water Commission. The Executive Engineer has requested the plaintiff to vacate the land, but the plaintiff did not heed to his request. As the plaintiff was creating nuisance to the general public, they have also started to make complaint against the plaintiff to the defendants. The plaintiff cannot occupy the public property and claim that he has got legal right or possession over the same.



5. On the basis of the above pleadings, the Trial Court has framed the following issues:

“1.வாதி கேட்டுள்ளவாறு நிரந்தர உறுத்துக்கட்டளை பெற அருகதை பெற்றவரா?

2.வாதிக்கு வழக்கில் கிடைக்கத்தக்க இதர பரிகாரங்கள் யாது?

கூடுதல் எழுவினாக்கள் :-

1.வாதி வழக்கிடை சொத்தில் குத்தகைதாரர் என்கிற முறையில் அனுபவத்தில் உள்ளாரா? அல்லது உரிமதாரர் என்கிற முறையில் அனுபவத்தில் இருக்கிறாரா?

2.வழக்குமூலம் உண்மையா?

3.திருத்தப்பட்ட நில ஆக்கிரமிப்புச் சட்டம் பிரிவு 14ன் காரணமாக இவ்வழக்கு நிலைக்கத்தக்கதா?”

6. After recording the finding on the basis of the materials and evidence available on record, the Trial Court has dismissed the suit. However, the First Appellate Court has reversed the order passed by the Trial Court and now, the defendants have filed this Second Appeal challenging the reversal judgment of the First Appellate Court by raising the following substantial question of law:



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"1.Is not suit filed by the respondent barred under Section 14 of the Tamil Nadu Land Encroachment Act?

2. Is not the suit filed by the respondent bad for non joinder of necessary parties viz., the Government of Tamil Nadu through its District Collector, Erode?

3.Is the respondent entitled to the statutory notice contemplate under Section 106 of the Transfer of Property Act?"

7. But the substantial question of law No.3 will not arise because the appellants' arguments itself is that the plaintiff is not a lease holder. In such case, there is no question of statutory notice under Section 106 of the Transfer of Property Act, will arise. So, the substantial question of law is limited and reframed to 1 and 2.

8. The learned Additional Government Pleader for the appellants submitted that despite the Trial Court has framed the issue as to whether the suit is barred in view of Section 14 of the Tamil Nadu Land Encroachment Act and rendered a finding against the plaintiff, the First Appellate Court has misdirected itself and has made an observation that Section 14 of the Tamil Nadu Land Encroachment Act is not applicable to the case of the



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plaintiff and the plaintiff is ought to have been given with notice under Section 106 of the Transfer of Property Act, as he is the lease holder of the suit property.

9. The learned counsel for the plaintiff / respondent submitted that the First Appellate Court is right in reversing the judgment of the Trial Court by considering the plaintiff's long and unobstructed enjoyment of the suit property.

10. According to the plaintiff, he claims himself as a person in occupation in the suit property for more than 35 years. Even if the plaintiff claims himself as a lease holder, he ought to have purchased the lease agreement to substantiate his claim, but the same has not been produced as document before the Courts. The Trial Court has rightly observed that the plaintiff has not established that he is the lease holder by producing any documents to that effect. If the plaintiff claims any lease hold right over the suit property, he ought to have impleaded the Government of Tamil Nadu who is the owner of the poromboke lands.



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11. The respondent has produced Ex.A1 series and claimed that they are the receipts given to him for having paid the lease amount to the suit property. But the Trial Court has made an observation stating that in the receipts, it has been stated only as term rent. Hence, they cannot be considered as the receipts issued for paying the lease amount to the defendants and further, the defendants cannot give any lease hold right to any third party in respect of the lands belonging to the Government without getting authentication from the Government.

12. Even in the oral evidence of the plaintiff, he has admitted that there is no lease agreement in his favour and that he has paid only the license amount. Even before the plaintiff, the license in respect of the suit property has been given to one R.Murugavel. Once the license is cancelled and the licensee continues to be in possession of the property subsequent to the cancellation of license, he will be deemed to be an illegal occupant over the suit property. The nature of the occupation of the illegal occupant is nothing but encroachment. Instead of vacating the property and handing over the



possession subsequent to the revocation of license in the name of the R.Murugavel, the plaintiff cannot claim any right over the suit property.

13. As the plaintiff is an illegal occupant of the suit property, his possession has not been safeguarded by granting an order of permanent injunction. Any action taken by the Government officials to vacate the persons in an illegal occupation by encroachment shall not be challenged before the civil courts. Even the Civil Court has not taken the suit itself on file in view of the bar under Section 14 of the of the Tamil Nadu Land Encroachment Act. Even the Trial Court has rightly understood the position of law and dismissed the suit. But the First Appellate Court has misdirected himself as Section 14 is not applicable to the case of the plaintiff and thus, he is entitled to notice under Section 106 of the Transfer of Property Act. Since the observation of the First Appellate Court has been made without understanding the law applicable to the case and the nature of the possession of the plaintiff, the judgment of the First Appellate Court is perverse and unsustainable in law and it is liable to be set aside.



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14. In the result, this Second Appeal is allowed and the judgment and decree of the First Appellate Court dated 24.08.2005 made in A.S.No.6 of 2005 on the file of the First Additional Subordinate Judge, Erode, is set aside. No costs.

04.11.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The First Additional Subordinate Judge,
Erode.

2. The District Munsif Court, Kodumudi.



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R.N.MANJULA, J.

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