

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.225/2017

1.Vasantha
2.Illayaraja

... Appellants/Plaintiffs

Vs.

1.Cheif Engineer (LA),
Neyveli Lignite Corporation
Neyveli-1.
2.The Special Tahsildar (L.A-III)
Neyveli Lignite Corporation,
Virudhachalam Taluk, Neyveli-2.
3.Kamalam.
4.Kanagarani.
5.Panchatcharam.
6.Pattabiraman.
7.Rajakumari.
8.Shanthi.
9.Jaya.
10.Saritha.

... Respondents / Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.3 of 2014 dated 29.01.2015 on the file of the learned Sub Judge, Neyveli, confirming the Decree and judgment passed in O.S.No.256 of 2004, dated 17.04.2012 on the file of the learned District Munsif Cum Judicial Magistrate, Neyveli, Cuddalore District.

For Appellants : Mr.R.Margabandhu

JUDGMENT

The plaintiffs, who lost before the Courts below, are the appellants herein.

2 The appellants/plaintiffs had filed OS.No.256/2014 on the file of the court of District Munsif Cum Judicial Magistrate, Neyveli, against Rangasamy and the respondents 1 & 2 herein, praying for judgment and decree to declare that they are the lawful owners of Plot no.88, Indira Nagar, Alternate Scheme, Neyveli along with yielding trees and also for permanent injunction, restraining the 1st defendant or his agents, servants or mens from interfering with the peaceful possession and enjoyment of the same and also for the cost.

3 The plaintiffs would aver among other things that the 1st plaintiff was owner of the portion of the property in Periyakurichi Village in S.No.215/3C and the said lands were acquired under Award No.4/1997 and on account of the acquirement of the lands, the suit property was allotted in favour of the 2nd plaintiff on 29.07.1996 from that date onwards, they remain in possession and also put up superstructures for enjoying the basic amenities. It is further averred by the plaintiffs that the 1st defendant, who has no right whatsoever in respect of the suit property, suddenly started interfering with their possession and enjoyment on 20.06.2004 and subsequently, the 1st defendant died and therefore his legal representatives are the defendants 4 to 11. It is the grievance of the 1st plaintiff that though he has been allotted an alternate land bearing Plot no.88 by virtue of acquisition of the lands belonging to 1st defendant, after the demise of the 1st defendant, his legal representatives are interfering with the peaceful possession and enjoyment of the plaintiffs without due course of law and therefore, filed the above said suit.

4 The 1st defendant has filed the written statement, refuting the averments made in the plaint and denied the averments that the 2nd plaintiff was allotted Plot no.88 on 29.07.1996 and thereafter put up structures for enjoying the basic amenities and would contend that the plaintiffs are not having any cause of action to file the suit and therefore, prays for dismissal of the suit.

5 The second defendant has filed the written statement stating among other things that the 1st defendant claims to be the second daughter of Dhandapani, whose lands were acquired and she was also paid with the compensation of Rs.14075/- and though initially, a recommendation was made for giving alternate site, later on, it was found that she was not eligible to get allotment and therefore, no alternate site was allotted to her and insofar as the suit property is concerned, it has been allotted in favour of the 1st defendant and prays for dismissal of the suit.

6 The Trial Court on considering the pleadings had framed the following issues :

- i. Whether the Plaintiffs are the owners and are in possession and enjoyment of the suit property?
- ii. Whether the Plaintiffs are entitled to decree for permanent injunction ?
- iii. Whether the Plaintiffs are entitled to declaratory relief?
- iv. Whether the Court is having pecuniary jurisdiction to entertain the suit ?
- v. Whether the 1st plaintiff has acquired prescriptive right in respect of suit property ?
- vi. To what other relief, the plaintiffs are entitled to?

7 The Trial Court on 04.03.2011 had framed the following additional issues :

- i. Whether the plaintiffs are entitled to alternate relief of recovery of possession ?
- ii. Whether the plaintiffs are entitled to mense profits/ damages for use and occupation?

8 On behalf of the plaintiffs, three witnesses were examined, Exs.A1 to A29 were marked and on behalf of defendants, DW1 to DW3 were examined and Exs.B1 to B13 were marked.

9 The Trial Court on consideration of pleadings and on appreciation of oral and documentary evidences, had dismissed the suit vide Judgment and decree dated 17.04.2012 and challenging the legality of the same, the plaintiffs filed an appeal in A.S.No.3 of 2014 and also filed an IA.Nos.23 of 2014 and 33 of 2014 for reception of additional documents.

10 The Lower Appellate Court, insofar as the petitions filed for reception of additional documents, found that the documents sought to be received are not required for adjudication of the appeal and that the documents have also been belatedly filed and therefore, dismissed both the petitions.

11 The Lower Appellate Court, on going through the materials, had formulated the following points for determination :

- i. Whether the IA.Nos.24 & 33 of 2014 filed for reception of the additional documents are to be allowed or not?

ii. Whether the appeal filed by the Appellants/Plaintiffs is to be allowed?

iii. To what other relief the appellant / Plaintiffs are entitled to?

12 The Lower Appellate Court found that with regard to the suit property, both parties did not file any registered documents and therefore Exs.B1 and B2 assume importance. The Lower Appellate Court found that the Plaintiffs did not substantiate their claim as to the allotment of Plot No.88, as per the records maintained by the official defendants and they have not file any documents also. Insofar as the claim made by the 1st defendant that the suit property has been allotted to him, Ex.B1-Plot Allotment Register and Exhibit B2-list of beneficiaries, have been marked and the Assistant Principal Manager who was employed in the office of the 2nd defendant, was examined and as per his evidence, it has been proved that the 1st defendant has been allotted with the suit property and he is the owner of the property. The Lower Appellate Court further found that the Appellants / Plaintiffs did not substantiate their case as to the incorporation of their names as beneficiaries in respect of Plot No.88 and the said entry has been clandestinely removed.

13 The Lower Appellate Court further found though the Appellants / Plaintiffs would contend that the documents have been fabricated to help or advance the case of the 1st defendant, there is no specific plea either in the plaint or in the evidence adduced on behalf of the Plaintiffs. Insofar as the Ex.A26-Family card marked on behalf of plaintiffs to prove that the address given in the said document is referable to Plot No.88. The Lower Appellate Court found that the said document came into being after the filing of the suit and Ex.B12-Sworn affidavit dated 25.06.1998 would also substantiate the case of the 1st defendant and that he was allotted with Plot No.88. The Lower Appellate Court also recorded the findings of the Plaintiffs were never in possession of the property and though they claim that they have put up superstructures for the purpose of enjoyment of basic amenities, they have filed any planning permission or other tenable documents. Thus, the Lower Appellate Court has reached the conclusion that the findings rendered by the Trial Court warrant no interference and therefore, dismissed the appeal vide impugned Judgement and decree dated 29.01.2015 and making a challenge to the same, the plaintiffs had filed this Second Appeal.

14 In the memorandum of Grounds of Second Appeal, the following substantial questions of law are raised:-

i. Whether Ex- B2 is not a tampered document and whether DW1 has not given false evidence?

ii. Whether the Courts below were right in holding that plot No.88 was allotted to Rengasamy. Since Exhibit - B2 patently tampered and fabricated ?

15 Mr.R.Margabandhu, learned counsel for appellants/ plaintiffs has drawn the attention of this Court to the Judgments rendered by the Courts below and would submit that while DW1 was in box, a slip indicating allotment of the suit property in favour of the Plaintiffs was produced and since he denied the same, it was not marked and would further add that Ex.A26-Family Card / Ration Card issued by the Civil Service Department would clearly indicate that the Plaintiffs and their family members are residing in Plot No.88 - suit property and the Lower Appellate Court has not properly appreciated Exs.B1 & B2 as well as the testimony of DW1. It is further submission of the learned counsel appearing for the appellants / plaintiffs that the appellants, by examining two other witnesses and also marked overwhelming documents, had probablised their case and would add that relevant records have been tampered with to help and assist the 1st defendant and without recourse to law also, the appellants/plaintiffs have been dispossessed and prays for entertainment of the Second Appeal.

16 This Court has paid its best attention and anxious consideration to the submission made by the learned counsel appearing for appellants / plaintiffs and also gone through the impugned Judgments passed by the Courts below.

17 DW1 is an Official working in the office of the 2nd defendant and he is not has no axe to grind against the plaintiffs / appellants. The plaintiffs came forward to file the suit for declaration that they are the owners of the suit property and also for permanent injunction restraining the defendants to interfere in their peaceful possession and enjoyment of the suit property and it is a well settled position of law that the plaintiffs in order to succeed, will have to stand on their own pleadings and probablise their case. As rightly found by the Courts below, the plaintiffs did not mark any documents with regard to the allotment of the suit property in favour of the 1st plaintiff. DW1 in the course of his testimony would depose that as per the Exs.B1 and B2, the suit property has been allotted in favour of the 1st defendant and though the name of the 1st plaintiff was initially recommended, later on it was found that as per norms he was not eligible and therefore his name has been omitted.

18 The learned counsel appearing for appellants / plaintiffs has also produced the testimony of DW1 and this court has also gone through the same and finds that the said witness had withstood the rigor of cross-examination and nothing useful was elicited in favour of the appellants / plaintiffs. It is the further submission of the learned counsel for appellants that a slip was given with regard to the allotment of plot and the said document was also produced when DW1 was in the box and since he has denied, it could not be marked and however, the genuineness of Ex.A26-family card / ration card cannot be disputed for the reason that it was issued by the Civil Supplies Department, wherein the address has been given as the suit property.

19 Admittedly, the said document came into being after the filing of the suit and no additional plea has been raised with regard to the said document. The concerned Department, who had issued the said document, has not been arrayed as a defendant and no official from the said Department has been examined as a witness. Therefore the Lower Appellate Court has rightly held that the said document came into being after the filing of the suit and the same need not be considered. In the considered opinion of the Court, in the absence of any tenable evidence to the allotment of the suit property in favour of the plaintiffs and coupled with the testimonies of DW1 and Exs.B1 and B2, the records which are maintained by DW2 in the normal course of business, this Court is of the view that the findings rendered by the Courts below for negating the relief sought for by the appellants / plaintiffs, do not warrant any interference.

20 The points urged by the learned counsel for appellants / plaintiffs have been considered and answered by the Courts below and there are no substantial questions of law arise for consideration in the second appeal.

21 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgement and decree dated 29.01.2015 made in A.S.No.3 of 2014 on the file of the Court of the Sub-Judge, Neyveli. However, there shall be no order at costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rka/sk
To

1.The Sub Judge
Neyveli.

2.The District Munsif cum Judicial Magistrate
Neyveli, Cuddalore District.

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