

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 21.09.2017	Date of Pronouncing Judgment 24.11.2017
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CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

SA.No.509 of 2017 and
CMP.No.12203 of 2017

Salendra Ammal (died)

- 1 Thirupuam Ammal
- 2.Sakunthala Ammal
- 3.Selvambal
- 4.Krishnaveni Ammal
- Arockiyamary(died)
- 5.Umadevi
- 6.Jainey
- 7.Amudha
- 8.J.Irudayaraj
- 9.J.Anandraj
- 10.J.Thomas
- 11.J.Vallabadoss

...Appellants

Vs.

- 1.The Collector,
Villupuram,
Villupuram District
- 2.The Thasildhar,
Villupuram,
Villupuram District
- 3.The Divisional Engineer,
National Highways,
Villupuram

...Respondents

PRAYER:

The Second appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree in AS.No.66 of 2011 dated 30.01.2017 on the file of the learned I Additional Subordinate Judge, Villupuram confirming the Judgment and Decree

in O.S.No.347 of 2007 dated 25.02.2011 on the file of the Additional District Munsif, Villupuram

For Appellants : Mr.S.Muthaiah for
Mr.N.Suresh

ORDER:

The brief facts of the case is as follows:

The appellants / plaintiffs have filed a suit in OS.No.347 of 2007 before the Additional District Munsif, Villupuram for permanent injunction. According to the plaintiffs, the plaintiff while in possession and enjoyment of the suit property for more than 50 to 60 years, the Highways Department attempted to demolish the house of the plaintiff. Hence, the plaintiff has filed a writ petition in WP.No.16017 of 1994 and this Court was disposed the writ petition by directing the defendants to inform the actual classification of land in the occupation of the plaintiffs. The said direction was not complied with by the defendants / respondents. Therefore, the plaintiffs / appellants have filed the present suit. The respondents / defendants have filed written statement stating that the plaintiffs already filed a writ petition before this Court. Therefore, the present suit is barred by res judicata. According to the respondents / defendants, the suit property is belonged to National Highways Department. By considering the oral and documentary evidence, the trial court dismissed the suit by holding that the appellants / plaintiffs already filed a writ petition in WP.No.16017 of 1994 and the order copy was marked as Ex.33. The aforesaid writ petition was disposed of with liberty to the appellants / plaintiffs to establish the suit property as Natham pooramboke. The said order was pronounced in the year 11.07.2001. Till the notice issued by the defendants under Ex.A34 on 11.05.2007, the appellants / plaintiffs have not taken any steps to approach the authority. Challenging the said Judgment and Decree passed by the trial court, the appellants / plaintiffs filed an appeal in AS.No.66 of 2011 before the learned I Additional Subordinate Judge, Villupuram. The Appellate court dismissed the appeal and confirmed the order passed by the trial court. Challenging the aforesaid Judgment and Decree, the appellants / plaintiffs have filed the Second appeal before this Court.

2. The learned counsel for the appellants would submit that the appellants / plaintiffs have been in possession and enjoyment of the suit property and to prove the possession, the appellants / plaintiffs have filed Exs.A1 to A36 before the trial court. According to the learned counsel for the appellants, question of res judicata in the present case does

not arise, when the High Court has directed the defendants / respondents to inform the actual classification of the land. Therefore, the appellants / plaintiffs are entitled to get adverse possession as prayed for in the suit. The question of law was framed and there is no denial in the pleadings as to the classification as "Natham pooramboke" as challenged by the plaintiffs in the pleadings, and the respondents / defendants have not produced any documents to show that the property belongs to the National Highways.

3. According to the appellants both the courts have not considered the case of the appellants, when the plaintiffs have proved possession and enjoyment of the properties by way of oral and documentary evidence. Therefore, the appellants have filed the Second appeal before this Court.

4. Heard, the learned counsel for the appellants and perused materials available on record.

5. The appellants / plaintiffs have filed a suit for permanent injunction against the respondents / defendants. In the averments of the plaint, the appellants / plaintiffs have stated that at the time of disposal of the writ petition in WP.No.16017 of 1994, the defendants / respondents were directed to inform the actual classification of the land in the occupation of the plaintiffs. Without complying the said direction passed in the writ petition, the respondents / defendants have interfered with the possession of the suit property. Therefore, the plaintiffs have filed the present suit.

6. The appellants have marked the order passed by this Court in WP.No.16017 of 1994 as Ex.33, the appellants / plaintiffs' houses were demolished by the respondents on 20.08.1994 and after that put hut in it and prays for compensation. They claim that the property is Natham pooramboke. But this Court has dismissed the writ petition by stating that the removal of encroachment have taken pursuant to the provisions of the Land Encroachment Act. However liberty was given to the petitioners to establish the suit property as Natham Poromboke. Further, if any such request is made, then the respondent has to pass necessary orders. On perusal of the Ex.A34 filed by the appellants / plaintiffs it is proved that the notice was issued only after six years which is contrary to the pleadings of the plaintiffs. The appellants have filed another suit in OS.No.60 of 2004, without disclosing the said material fact, the appellants / plaintiffs have filed the present suit. Hence, the appellants / plaintiffs have approached the court with unclean hands. By considering the above fact, suit was dismissed as barred by res judicata. The Appellate court has rendered the findings that the plaintiffs

have suppressed material fact of demolition of their houses by defendants after issuance of notices to them. Without disclosing the fact, the plaintiffs have filed the suit for permanent injunction by contending that without following due process of law, without issuing notice, the defendants have demolished their houses. Further, it was held by the Appellate court that there is already heavy traffic in that area, which is also prone to higher risk of accidents. Further, Appellate court has considered the safety of the general public and the suit property is situated in National Highways prone to accidents. Both the courts have considered the facts and dismissed the suit. The said findings of both the courts clearly show that the appellants / plaintiffs have filed the writ petition before this Court. Pursuant to the said order passed by this Court, the appellants / plaintiffs have not approached the authority to establish that the suit property is classified as Natham pooramboke. Further, it is seen from the findings of the courts below that the plaintiffs have already filed a suit in O.S.No.60 of 2004 before the Principal District Court, Villupuram. The said fact was not disclosed by the appellants / plaintiffs in the present suit. Without disclosing the notice issued by the department and subsequently, property was demolished by the department and prayed for compensation in the aforesaid writ petition, has not truly set forth in the plaint. The appellants / plaintiffs have already challenged the notice issued by the defendants and the same was dismissed by this court on merits. After perusal of the said order, both the courts have dismissed the suit as well as appeal suit filed by the plaintiffs / appellants.

7. At this juncture, it is appropriate to extract the decision of the Hon'ble Supreme Court in the case of S.P.Chengalvaraya Naidu (Dead) ... Vs Jagannath By L.Rs. And others... reported in AIR 1994 SC 853, wherein the Hon'ble Apex Court has held that the case of the person who approaches the court with unclean hands may not be entertained and the operative portion of the order is as follows:

"8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered

release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as the opposite party".

8. Therefore, from the facts, it is clear that the appellants / plaintiffs have misrepresented the facts of the order passed by this Court in WP.No.16017 of 1994 and filed the present suit. The appellants have not truly set forth the said facts in the suit. Hence, the appellants have approached the court with unclean hands. In the light of the above, appellants / plaintiffs are not entitled to get the relief of permanent injunction. Hence, the findings of both courts dismissing the suit is hereby confirmed and consequently, there is no question of law involved in the present Second appeal. Hence, the Second appeal deserves to be dismissed in limine.

9. In view of the facts and circumstances of the case, the Second appeal fails and accordingly, the Second appeal stands dismissed with cost of Rs.1,000/- (Rupees One Thousand only) payable by the appellants / plaintiffs to the third respondent department. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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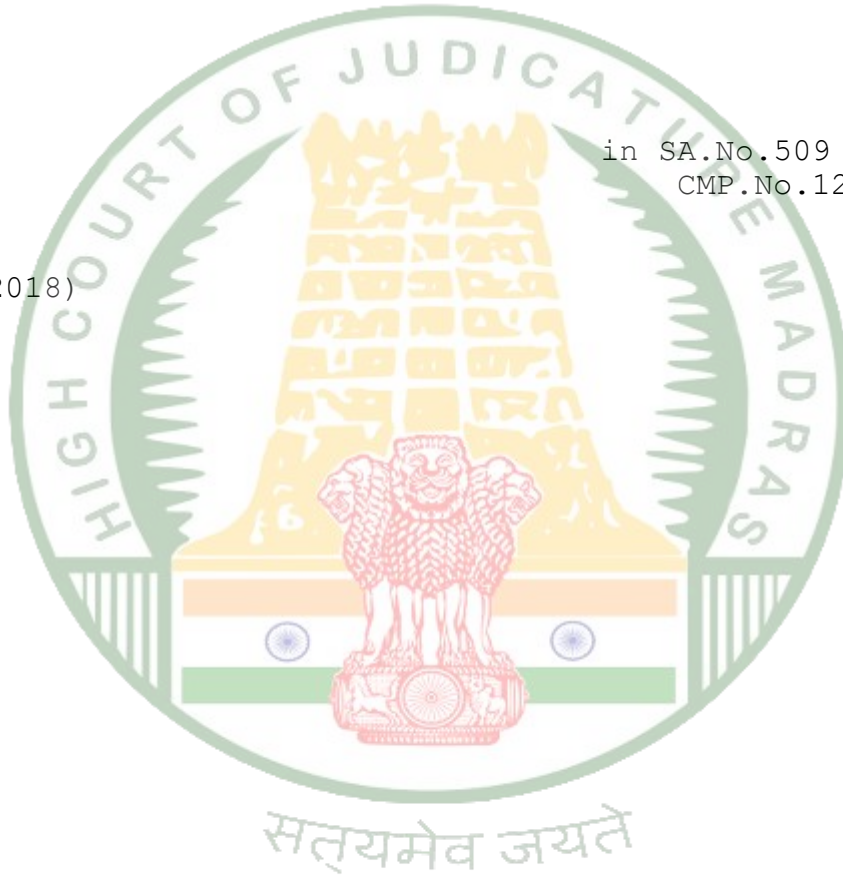
1. The learned I Additional
Subordinate Judge,
Villupuram

2. The Additional District Munsif,
Villupuram

+1 CC to Mr.N. Suresh, Advocate sr 84102.

in SA.No.509 of 2017 and
CMP.No.12203 of 2017

GJ(CO)
SP(17/01/2018)



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