

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.01.2017

Date of Verdict : 31.01.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 501 of 1999

1. Duraisamy
2. Ramakrishnan
3. SelvarajAppellants

Vs.

1. The State of Tamil Nadu
rep. by its District Collector,
Erode District, Erode - II
2. The Special Tahsildar (ADW)
Erode - II.
3. P.ShanmughanathanRespondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.09.1998 made in A.S.No.52 of 1998 on the file of the Sub Court, Bhavani confirming the judgement and decree dated 26.02.1998 made in O.S.No.316 of 1995 on the file of the Principal District Munsif Court, Bhavani.

For Appellants : Mr.T.Murugamanickam

For Respondents: No appearance

JUDGMENT

The plaintiff is the appellant. The second appeal is filed against the concurrent findings of the Courts below, in the suit filed for injunction restraining the respondent from evoking the plaintiff without following due process of law.

2. The case of the plaintiff is that :- The suit property originally belongs to one Muthayammal, W/o. Ramasamy Pooshari. The father of the plaintiff became a cultivating tenants under her and he also constructed a house in the suit land. He has improved the land by installing oil engine and

enjoying it continuously by paying rent and tax. While so after the death of his father Kavery Gounder, the plaintiff's mother Kuttiammal became lessee of the suit property and her name is found place in the tenancy Register dated 01.11.1972. When the possession of the plaintiff were attempted to be disturbed by the land owners, a suit was filed by the plaintiffs which was decreed. Against that first appeal was filed and in the first appeal the judgment of the trial Court was set aside and against which second appeal was filed in S.A.No.777 of 1977 and the same was allowed in favour of the plaintiffs. While so, the possession of the suit property was acquired by the Adi Dharavidar Welfare Department, but possession is still with the plaintiffs. The third defendant is alleged to have purchased the suit property from one Muthayammal in the year, 1987 and he had sold away the property to the first defendant on 13.02.1995. However, so far as the possession of the property is concerned, neither the possession was given to the defendants nor the defendants attempted to evict the plaintiffs.

3. The first defendant has filed a written statement which is adopted by the second defendant. According to the first defendant, he is not a party to the earlier proceedings in S.A.No.777 of 1977. The plaintiffs are not a registered cultivating tenants. The said Muthayammal has sold her share in R.S.803/2B to the third defendant Shanmuganathan on 22.10.1987. The third defendant has sold away the said property to the Government through private negotiation. The possession was also handed over on 10.04.1985. The residential portion and the Well enjoyed by the plaintiffs have been bifurcated under R.S.803/2B2B (0.04.0) and 803/2B2C (0.05.5) and the same was taken possession by the Adi Daravidar Welfare Department which is not adopted by the plaintiffs. Therefore, they are not entitled for any injunction, since the defendants have already taken possession of the suit property.

4. The trial Court after examining the witnesses and exhibits including the Advocate Commissioner's Report and Sketch, dismissed the suit. Aggrieved by that, the plaintiffs preferred a first appeal before the Sub Court, Bhavani. After the re-appreciation of evidence, the first appellate Court, relying upon Ex.B.9, held that the possession of the suit property has already been taken by the Government and there is no merits in the appeal. In support of the said conclusion the first appellate Court has relied upon the Ex.B.11 the order of the Hon'ble High Court in W.P.No.1060 of 1994. Challenging the same, the present second appeal has been filed.

5. At the time of admission, the following points for considering have been formulated by this Court :

1. When the third respondent had not produced any document to prove ownership of the suit property, whether he was competent to effect a transfer?
2. When the Government has not produced any document evidencing purchase by private negotiation, whether the Courts below were justified in holding that possession had been taken in consequence of such purchase?
3. Where the suit property is in possession of recorded cultivating tenants, whether any sale by the land owner can affect the existing possessory right of the tenants?

6. The learned counsel for the appellants referring to Exs.A.9 and A.19, documents related to delivery of possession, contended that the Government has not produced any document to substantiate the claim that the suit property was purchased by them through private negotiation from the lawful owner and even if there is private negotiation, it is not a valid one, since such a negotiation is not with the consent of the plaintiffs who are one of the parties interested in the land sought to be acquired. If there is a registered cultivating tenants, without considering their objections and without provides him with adequate compensation for loss of possession no acquisition process has legs to stand. The specific case of the appellants is that having recognised parties in possession, there cannot be any negotiation or acquisition without involving them in the proceedings. Obviously in the private negotiation alleged to have taken place, the possession of the property being taken over by the Government is not with the consent or knowledge of the appellants.

7. The learned counsel for the appellants further drew the attention of the Court that present suit was filed on 17.04.1998 for injunction not to evict them without due process of law. Next day the Advocate Commissioner inspected the suit property and recorded that the suit property was in possession of the plaintiffs. While so, the document Ex.B.19 indicating the delivery of possession on 28.04.1995 should at the most be only a paper delivery which has no binding force. Since the acquisition is alleged to have taken place through private negotiation without involving the plaintiffs, such a proceedings cannot be a handle for the defence to evict the plaintiff who had come in possession of the property through legal process.

8. In support of his submission, the learned counsel for the appellants referred a recent judgment of this Hon'ble High Court delivered in connection with the new Land Acquisition Act and contended that the transfer certificate subsequently prepared by the Revenue Authorities in the absence of Panchanama or witness would not prove taking over of the possession and it will not lead to the presumption that the possession of the property has been taken. He also referred the following passage of the Division Bench judgment rendered in "Tamil Nadu Housing Board Vs. iGate Global Solutions Limited reported in 2016 (2) CTC 241" :-

"60. The ratio deducible from the aforesaid judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the Revenue Authorities must establish by producing some evidence, i.e., either preparation of Panchanama in the presence of the Witnesses or some other documents. The Transfer Certificates subsequently prepared by the Revenue Authorities for delivering possession of the land in question to the Housing Board in absence of a Witness or Landowner, will not be sufficient to establish the possession of the lands was taken over by the Landowners. In the case on hand, it is strongly pleaded by the learned Counsel appearing for the Private Respondent that the Landowners or their successors are continuing in possession till date. Thus, it is held that the possession of the lands in question were not taken over after passing of the Award."

9. In the light of the above judgment, if Exs.B.9 and B.19 are looked into, we find that there is no evidence for the real delivery of possession. Evidence on record shows that the plaintiffs are cultivating tenant and when there is a cultivating tenant, there must be a personal hearing and opportunity given to the appellants/plaintiffs who are the parties interested in the land acquired. In the absence of any evidence of affording opportunity to the plaintiffs before acquisition and at the time of taking possession, the findings of the Courts below are bound to be reversed and the prayer of the plaintiffs is bound to be considered. Before depriving the plaintiffs from the possession of the suit property, due process of law should be followed and the said right is guaranteed in the statute and it cannot be taken away under the carb of land acquisition proceedings. Since the defendants have no evidence

to show that opportunity of hearing was granted to the appellants and they were dis-possessed only after following due process of law, the plaintiffs are entitled for the limited relief of protection.

10. Accordingly, the concurrent finds of the Courts below are set aside and the appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Sub Court,
Bhavani.
2. The Principal District Munsif Court,
Bhavani.
3. The District Collector,
Erode District, Erode.
4. The Special Tahsildar(ADW),
Erode-II.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.T.Murugamanickam, Advocate SR.6480

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srg 14/2/2017

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