

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1100 of 2014
and M.P.No.1 of 2014

1. Tamil Nadu State,
Rep. by the District Collector,
Nagapattinam,
having office at South Palpannaicherry,
Nagapattinam Town, Taluk and District Munsifi.
 2. Revenue Divisional Officer,
Nagapattinam District,
having his office at
Nagapattinam Kadambadi,
Nagapattinam Town, Taluk and District Munsifi.
... Appellants/Defendants
- Vs.
- Thirugnanasabandam Pillai
... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.03.2012 in A.S.No.53 of 2011 on the file of the Subordinate Court, Nagapattinam, against the judgment and decree dated 26.08.2010 in O.S.No.324 of 2006 on the file of the District Munsif Court, Nagapattinam.

For appellants : Mr.T.Jayarama Raj, Govt. Advocate
For respondent : Mr.M.S.Palanisamy

JUDGMENT

The State has filed this Second Appeal challenging the judgment and decree of the first appellate Court, dated 08.03.2012 in A.S.No.53 of 2011 (Sub-Court, Nagapattinam), against the judgment and decree of the trial Court, dated 26.08.2010 in O.S.No.324 of 2006 (District Munsif Court, Nagapattinam).

2. The respondent-plaintiff has filed the suit contending that he took lease of 5 acres 69 cents of land in toto, in S.F.Nos.119/2 and 120/1 in Vadakathi Circle, Vangaramavadi Village, which belongs to Thiruvaduthurai Atheenam by executing

lease deed in favour of the said Atheenam on 10.11.1962 and he is cultivating on the said land. He planted Indian Ash tree (Vaagai Tree) and two other tiny Indian Ash trees, one Sirissa tree (Odhiya Tree), four date palm trees (Eecham tree) and one small Indian Mulberry (Nunaa Tree), and as these trees became hindrance for cultivation of the land, on 07.05.2006, he obtained permission from the Inspector of the said Atheenam to cut those trees, for which, the Village Administrative Officer did not raise any objection. Thereafter, the VAO complained against the plaintiff stating that he had cut those trees from poramboke land, based on which, the second defendant inspected the spot and concluded that the plaintiff cut the trees on the poramboke land, leading to threat of initiation of criminal proceedings against the plaintiff. Subsequently, as calculated, the plaintiff was directed to pay the sale value of the trees in total in a sum of RS.82,491/-. It is further alleged by the plaintiff that the fixation of sale value by the second defendant is not as per the guideline value of the Government, as the second defendant ought to have fixed the value only after getting a surveyor's report. The Government did not plant those trees and no numbers were assigned to them. Thereafter, RTI (Right to Information Act) proceedings were going on between the parties. Hence, the plaintiff has filed the suit praying for declaration that the order passed by the second defendant on 11.07.2006 fixing the value of the trees cut, is not valid, contrary to law, ultra-vires and opposed to principles of natural justice and also for consequential permanent injunction restraining the defendants from collecting any amount from the plaintiff based on the said order of the second defendant.

3. The defendants resisted the suit and admitted that the lands belong to Atheenam (Mutt). The cut trees were situated in 'Vaikkal poramboke' and 'tank poramboke' and hence, the trees belong to the Government. Further, on 21.06.2006, the plaintiff also cut 20 Sirissa (Vaagai) trees and Form-C was also issued. Since the plaintiff refused to accept the guilt, the defendants made arrangements to initiate criminal action before Keevalur Police Station, after which only, the plaintiff accepted the guilt of cutting the trees of Government poramboke lands and also accepted to pay the fine. So as to avoid penalty, he has filed the suit. It is further alleged by the defendants that only with the help of Taluk Surveyor, the defendants ascertained that the trees belong to the Government and are in Government poramboke lands. If at all the trees are in cultivable lands, the plaintiff would have taken steps for measurement of lands, but failed in doing so, and admitted the guilt on 23.06.2006 before the Revenue Inspector, after which, the Tahsildar and the Revenue Divisional Officer inspected and valued the trees. Usually, the Revenue Department will not assign the numbers for the trees and the value of the trees is fixed as in the case of forest offences and penalty levied. The plaintiff paid the

penalty on 27.07.2006. Hence, the defendants pray for dismissal of the suit.

4. On a consideration of the oral and documentary evidence, the trial Court partly decreed the suit by granting the relief of declaration and rejecting the relief of permanent injunction. Further, the trial Court directed the defendants to pay a sum of Rs.58,968/- to the plaintiff with regard to the value of the tress cut by the plaintiff. Challenging the same, the Government (appellants-State) preferred First Appeal and the first appellate Court allowed the appeal, modifying the judgment and decree of the trial Court, by directing the plaintiff to pay the Court fees in a total sum of Rs.58,968/- and in other respects, the judgment and decree of the trial Court were confirmed. Challenging the said judgment and decree of the first appellate Court, the State has preferred this Second Appeal.

5. While admitting the Second Appeal on 18.11.2014, this Court framed the following substantial questions of law for consideration:

(i) Whether the suit is maintainable without issuing notice under Section 80 of the Civil Procedure Code ?

(ii) Whether the suit is maintainable without paying the Court fees, as the suit has been filed seeking declaration and challenging only the notice and not the amount as claimed in the notice ? and

(iii) Whether the suit is maintainable when the defendant has admitted and paid the money only to evade the criminal liability ?

6. Heard both sides and perused the materials available on record.

7. It is a suit for declaration and permanent injunction. It is partial concurrent judgments. According to the appellants herein, who are the defendants in the suit and the appellants in the First Appeal, the suit itself is not maintainable, as the relief sought for by the plaintiff is only for declaration that the order passed by the second defendant is incorrect and illegal and that he has not sought for the consequential relief. According to the defendants, the trees have been cut by the plaintiff from the Government poramboke land and that he has paid the amount within three days from the date of filing of the suit and that the plaintiff is not entitled to the relief sought for, more particularly, the relief of refund of amount, as the consequential relief has not been made.

8. It is further contended that in the written statement, a specific plea has been taken that 20 trees were cut by the respondent/plaintiff in S.No.120/1, 120/2 and 121/8. Since the amount has been determined and having paid the amount, the

relief sought for by the respondent/plaintiff is not at all maintainable.

9. The respondent/plaintiff would submit that he has been threatened to pay the amount, failing which, criminal action would be taken and arrest would be made, fearing which, he has duly paid the amount, and thereafter, the plaintiff filed the present suit for declaration. It is submitted that even though he has not sought for the consequential relief, it is the duty of the Government to pay the amount, which is collected and that having lost before the two forums, it is not correct on the part of the Government to retain the money, more particularly, after the orders of the Courts below. Learned counsel for the respondent/plaintiff further submitted that no question of law is involved in this matter and hence, this Court may not interfere with the judgment and decree of the first appellate Court.

10. In reply, Mr. Jayarama Raj, learned Government Advocate appearing for the appellants/Government submitted that the plaintiff pleaded the relief and agreed to pay the amount as determined by the Government and that the Government has passed the order fixing a sum of Rs.82,491/- as the value of the trees cut.

11. With regard to the first substantial question of law relating to notice under Section 80 CPC, it is relevant to quote Section 80 CPC, which reads as follows:

"Section 80 : Notice: (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government including the Government of the State of Jammu and Kashmir or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of--

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

12. Even though Section 80 CPC contemplates that notice has got to be given to the Government and after waiting period mentioned therein, the suit can be filed in terms of Section 80 (2) and (3) therein, the suit can be instituted by waiving the period of notice, if there is any urgent or immediate relief is to be sought against the Government.

13. In the case on hand, the plaintiff was cornered by threat of initiating criminal action and he has paid the amount within three days from the date of initiation of the suit. Since, to avoid criminal prosecution, and as there was urgency to get back the amount which had been duly paid by him in excess, and on a reading of the entire provisions under Section 80 CPC, this Court is of the view that the suit is maintainable. The first substantial question of law is answered accordingly.

14. With regard to the third substantial question of law, it is to be noted that the suit is maintainable, as the plaintiff had paid the amount under threat. Even assuming that the plaintiff has paid the amount on his own volition after three days from the date of filing of the suit, there is nothing wrong in seeking the relief mentioned in the plaint. The third substantial question of law is answered accordingly in favour of the plaintiff.

15. From the pleadings, it is very clear that the issue revolves around with regard to the fixation of the value for the trees cut by the plaintiff. By detailed judgment, the first appellate Court held that the second defendant fixed the value of the trees based on Ex.B-16, taking note of Ex.B-1 for cutting of the trees, which alone is considered to be correct and that there is no infirmity in the findings of the first appellate Court and even though the consequential prayer has not been sought for, may be on technical grounds, this will not give right to the Government to retain the money paid by the plaintiff. Based on the findings of fact, the first appellate Court came to the conclusion that the amount determined based on Exs.B-1 and B-16, cannot be interfered with.

16. Further, the first appellate Court dealt with the second substantial question of law framed herein in proper perspective. But, with regard to the direction issued by the first appellate Court, directing the plaintiff to pay the Court fees of Rs.58,968/-, this Court finds that the trial Court, taking into consideration the factual aspects of the matter, rightly directed the defendants to pay the said amount of Rs.58,968/- to the plaintiff, which is legally sustainable. Hence, the direction of the first appellate Court directing the plaintiff to pay the said amount as Court fees, alone is set aside and the direction of the trial Court directing the defendants to pay the said sum to the plaintiff, is confirmed. The second substantial question of law is answered accordingly.

17. With the above observations and direction, the Second Appeal is disposed of. No costs. The Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(csviii)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge, Nagapattinam.

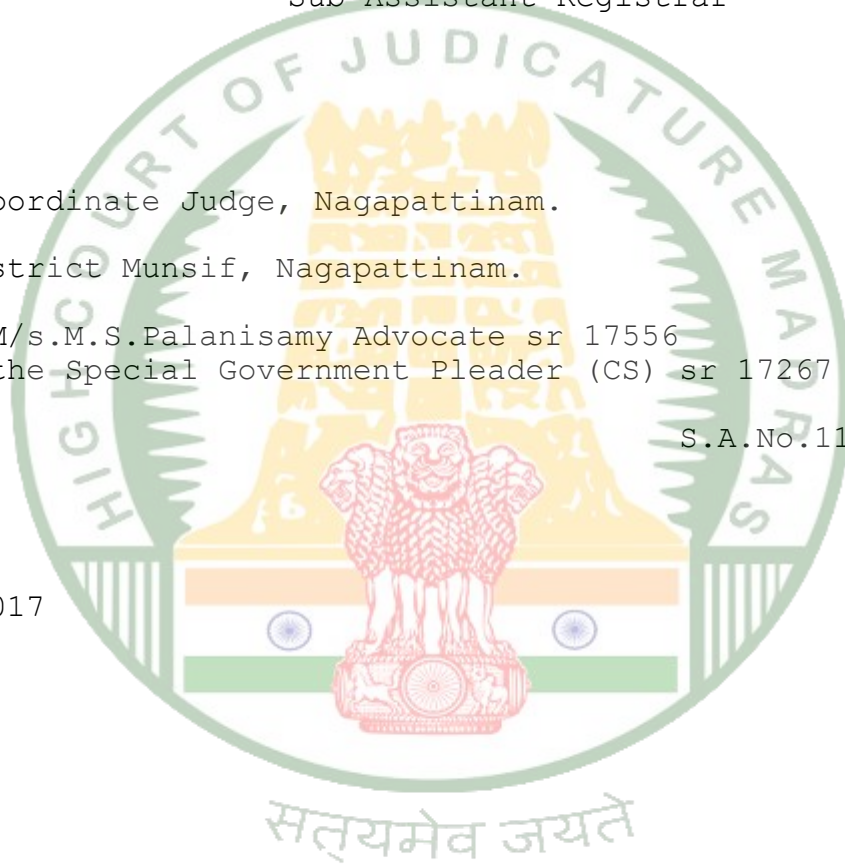
2. The District Munsif, Nagapattinam.

+1 cc to M/s.M.S.Palanisamy Advocate sr 17556

+1 cc to the Special Government Pleader (CS) sr 17267

S.A.No.1100 of 2014

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