

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2015

Delivered on : 09.10.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.865 of 1999

Thanapackiyam .. Appellant/Plaintiff

-Vs-

1.State of Tamil Nadu
Rep. by its District Collector
Thiruvarur District

2.The Executive Engineer
Public Works Department
Vennaru Division
Thanjavur

3.The Junior Engineer
Public Works Department
Mannargudi Koraiyar Division
Needamangalam

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal Subordinate Judge, Nagapattinam dated 16.10.1998 made in A.S.No.88 of 1998 confirming the judgment and decree of the learned District Munsif, Mannargudi dated 20.11.1997 made in O.S.No.14 of 1997.

For Appellant : Mrs.R.T.Shyamala

For Respondents : Mr.T.Jayaram Raj
Spl. Govt. Pleader (CS)

J U D G M E N T

The plaintiff in the original suit is the appellant in the second appeal.

2. The appellant filed the suit O.S.No.14/1997 in the Court of the District Munsif, Mannargudi for the relief of permanent injunction on the basis of the plaint averments, which are as follows:

3. The suit property is a riverbed poramboke land belonging to the Tamil Nadu Government and the same is maintained by Public Works Department. The appellant herein/plaintiff has been in enjoyment of the suit property for more than 30 years. As on the date of filing of the suit, she had planted 25 coconut trees and out of the 25 coconut trees planted by her, 15 were yielding trees. The trees and their usufructs were being enjoyed by the appellant/plaintiff paying the land rent to the Public Works Department. While so, the officials of the Public Works Department, namely the respondents 2 and 3, wanted to auction the leasehold rights of enjoying the usufructs of the coconut trees. The appellant/plaintiff, being a member of the Scheduled Caste and a widow, will be deprived of her livelihood if her possession of the suit property is disturbed or possession of the suit property is taken from her. Hence the appellant/plaintiff was forced to approach the trial court seeking a permanent injunction against the respondents not to disturb her peaceful possession and enjoyment of the suit property.

4. The suit was resisted by the respondents/defendants denying her claim to be a lessee of the suit property on permanent basis and contending that the suit property was being leased out periodically by conducting public auction; that the appellant/plaintiff became such a lessee after emerging successful bidder and such lease in her favour came to an end by 30.06.1996 and that thereafter the appellant/plaintiff did not have any right as a lessee to continue in possession and to prevent the respondents from conducting public auction for selecting the lessee. The suit was filed without giving the mandatory notice under section 80 of the Code of Civil Procedure and hence the same is not maintainable. Based on the said contentions, the respondents/defendants had prayed for the dismissal of the suit.

5. The trial court, after framing necessary issues, conducted a trial. The appellant/plaintiff figured as the sole witness (PW1) and exhibited seven documents as Exs.A1 to A7 on her side, whereas three witnesses were examined as DWs.1 to 3 and four documents were marked as Exs.B1 to B4 on the side of the respondents herein/defendants. At the conclusion of trial, the learned trial judge appraised the evidence and on such appreciation of evidence, held the appellant/plaintiff not entitled to the relief of permanent injunction as prayed for in the plaint. Accordingly, the learned trial Judge dismissed the original suit with cost by a judgment and decree dated 20.11.1997.

6. Aggrieved by and challenging the decree of the trial court dismissing the suit, the appellant herein/plaintiff filed an appeal in A.S.No.88 of 1998 on the

file of the Principal Subordinate Judge, Nagapattinam. The learned lower appellate Judge, after hearing, concurred with the findings of the trial court in all respects, as a result of which, the appeal was dismissed by a judgment and decree dated 16.10.1998. As against the said decree of the lower appellate court dated 16.10.1998 made in A.S.No.88 of 1998, the appellant herein/plaintiff has filed the present second appeal.

7. The second appeal was admitted on 18.06.1999 and the following question was formulated as the substantial question of law that has arisen for consideration in the second appeal.

"Whether the findings rendered by the courts below on the plaintiff's right to be in possession of the property is supported by evidence?"

8. The arguments advanced by Ms.R.T.Shyamala, learned counsel for the appellant and by Mr.T.Jayaram Raj, learned Special Government Pleader (CS) representing the respondents were heard. The judgments of the courts below and the other materials available on record were perused and were also taken into consideration.

9. Whether the findings of the courts below that the appellant/plaintiff is not entitled to the permanent lease or lease in respect of the land as claimed by her is perverse? - is the actual meaning of the question formulated as the substantial question of law. The plaintiff averments made by the appellant/plaintiff are not free from ambiguity as to how she got possession of the suit property. She simply stated that she had been in enjoyment of the suit property for more than 30 years by planting coconut trees and 15 out of 25 coconut trees planted by her were yielding trees as on the date of plaint. Whether she was a trespasser who trespassed into the land and started enjoying the same by planting coconut trees or she was inducted as a lessee in respect of the land whereupon she planted coconut trees has not been made clear in her pleadings. The further averment made by her in the plaint is that the plaintiff was in enjoyment of the fruits of the trees by paying "gFjp" to the Public Works Department for the site. The said plea, no doubt, amounts to a plea that she was paying the rent for the land and was enjoying the fruits of the trees, but it is quite contrary to the records.

10. The appellant/plaintiff seems to have suppressed the fact that the lessee in respect of the land for the enjoyment of the usufructs of the tree was selected from time to time by conducting public auction for a specified period. Ex.A1 is the miscellaneous receipt for the payment of Rs.15/- on 14.03.1992. Ex.A2 is another document dated 19.07.1986

evidencing payment of Rs.34.40P as rent from 01.07.1986 to 30.07.1986. Similar documents dated 09.11.1993 and 05.11.1993 have been produced and marked as Exs.A3 and A4. Ex.A5 is the reply to a letter sent by the appellant/plaintiff demanding receipts, 20 in number, covering three years from 1993-1994 to 1995-1996. In the said reply it was informed that the receipts for the said period had already been sent to her after making necessary entries in the ledger and that no new receipts could be issued. Ex.A6 is the copy of the pre-suit notice and Ex.A7 is the certificate of posting. The above said documents will show that prior to 1996, the appellant/plaintiff had been granted the lease by the Public Works Department and she was paying the rent. The documents do not suggest that the amount was paid as the ground rent as an occupier of the land. On the other hand, the appellant/plaintiff, who figured as the sole witness (PW1) on her side, had made an attempt to contend that she occupied the land without the permission of the Public Works Department and planted coconut trees. However, during cross-examination she pleaded absence of knowledge, when it was suggested that her husband took the land on lease in the auctions conducted every year. There is also an admission made by PW1 that before they brought the suit property under their enjoyment, public used it (g[H';fp te;jhh;fs;) to reach the river and that only five years prior to her examination as PW1, they put up a fence and prevented the access to the river. Besides she has not denied the defendant's case that the lessee was selected every year by conducting public auction. PW1 would also state that after 1406 Fasli, she did not make payment of the lease amount.

11. On the other hand, clear evidence came to be adduced through DWs.1 to 3 to the effect that the riverbed poramboke under the control of the Public Works Department was given on lease to the persons who were then in occupation and that thereafter every year the lessees were selected by public auction. From the evidence of DWs.1 to 3, it is quite obvious that the lessee in respect of Korayar riverbed was selected every year by conducting public auction. Especially the evidence of DW1 and Exs.B1 to B3 make it clear that from 1986 lessees were selected by conducting public auction. On the expiry of the lease period covered by the last auction for the period ending with 30.06.1986, Auction Notice came to be issued under Ex.B4 for selecting the lessee for the next year, namely for the period from 01.07.1996 to 30.07.1997. Under the said circumstances alone, perhaps expecting that she could not emerge as successful bidder and with the intention of claiming permanent tenancy, the appellant/plaintiff chose to file the suit for permanent injunction. As it is admitted by the appellant/plaintiff herself that the suit property belongs to the Government and it is under the supervision and control of the Public Works Department, the appellant/plaintiff, having failed to prove her claim that she enjoys a permanent

lease in respect of the suit property, cannot succeed in the suit filed for getting a decree for permanent injunction against the true owner.

12. In this regard a meek attempt was made on behalf of the appellant before this court by advancing an argument that though the appellant/plaintiff could be construed to be a trespasser, since she did have an established position, she could not be evicted without adopting due process of law. Such a contention is far from being sustainable. First of all, the suit property is admittedly a riverbed poramboke and it will answer the definition of water bodies. No one shall be allowed to occupy such water bodies. In addition, the respondents herein/defendants have substantiated their case that no lease was created in respect of the land and the lease was only to enjoy the usufructs of the trees. Even if such lease could be construed to be a lease on land, as the respondents/defendants have clearly proved their case that the lessees were selected every year by conducting public auction and the appellant herein/plaintiff, who was the lessee selected in the previous auction, lost her status as lessee by efflux of time on the expiry of the period of lease on 30.06.1996 and that thereafter she cannot squat on the property and go to the extent of seeking a permanent injunction against the defendants, who are admittedly officers of the paramount title holder, viz., Government. Moreover, the concept of due process of law applicable in such circumstances came to be discussed by the Hon'ble Supreme Court in Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. & others reported in 2008 (6) CTC 237. It was held by the Supreme Court therein that when a question regarding the inter se rights of the parties is raised in a suit for injunction, the same can be decided in the said suit itself and such a decision will amount to adoption of due process of law.

13. In the case on hand, the appellant/plaintiff, claiming permanent lease in her favour, came forward with the suit for permanent injunction against the admitted lessors. But the plaintiff was not able to prove her plea of permanent lease. On the other hand, the respondents/defendants were able to prove by reliable evidence that the lease granted to the appellant/plaintiff came to an end by efflux of time by 30.06.1996. The trial court and the lower appellate court, on proper appreciation of evidence, rendered a correct and concurrent finding that the lease in favour of the appellant/plaintiff got terminated by efflux of time by 30.06.1996. The courts below have also rendered a correct finding that the claim of permanent lease was also not substantiated. On the said basis alone, the appellant/plaintiff was non-suited for the relief in the plaint. The above said findings of the trial court, which was confirmed by the lower appellate court, cannot be said to be

based on no evidence. The said findings of the courts below, according to the considered view of the of this court, are not either infirm or defective, much less perverse as contended by the appellant herein/plaintiff. Accordingly, the substantial question of law formulated is answered in the negative and in favour of the respondents herein.

14. For all the reasons stated above, this court comes to the conclusion that there is no merit in the second appeal; that the appellant/plaintiff cannot be permitted to squat on the property any more by granting the relief of permanent injunction as sought for by her and that the decree of the trial court as confirmed by the lower appellate court deserves no interference by this court in the second appeal.

In the result, the second appeal fails and the same is dismissed with cost.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

asr

To

- 1) The Principal Subordinate Judge, Nagapattinam
- 2) The District Munsif, Mannargudi

+1 cc to M/s.R.T.Shyamala, Advocate, sr.55504

+1 cc to The Spl.Government Pleader (CS), sr.55047

in S.A.No.865 of 1999

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