

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.707 of 2017
and C.M.P.No.18106 of 2017

1.Tamil Nadu State Government,
Through The District Collector,
Nagapattinam.

2.The Tahsildar,
Mayiladuthurai. ... Appellants/Plaintiff

-Vs-

Nagarajan ... Respondent/Defendants

PRAYER: Second Appeal filed under Section 100 C.P.C to set aside the Judgment and Decree dated 23.03.2015 made in A.S.No.63 of 2014 on the file of Principal Sub Court, Mayiladuthurai, confirming the Judgment and Decree dated 17.02.2011 made in O.S.No.9 of 2010 on the file of Principal District Munsif, Mayiladuthurai.

For Appellants: Mr.M.Venugopal
Special Government Pleader

O R D E R

The defendants 1 and 2 are the appellants herein, who are the State Machinery.

2. The suit is filed for declaration that the demolition of the plaintiff's Eastern compound wall and the G.I shed put up by the defendants are illegal and to direct the defendants to pay a sum of Rs.65,000/- as compensation and Rs.10,000/-for causing mental agony to the plaintiff.

3. The case of the plaintiff is that the suit property belonged to him, which was a dry land. One Mr.Jainub Gani encroached upon the Channel and bund on the North of the plaintiff's property, put up a thatched hut and indulged in illegal actions. Hence, the plaintiff complained to the Panchayat Board, Tahsildar and Revenue Divisional Officer, Mayiladuthurai to remove the encroachment and allow the public to live in peace. However, no action was taken. On the petition

given by the plaintiff, the Tahsildar was chided by the RDO and others. Enraged by the strictures issued by the higher authorities, the Tahsildar, Mayiladuthurai ordered removal of the Eastern compound wall of the plaintiff. The request made by the plaintiff and his wife went in vain. The compound wall to the length of 33 feet including the iron gate, was demolished with the help of JCB machine. When the plaintiff's compound wall is in his land in Survey R.S.No.221/11 and there is no encroachment, the appellants had, without any legal basis, had deliberately demolished the compound wall damaging the iron gate. Hence, after issuing notice, the suit had been filed claiming compensation of the act of the second defendant.

4. Before the Trial Court, the plaintiff examined himself as PW-1 and three more witnesses were examined as PW-2, PW-3 and PW-4 and Exhibits A1 and A7 were marked. On the side of the defendants, Mr. Balasubramanian (Village Administrative Officer) was examined as DW-1 and one more witness was examined as DW-2 and no documentary evidence was marked on the side of the defendants and EX.C1 to C4 were marked.

5. Based on the above pleadings, the trial Court had decreed the suit. On appeal by the defendants in A.S.No.63 of 2011, the judgment and decree of the trial Court was confirmed by dismissing the appeal. Aggrieved by the same, the above second appeal has been filed by the defendants.

6. Heard the learned Special Government Pleader appearing for the appellants and perused the materials available on record.

7. Though several defences have been taken by the appellants, the Courts below have concurrently held that the plaintiff is entitled to a decree. The appellants had not established that the plaintiff had encroached upon the Government land. Even presuming that there was an encroachment, the Government ought to have issued notice to the plaintiff under the Tamil Nadu Land Encroachment Act 3 of 1905. In the absence of any notice, there is no opportunity given to the plaintiff to establish that there was no encroachment by him. Hence, it is concurrently held that the act of the appellants is arbitrary and illegal. Therefore, when the act of demolishing the compound wall is admitted, the plaintiff is entitled to the compensation claimed. Though a sum of Rs.75,000/- was claimed, the trial Court had granted Rs.48,000/- as damages and Rs.5,000/- for the mental agony caused including the costs of the suit. The said decree is confirmed in appeal. As this Court finds no infirmity in the said judgment and decree of the lower Court, as confirmed by the Appellate Court, the same does not warrant any interference by this Court and there is no

question of law, much less, substantial question of law arising for consideration in this Second appeal.

8. Accordingly, the Second appeal is dismissed confirming the Judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iv)

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Sub Assistant Registrar
srn

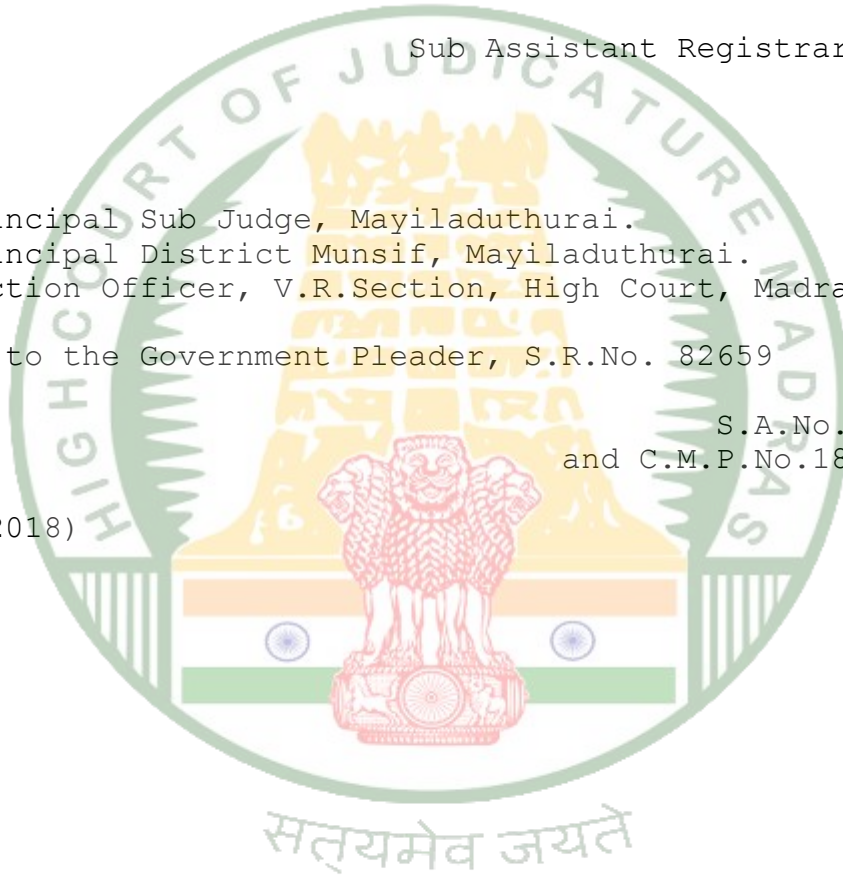
To

1. The Principal Sub Judge, Mayiladuthurai.
2. The Principal District Munsif, Mayiladuthurai.
3. The Section Officer, V.R.Section, High Court, Madras.

+1cc to the Government Pleader, S.R.No. 82659

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