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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

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THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.40 of 2012
and
M.P.No.1 of 2012

1.P.Ravichandran

2.P.Kumar

...Appellants/Plaintiffs

Vs.

1.The President,
C.Kothangudi Panchayat,
C.Kothangudi Village,
Chidambaram Taluk,
Cuddalore District.

2.The Block Development Officer,
Parangipettai Panchayat Union,
Parangipettai,
Chidambaram Taluk,
Cuddalore District.

...Respondents/Defendants 1 & 2

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 18.11.2011 made in A.S.No.24 of 2011 on the file of the learned Subordinate Judge, Chidambaram reversing the judgement and decree dated 20.06.2011 in O.S.No.245 of 2008 on the file of the learned Principal District Munsif, Chidambaram.

For Appellants : Mr.T.R.Rajagopalan, SC
for Mr.R.Bharath Kumar

For R.1 : Mr.AR.L.Sundaresan, SC
for Mr.M.Sivavarthanan

(R.2 given up vide order dated
09.03.2015)



JUDGEMENT

The plaintiffs in O.S.No.245 of 2008 on the file of the learned District Munsif, Chidambaram, are the appellants herein. The respondents herein are the defendants in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property and to restrain the defendants from constructing any superstructure on the suit property. The trial Court by decree and judgement dated 20.06.2011, decreed the suit as prayed for. As against the same, the defendants filed an appeal in A.S.No.24 of 2011 on the file of the learned Subordinate Judge, Chidambaram. By decree and judgement dated 18.11.2011, the First Appellate Court set aside the decree and judgement of the trial Court and dismissed the suit. As against the same, the plaintiffs are before this Court with this second appeal.

2.The case of the plaintiffs is as follows:-

The suit property is comprised in S.Nos.97 and 99/1 at C.Kothangudi Village in Chidambaram Taluk. The said property and the properties comprised in various other Survey Numbers like S.Nos.90, 91/1, 93, 95, 96, 97, 98, 99/1, 99/2, 99/4, 101, 103/1B, 103/3, 104, 105, 106, 107, 108/1 and 110/3, were all owned by a Society known as "Raja Muthaiah Mundram". The said society had formed a lay out on these lands and obtained approval from the Director of Town and Country Planning Authority at Chengalpet by his proceedings in Se.Thema/Na Vu Ilam - 86-187/Ma.Pa.153.

3.According to the plaintiffs, the property comprised in S.No.99/1 (Old Survey Nos.98 and 99) did not form part of 'Muthaiah Nagar' and they form part of 'Rukmani Ammal Nagar' which is situated on the North of Muthaiah Nagar. It is the further case of the plaintiffs that the suit property was purchased by them from the then Secretary of the Society by name Mr.Tamilarasan. It is their further case that from the date of purchase, the first plaintiff was in enjoyment and possession of the suit property. The specific case of the plaintiffs is that, Item Nos.2 and 3 of the suit properties were purchased by the first plaintiff from Mr.Tamilarasan by means of registered sale deed dated 22.06.2000 and Item No.3 was purchased by Mrs.Kala from Mr.Tamilarasan on 17.04.2000. Thus, the plaintiffs are in possession and enjoyment of the suit property. According to the plaintiffs, the defendants have got no right whatsoever over the same.

4.The first defendant herein filed a written statement before the trial Court stating that the suit property forms part of Muthaiah Nagar and not Rukmani Ammal Nagar. The suit property has been shown as a "Park" for public purpose. According to the first defendant, as per the Tamil Nadu Town and Country Planning Act, the defendant is



the custodian of the suit property which has been earmarked as a Park for public purpose. Mr.Tamilarasan, had no right or title to convey to his purchasers namely, the first plaintiff and Mrs.Kala. The above stated society became defunct and therefore, Mr.Tamilarasan the Ex-Secretary of the said society had no right to execute any sale deed in respect of suit property. It is also the case of the defendants that the District Collector has sanctioned a sum of Rs.15 lakhs for the purpose of erecting a bore well and for construction of Over head tank on the suit property for the purpose of providing drinking water facility for the residents of the entire Muthaiah Nagar. According to the defendants, the plaintiffs are not in possession and enjoyment of the suit property and therefore, the suit is liable to be dismissed.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and as many as 33 documents were exhibited. On the side of the defendants, four witnesses were examined and as many as 4 documents were exhibited. Exs.C.1 and C.2 were marked as Court documents.

6.Having considered the above, the trial Court decreed the suit which was reversed by the First Appellate Court. That is how the plaintiffs are before this Court with this second appeal.

7.I have heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellants and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the respondents and I have also perused the records carefully.

8.At the outset, when this second appeal was admitted, this Court has framed the following substantial questions of law:-

"i) In a suit for bare injunction whether the First Appellate Court is correct and justified in going into the question of title and to hold that the plaintiffs have no title to the suit properties?

ii) Is the First Appellate Court correct and justified in not considering the additional evidence produced before the court especially when that court itself had allowed the application in I.A. No.126/2011 and received the documents in evidence?

iii) On the face of Ex.A1 to A3 and A20 to A27, is the First Appellate Court correct and justified in reversing the finding of the trial court regarding the plaintiff's possession on the date of suit?



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iv) On the face of contents of Ex.B.1, which is not the final sanctioned plan, is the First Appellate Court correct and justified in relying on it and holding that the suit property had been earmarked for public purpose and therefore cannot be sold? "

9. Though, it is the stand of the plaintiffs in the plaint that the suit property forms part of Rukmani Ammal Nagar, now, across the Bar, learned Senior Counsel appearing for the appellants would submit that the suit property forms part of only Muthaiah Nagar. In view of the tacit statement made across the Bar by the learned Senior Counsel appearing for the appellants, I need not go into the said issue and to resolve the same as to whether the suit property forms part of Rukmani Ammal Nagar or Muthaiah Nagar. As a matter of fact, a perusal of the evidences let in by both the parties and the arguments submitted before the Courts below would also go to show that both the parties have conceded that the suit property forms part of Muthaiah Nagar.

10. It is also not in dispute before this Court that the suit property, as per the lay out approved by the Director of Town and Country Planning Authority, was shown as a place reserved for a 'public purpose' namely to use the same as a 'Park' for the benefit of the residents of Muthaiah Nagar. The order of approval granted by the Director of Town and Country Planning Authority by his proceedings in File No.1929/1986 Se.Tha.Ma/Na.Vu.E.M.86-87 Ma.Pa.153 has been marked as Ex.B.1. As per the said document, the suit property should be used only for one specific purpose namely as a Park for the benefit of the public.

11. According to the plaintiffs, the first plaintiff purchased Item Nos.1 and 2 from Mr.Tamilarasan, the then, Secretary of Society known as "Raja Muthaiah Mundram" and Mrs.Kala, purchased Item No.3 from Mr.Tamilarasan. From Mrs.Kala, the second plaintiff subsequently purchased Item No.3. There is no dispute that the above stated Society was the promoter who had title for the same. Now, the question is whether the title can be transferred by the Society in the name of a third party despite the fact that the property has been earmarked for a public purpose.

12. In this regard, I am of the view that, there may not be much difficulty for this Court in resolving this issue. Transfer of property is governed by the provisions of the Transfer of Property Act. In this case, no such transfer of the suit property has been effected either by the promoter or by the subsequent purchasers in favour of the panchayat/first defendant. Though, an attempt has been made by the first defendant that the approval given by the Director of Town and Country Planning Authority would automatically vest the



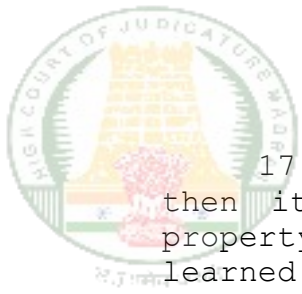
suit property in favour of the Panchayat, it has got no legal basis. Neither there is any provision in the said Act nor is there any provision in any other enactment enabling such vesting of the property automatically in favour of the first defendant Panchayat. It is too well settled by a catena of judgements of the Hon'ble Supreme Court, that for the properties earmarked for public purpose, the Panchayat becomes the custodian of the public interest to manage the said property in the interest of the general public. The Hon'ble Supreme Court has also held that, the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law (vide Pt. Chetram Vahit (dead) by LRS v. Municipal Corporation of Delhi 1995 (1) SCC 47).

13. From the above judgement, it is crystal clear that there is no prohibition for transfer of property earmarked for public purpose by the promoter. If the local body wants to gain title for the said property, either that should have been done by way of gift deed executed by the promoter or sale deed executed in favour of the Panchayat thereby conveying title or atleast, there should have been acquisition of the property by the local body from the promoter.

14. In this case, nothing of that sort happened and therefore, it is crystal clear that the ownership for the suit property remained only with the Society. As I have already pointed out and as more specifically dealt with in the judgement referred to above by the Hon'ble Supreme Court, there is no prohibition for the owner of the land to transfer the title.

15. In this case, it is the case of the plaintiffs that the title was transferred by Mr. Tamilarasan, the then Secretary of the Society in their favour. The same was disputed by the defendants. Since, the suit is not for title, I need not go into the said question in detail. This needs to be resolved only in a suit for declaration of title.

16. At any rate, the question whether Mr. Tamilarasan has filed the present suit on behalf of the society and obtained a decree in this matter, or whether he was empowered by the society to transfer title, need not be extensively gone into by this Court in this second appeal. It is suffice for this Court to hold that there are sale deeds executed by Mr. Tamilarasan in favour of the first plaintiff and Mrs. Kala. Further, it prima facie shows that the plaintiffs have got title.

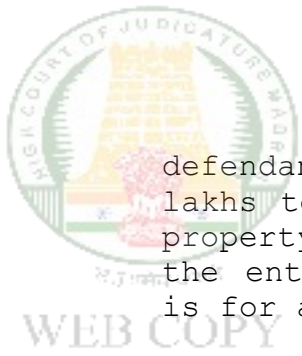


17. When the plaintiffs have so discharged their initial burden, then it is the burden of the defendants to prove that the suit property was transferred to the first defendant Panchayat. The learned Senior Counsel for the first respondent would tacitly admit that there was neither any gift deed executed nor a sale deed nor any other mode known, by which, title was transferred. But, what was argued by the learned Senior Counsel for the first respondent that at the moment the Director of Town and Country Planning has approved the lay out, there is automatic vesting of the title for the property in favour of the first defendant/first respondent.

18. In my considered opinion, this argument has got no legal basis which is evidenced from the judgement of the Hon'ble Supreme Court which I have referred to above. Therefore, it is crystal clear that the first defendant/first respondent has got no title for the suit property at all. At the same time, it cannot be said that the first defendant has got no right over the property irrespective of the fact whether the title for the property either remains with the society or with the plaintiffs, the right of the Panchayat is only limited to the extent that the panchayat can act as a custodian of the property to protect the interest of the general public to use the said property for the public purpose for which it was earmarked.

19. Though, it is contended by the learned Senior Counsel for the appellants that the order approving lay out passed by the Deputy Director of Town and Country Planning is not the end of the matter, because, there was no consequential final order passed by the panchayat, that question was also need not be, in my considered opinion, gone into, in this second appeal. Assuming that the suit property has been earmarked for a public purpose, namely for the purpose of maintaining park and assuming that as per the settled law, the first respondent is the custodian of the property, the first respondent is a Trustee of the general public and he can ensure that the property is used only for the purpose which was earmarked and it was no authority at all to use the same for any other purpose.

20. The learned Senior Counsel appearing for the first respondent would rely on a judgement of a Division Bench of this Court in K. Rajamani v. Alamunagar Residents' Welfare Association (2011 (1) CTC 257). I have gone through the said judgement carefully. This judgement clearly answers all the issues raised in this second appeal. As a matter of fact, the Division Bench has gone extensively into the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and various judgements of the Hon'ble Supreme Court to hold formally that there is no attempt vesting of the title in favour of the local body and also to hold that as a Trustee, the panchayat has to ensure that the property is used for the very purpose for which it was earmarked. The Division Bench has further held that neither the Planning Authority nor the Government can get any power to convert the same to use for any other purpose. But, in the case on hand, the first



defendant states that the District Collector has sanctioned Rs.15 lakhs to erect bore well and to construct over head tank in the suit property for the purpose of providing drinking water facilities to the entire Muthaiah Nagar residents. This, in my considered opinion is for a different purpose.

21.As I have already pointed out, as the custodian of the property, the first defendant can ensure that it is used only for the public purpose namely to be used as a park. The first defendant has got no authority to use it for different purpose i.e., to erect bore well and to construct over head tank to diminish the use of the same as a park. In these circumstances, in my considered opinion, there can be an injunction to the limited purpose to restrain the first respondent from using the said property for a different purpose namely to erect a bore well and to construct a over head tank on the suit property. When this was expressed, the learned Senior Counsel for both parties submitted that if the first respondent Panchayat is so permitted by the Authority competent under the Act, then, there may not be any impediment for the first respondent to make such construction. In this regard, I do not want to express any opinion, because, it is for the authority concerned to decide as to whether the authority has got such power to grant sanction and to whether such sanction was given going by the facts and circumstances of the case and if any such permission is legally granted, of course, the first respondent may make such construction, for which, this decree for injunction will not be an impediment.

22.Similarly, armed with this limited order of decree of injunction, the plaintiffs cannot prevent the public from using the suit property as a park and also they cannot prevent the first defendant to maintain the same as a park. This I want to say by way of clarification because, the plaintiffs should not try to abuse the decree of injunction which I grant now.

23.The learned Senior Counsel for the appellants would submit that the plaintiffs may be given liberty to file an appropriate suit for declaration of title and also for other reliefs to use the suit property for a different purpose. As I have already pointed out, if there is any statutory authority who has got the power to grant such permission for the plaintiffs to use the suit property for a different purpose, then, it is open for the plaintiffs to approach the authorities concerned or to file an appropriate suit before the competent Civil Court. I only say that the decree of injunction granted herein will not be an impediment either for the plaintiffs or for the first defendant to work out their remedies in accordance with law and this decree of injunction will not operate as res judicata against the plaintiffs as well as against the first defendant. I also make it very clear that the parties are at liberty to work out their remedies as to whether there is proper approval of the lay out; whether the title remains with the plaintiffs or with the first



defendant and also to work out as to whether the plaintiffs can approach any authority to use the suit property for different purpose and also for the first defendant to approach the authorities, if any, under the statue, to get permission to use the suit property for a different purpose.

24. So far as the second defendant is concerned, the plaintiffs/appellants have filed a memo before this Court giving them up. Therefore, in this second appeal, the said memo is recorded and the second respondent is given up. In view of the foregoing discussions, I answer all the substantial questions of law framed in this appeal accordingly.

25. In the result, this second appeal is allowed and the decree and judgement of the trial Court as well as the First Appellate Court are set aside and the suit in O.S.No245 of 2008 is decreed in part in the following terms:-

"There shall be an order of interim injunction restraining the first defendant from erecting a bore well and constructing a over head tank on the suit property. However, liberty is given to the plaintiffs as well as the first defendant to approach the appropriate authority, if any, for converting the use of the suit property for different purpose. In all other respects, the suit shall stand dismissed. Further, the plaintiffs as well as the first defendant are at liberty to file a suit for declaration or for any other relief before the appropriate Civil Court, if so advised. If any suit is filed either by the plaintiffs or by the first defendant, all the evidences available to the respective parties are left open for them to raise by way of evidence."

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



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To

1.The Subordinate Judge,
Chidambaram.

2.The Principal District Munsif,
Chidambaram.

3.The Section Officer,
V.R.Section, High Court,
Madras.

1 CC to Mr.R.Bharath Kumar, Advocate SR.No. 13214

1 CC to the Government Pleader, SR.No. 13100

1 CC to Mr.M.Sivavarthan, Advocate SR.No. 13151

Second Appeal No.40 of 2012

JSV (CO)

PSI (30.04.2015)