

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27 - 07 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 605 of 2009

1. Rathinamani
2. Rajammal
3. Ramasamy
4. Karupanammal
5. Sellammal

.. Appellants

Vs.

1. The State of Tamilnadu
rep. by its District Collector
Erode District
2. The Special Tahsildar
(Adhi-Dravidar Welfare)
Sathy, Erode District

.. Respondents

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.11.2008 passed by the Principal Subordinate Judge, Gobichettipalayam, in A.S. No. 67 of 2008 confirming the judgment and decree passed by the District Munsif, Gobichettipalayam, in O.S. No. 425 of 2000 on 31.08.2006.

For Appellants : Mr. N. Manokaran

For Respondents : Mr. T. Jayaramaraj
GA (CS)

JUDGMENT

The non-suited plaintiffs in a suit for permanent injunction by the Courts below, have filed the instant Second Appeal.

2. The plaintiffs filed the suit for permanent injunction restraining the respondents / revenue authorities from in any way disturbing their peaceful possession and enjoyment of the suit property by acquiring S.F No. 132/1 for forming cart track or pathway.

3. The trial Court before which evidence was adduced and documents were marked, dismissed the suit O.S. No. 425 of 2000 by judgment and decree dated 31.08.2006 and the appeal filed against the same in A.S. No. 67 of 2008 was also dismissed by judgment and decree

dated 17.11.2008 as not maintainable. Aggrieved by the same, the present Second Appeal has been filed.

4. Heard Mr. N. Manokaran, learned counsel appearing for the appellants / plaintiffs and Mr. T. Jayaramaraj, learned Government Advocate (CS) representing the respondents / revenue authorities and perused the records.

5. The relevant documents necessary for deciding the appeal are Ex. B.5 dated 23.12.1998, which is the Notification issued under Section 4(1) of the Land Acquisition Act, Ex. B.7 Award dated 09.3.1999 and Ex. A.12 dated 05.6.2000, order passed by this Court in W.P. No. 3846 of 1999 quashing the Notification issued under Section 4(1) of the Act.

6. From the above documents, it is clear that the suit lands were sought to be acquired for the purpose of providing pathway to burial ground to Adi Dravidar under Act 31/78 and on challenge before this Court, it was quashed on 05.6.2000 as per Ex. A.12. As the Notification itself has been quashed, the Award passed pursuant to the same, is deemed to be quashed. Admittedly, there is no appeal filed by the Government.

7. In the above factual circumstances, the plaintiffs have filed the present suit for permanent injunction. The Lower Appellate Court erroneously held that the appellants / plaintiffs had not challenged the Award for dismissing the suit. It was also further held that the lands were taken possession and compensation was paid to the appellants which are factually incorrect. At this juncture, it would be useful to extract the relief sought for in the suit, which reads as follows:

"Grant a permanent injunction against the defendants from any way disturbing from the plaintiff's peaceful possession and enjoyment of the suit property by acquiring S.F. No. 132/1 for forming cart track or pathway."

8. In this backdrop, the question that has to be decided in this Second Appeal is whether the Government can be enjoined from acquiring lands for public purpose?

9. In this regard, it is to be seen whether the Civil Court has jurisdiction to entertain a suit when the scheduled lands were acquired under the Land Acquisition proceeding. Section 9 CPC provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred. It is clear that the Land Acquisition Act is a complete code in itself and is meant to

serve public purpose by necessary implication. The power of the Civil Court to take cognizance of the case under Section 9 CPC stands excluded. Therefore, the Civil Court cannot go in to the question of validity or legality of the Notification issued under Section 4 of the Act and as such, the Civil Court is devoid of jurisdiction for granting injunction on the acquisition proceedings.

10. In the present case, the prayer is not to interfere with the possession of the plaintiffs. It was argued by the learned counsel for the appellants that the defendants tried to disturb their possession even after the acquisition proceedings initiated earlier, was quashed. However, excepting in the cause of action paragraph, nowhere else, the plaintiffs had pleaded about the alleged disturbance by the defendants. In the absence of any pleading to that effect, the scope of moulding the relief does not arise.

For the foregoing reasons, the Second Appeal fails and the same is dismissed confirming the concurrent finding of the Courts below. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The District Munsif
Gobichettipalayam

2. The Principal Subordinate Judge
Gobichettipalayam

3. The Record Keeper
V.R. Section
High Court
Madras.

1 cc to Mr. N. Manokaran, Advocate Sr.No.38315

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