IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2017

PRONOUNCED ON : 13.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.1825 to 1827 of 2001
and
898 to 900 of 2002

S. A.No.1825 of 2001

1. The Junior Engineer,
Highways Department,
Tamil Nadu Urban Development Scheme,
Thirumangalam,
West Anna Nagar,
Chennai

2. The Secretary to Government,
Highways Department,
Fort St.George, Chennai.
Representing the State of Tamil Nadu ... Appellants

Vs.

Lakshmi ... Respondent

Prayer: Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 20.10.2000 made in A.S.No.41/2000 on the file of the IVth Additional Judge, City Civil Court, Chennai, confirming the judgment ad decree dated 29.10.1999 made in O.S.No.5796 of 1994 on the file of the XVIIIth Assistant Judge, City Civil Court.

In all appeals

For Appellants : Mr.T.Jayaramaraj,
Government Advocate (CS)

For Respondents : Set exparte

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COMMON JUDGMENT

These second appeals are directed against the judgments and decrees dated 20.10.2000 made in A.S.Nos.41, 40, 42, 37, 38 & 39 of 2000, on the file of the IVth Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 29.10.1999 made in O.S.Nos.5796, 5797, 5798, 5800, 5799 & 5795 of 1994, on the file of the XVIIIth Assistant Judge, City Civil Court.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. The case of the respondents/plaintiffs in all the appeals is briefly stated as follows:

The suit properties described in all the cases were once a harijan colony and the local people were in occupation in the suit properties for years together and accordingly, after proper verification, the revenue authorities permitted the said people to dwell without any disturbance and subsequently, the occupants of the suit properties had been given assignment of patta by the revenue authories and accordingly, the respondents, on the basis of the above said assignment of patta granted in their favour, are in lawful possession and enjoyment of the suit properties as described in the various plaints and the appellants/defendants, who are having office at the South end of Jawaharlal Nehru Salai, began to disturb the possession and enjoyment of the plaintiffs without any right and they also have no scheme for acquiring the suit properties for any public purpose and no notification or declaration of acquisition of the suit property had been issued and the revenue authorities, after proper verification have assigned the lands in favour of the plaintiffs and accordingly, the plaintiffs have erected pucca building and been in possession and enjoyment of the suit property by paying tax etc., and inasmuch as the defendants attempted to interfere with their possession and enjoyment, according to the plaintiffs, they had been necessitated to institute the suits for appropriate reliefs.

5. The case of the appellants/defendants, in all the matters, is that there is no act of interference at all by the defendants with the lawful possession and enjoyment of the plaintiffs of their properties and the entire area comprised in the several suits is village natham as per the revenue records and the block No.22, T.S.No.1 was a store shed constructed for a high level bridge across the Coovum river in 8/8 of the inner ring road, now, Jawaharlal Nehru salai, from Government

funds to store departmental materials from 1979 and the land on which the store shed had been constructed is in the full enjoyment and use of the highways department and the land area is 12149 sq.ft and the building area is 1891 sq.ft and electricity service connection had also been given to the building in favour of the defendants and on the construction of the bridge being completed, the office of ADR (H) TNUDDP, Quality control, Sub division Madras had moved to this building in 1990 and the office of the Scientist, Vehicle Emission Monitary station, Tamil Nadu Pollution Control Board, Madras-40, has been accommodated from 1992 and the said offices are still functioning in the building and it is found that the new door numbers have been given to the houses and huts in the areas and the records point out that the door number 35 has been in the possession and enjoyment of the defendants and hence, there is no act of interference on the part of the defendants as such and hence, the suits are liable to be dismissed.

6. Inasmuch as in all the above said suits, common issues were involved in respect of the suit properties and as the defendants in all the suits are one and the same and the defendants have resisted all the suits on the same set of defence, accordingly, it is noted that all the above said six suits were jointly tried and common evidence has been recorded.

7. In support of the plaintiffs case in all the suits, PW1 has been examined, Exs.A1 to A37 were marked and on the side of the defendants, DW1 has been examined, Exs.B1 to B11 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the plaintiffs case and accordingly, granted the relief sought for by them. Aggrieved over the same, the present second appeals have come to be laid.

9. At the time of admission of the second appeals, the following substantial questions of law were formulated for consideration:

S.A.Nos.1825 to 1827 of 2001

> "***a. Whether the Court below failed to note the G.O.Ms.No.1427 Revenue Department dated 11.5.1971 and G.O.No.135/Revenue Department dated 20.1.1973 and the Ex.B11.***
>
> ***b. Whether the Court below failed to take into consideration that as per the G.O. the Collector has the power to assign only 3 cents of land.***
>
> ***c. Whether the Court below failed to note that Ex.A3 is an invalid document as the assignment patta issued to the plaintiff is not***

entered in the Revenue records?

d. Whether the Court below failed to note that prior to the suit there was a subdivision in S.No.233 and the same was not carried out in the plaint schedule property and therefore the plaintiff failed to locate his area by possession and enjoyment of the property."

S.A.Nos.898 to 900 of 2001

"***a. Whether the Court below failed to note the G.O.Ms.No.1427 Revenue Department dated 11.5.1971 and G.O.No.135/Revenue Department dated 20.1.1973 and the Ex.B11.***

b. Whether the Court below failed to take into consideration that as per the G.O. the Collector has the power to assign only 3 cents of land.

c. Whether the Court below failed to note that Ex.A3 is an invalid document as the assignment patta issued to the plaintiff is not entered in the Revenue records?

d. Whether the Court below ought to have considered Ex.B6 and B7, where the land allotted to the Highways for 100 feet width?

e. Whether the Court below failed to note that prior to the suit there was a subdivision in S.No.233 and the same was not

> ***carried out in the plaint schedule property and therefore the plaintiff failed to locate his area by possession and enjoyment of the property."***

10. The suits have been laid by the plaintiffs for the relief of permanent injunction, on the footing that the suit properties as described in the various suits belonged to the revenue department and accordingly, the revenue officials, taking into consideration of the long and continuous possession and enjoyment of the suit properties by the plaintiffs and their predecessors in title over a period of time, accordingly, recognised their possession and granted assignment of patta in their favour and based on the same, it is the case of the plaintiffs that they had put up pucca super structure in the suit properties and also obtained electricity service connection and enjoying the properties and the defendants without any legal authority attempted to interfere with the their possession and enjoyment in respect of the suit properties and hence, according to them, they had been necessitated to lay the suit for appropriate reliefs.

11. Per contra, it is the case of the defendants that the suit properties and the larger area in the survey numbers concerned are village natham properties as per revenue records and according to them, the extent of land measuring 12149 sq.ft had been allotted to

them for the purpose of constructing the store shed in connection with the forming of the high level bridge across the Coovum river and accordingly, it is their case that they had put up store shed on the building area measuring 1891 sq.ft and obtained service connection and keeping the above said extent of properties in their possession and enjoyment and completed the formation of the high level bridge and thus, it is stated that the defendants are not in any manner disturbing the plaintiffs' possession and enjoyment of the suit properties as claimed in the plaint and further, it has been clearly admitted by the defendants in the written statement that different structures by way of houses and huts had been erected in and around the areas and accordingly, it is found that various persons including the plaintiffs are in possession and enjoyment of the different extent of properties in the areas in and around the super structure said to have been put up by the defendants, which fact has been clearly admitted in the defendants' written statement and therefore, it is the case of the defendants that the plaintiffs are not entitled to obtain the reliefs sought for.

12. As rightly, determined by the Courts below, based on the oral and documentary evidence produced by the plaintiffs, it is found that the revenue officials, who are the owners of the lands in dispute, recognized the possession and enjoyment of the plaintiffs in respect of

the suit properties, accordingly, granted assignment of patta in their favour and on the strength of the same, it is found that the plaintiffs have put up super structure in the suit property and also obtained electricity service connection and enjoying the same and it is thus seen that voluminous records had been placed by the plaintiffs in the matter to show that it is only they, who are in possession and enjoyment of the suit properties as described in the plaint. As above seen, the defendants as such in the written statement have only pleaded that they have not disturbed the possession and enjoyment of the plaintiffs in respect of the suit properties. However, they would claim that the revenue people had allotted a particular extent of land to them for the construction of the store shed with a view to form high level bridge across the Coovum river and accordingly, on the construction of the high level bridge, the highways department are continuing to enjoy all the said area allotted to them by the revenue people and therefore, they have not interfered with the possession and enjoyment of the plaintiffs in respect of the suit properties.

13. On a reading of the written statement, it is found that at the most, the defendants claim to be in possession and enjoyment of the 12149 sq.ft in the area over which they had put up the store shed of a building area measuring 1891 sq.ft. It is not even the case of the defendants that the suit properties over which the plaintiffs claim

possession and enjoyment on the basis of the assignment of patta, fall within the area allotted to them by the revenue authorities for the purpose of putting up high level bridge. It is thus found that the suit properties did not fall within the extent of lands allotted to the defendants by the revenue people for the purpose above stated. Further, the documents marked on the side of the defendants as such also do not point out that the properties allotted to them by the revenue people also comprise of the suit properties as described in the various plaints. Ex.B1 point out that S.No.233 had been subdivided and comprises of various extents and that apart, does not serve any purpose to uphold the case of the defendants that they have been allotted the suit properties by the revenue people. Similarly, the document marked as Ex.B2 described as transfer charge certificate also does not point out that any particular extent in S.No.233 of koyambedu had been actually handed over to the defendants as such, it does not describe about the extent and the boundaries within which the said extent is situated and in such view of the matter, on the basis of Ex.B2, we cannot conclude that the suit properties also fall within the alleged allotted extent stated therein, in favour of the defendants. Ex.B3 is found to be a communication addressed on behalf of the defendants to the Collector, Madras District, seeking for the necessary orders of land transfer in their favour of an extent of 3480.18 sq.ft in survey no.233/3 of Koyambedu village and therefore, it is found that the as per Ex.B3, the defendants have only sought for the transfer of land as stated therein, in their favour from the Collector, Madras district. Ex.B4 is found to have been issued by the Collector, on a reading of Ex.B3 and accordingly, sent a communication to the Tahsildar with one set of form of requisition directing him to send necessary alienation proposals in the prescribed proforma duly observing the formalities as against the request made by the defendants for transfer of land in S.No.233/3 measuring 3480.18 sq.metres. The above said request seems to have made by the defendants for the purpose of widening and construction of the high level bridge across the Coovum river. Ex.B5 is the copy of the estimate as regards the construction put up by the defendants. Exs.B6 to B8 are certain field maps submitted by the Tahsildar to the Courts below as per the orders issued by the Courts with reference to the S.No.233. Ex.B9 is the letter addressed by the defendants' department to the Chennai Collector reminding as to the enjoyment of the certain extent of lands in the S.No.233 by the defendants and stressing the need for the transfer of the said lands in favour of the defendants as per the revenue documents.

14. Ex.B10 is the letter issued by the Tahsildar calling upon the defendants to depute some officer for identifying the extent of lands required for them and also informing them to send the necessary

papers for the transfer of the land as requested by them, in their earlier communication dated 23.2.93. Ex.B11 is the copy of the G.O.Ms.Mo.1427 Revenue department dated 11.5.71. Therefore, on a perusal of the above said documents filed by the defendants at the most it could be inferred that for the formation of the high level bridge over the Coovum river, a particular extent of land had been allotted to the defendants. It is seen that the defendants had put up a super structure and also constructed the high level bridge and the said work had been executed by them. It is found that the said lands are still in the possession and enjoyment of the allied departments of the defendants and it is further found that the defendants have been repeatedly making requests to the Chennai Collector for the alienation of the extent of lands by change of revenue records and the same are still pending under the consideration of the Collector and till date, it is found that the Collector, Madras, had not transferred the lands said to have been allotted to the defendants and it is further found that it is only the Collector Madras who is retaining the ownership of the lands said to be in the occupation of the defendants and their allied departments. It is thus seen that the defendants as on date could not lay any valid claim of title to the lands said to have been allotted to them by the Collector of Madras for the purpose of the formation of the high level bridge across the Coovum river. It is found that their requests for the transfer of land sent to the Collector's office are still pending and no further orders had been issued by the Collector for transferring the said lands in favour of the defendants.

15. Accordingly, it is found that the defendants as such cannot challenge the possession and enjoyment of the plaintiffs in respect of the suit properties as described in the various suits. Knowing the above said position very well, it is also found that the defendants in their written pleas have not specifically claimed that the suit properties as described in the various plaints also fall within the areas allotted to them by the Collector, Madras, for the purpose of formation of bridge. On the other hand, in the defence have only pleaded that despite their occupation of the land as provided to them, by the Collector, they have admitted that new houses and huts have been formed by in and around the area. Accordingly, they have pleaded that they are not disturbing the plaintiffs' possession and enjoyment of the suit properties.

16. The defendants have not placed any materials as such to hold that the suit properties as described in the plaint had been allotted to them by the Collector of Madras for the formation of the high level bridge across the Coovum river. As seen above, at the most they claim that only an extent of land measuring 12149 sq.ft had been allotted to them and they had put up a store shed measuring 1891sq.ft

on the said area for their project. Even the defendants have not placed any materials worth acceptance that the said area allotted to them falls anywhere near the suit properties as described in the plaints and in this connection, they have also not mentioned as to in which survey numbers or in which sub division of the properties, the above said land is allotted and accordingly, not stated as to the boundaries within which the said land is actually located. It is seen that the defendants are not sure as to where the lands allotted to them actually lie in the survey number concerned and accordingly, described the same vaguely and indistinctly in the written statement and also resultantly failed to establish the actual extent of land in their possession and enjoyment by placing necessary revenue records. If really the lands had been legally transferred to them by the Collector Madras, necessary revenue records would have been placed. It is found that the proposal of the transfer of lands in favour of the defendants is still pending and at the stage of correspondence with the Collector Madras. Such being the position, when the plaintiffs have placed materials on record to show that the suit properties had been assigned to them by way of grant of patta by the revenue people and accordingly, it is found that the plaintiffs had put up also pucca super structure and enjoying the same by obtaining electricity service connection, paying tax etc., and when over whelming documents are projected with reference to the same, on behalf of the plaintiffs, the Courts below have have rightly disbelieved the case of the defendants and accordingly, granted the reliefs in favour of the plaintiffs.

17. That apart, it is seen that the officer examined as DW1 on behalf of the defendants has clearly admitted, during the course of cross examination, that they have not claimed in the written statement that the suit properties are required for their project and also admitted that survey no.233 is grama natham poramboke land and the said land did not belong to the high ways land and they have not placed any proof as to what extent of land had been allotted to them for the purpose of the formation of the bridge and also admitted that they have in the written plea clearly admitted the construction of the building by various private parties in and around the area and they have also not clearly spelt out as to in which survey number and to what extent they have allotted the lands and therefore, admitted that it is only the plaintiffs, who are in the possession and enjoyment of the suit properties and it is not known whether the suit properties are actually required by the high ways department and no area has been so for transferred in their favour by the revenue department. Such being the evidence of DW1 and as rightly found, the documents placed on behalf of the defendants had only point out that it is only the revenue department who has the right over the properties comprised in the survey numbers and accordingly, it is found that based on the

assignment of the patta issued in the favour of the plaintiffs, the plaintiffs are in possession and enjoyment of the respective suit properties.

18. In the light of the above position, the contentions of the defendants that the Collector/Revenue department are not competent to issue patta in respect of the grant of 3 cents of lands and above as per the Government Orders placed by them and hence, the assignment of patta granted in favour of the plaintiffs are invalid etc., are found not entitled to be raised by the defendants, as the defendants not being the valid title holders of the suit properties are not entitled to question the assignment of the patta granted in favour of the plaintiffs by the revenue department. It is found that till date, no valid transfer had been effected also to the defendants for any extent of land by the revenue department and on the other hand, it is found that it is only the plaintiffs had been granted the assignment of patta by the revenue department in respect of the suit properties and accordingly, the plaintiffs are in possession and enjoyment of the suit properties. As above seen, the defendants have not established that the suit properties are required for their project and the suit properties fall within the land allotted to them by the revenue department for the formation of the bridge and when the defendants have also not placed any materials worth acceptance that the suit properties are in their

possession and enjoyment, it is found that the defendants have no *locus standi* to question the possession and enjoyment of the suit properties by the plaintiffs. When it is further found that the defendants have no better title than the plaintiffs in respect of the suit properties and when the defendants have miserably failed to establish that the suit properties are in their possession and enjoyment, it is seen that the Courts below have rightly upheld the case of the plaintiffs and no interference is called for with reference to the same. Accordingly, the substantial questions of law formulated in these second appeals are answered.

19. In conclusion, all the second appeals fail and are accordingly dismissed. No Costs. Consequently, connected miscellaneous petition, if any is closed.

13.12.2017

Index : Yes/No
Internet:Yes/No
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To
1. The IVth Additional Judge, City Civil Court, Chennai.

2. The XVIIIth Assistant Judge, City Civil Court, Chennai.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S.A.No.898 of 2002
and batch

13.12.2017