

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1575 of 1999

Mariappan

... Appellant/3rd Respondent/
3rd defendant

/Vs/

1. Shaik Alaudeen
2. Minor Shahul Hameed,
rep.by guardian first respondent
Shaik Alaudeen ...1&2 Respondent/Appellants/Plaintiffs
3. The State of Tamilnadu
rep. by the Collector of Nagapattinam District
having office at Nagapattinam.
4. The Assistant Commissioner,
Land Reforms, Mayiladuthurai Town,
Nagapattinam District.
5. Saraswathi Ammal
6. Kaliaperumal
7. Rajankam
8. Koothiyan
9. Chinnakulandai ...3-9 Respondents/Respondents 1,2,4,5,6,7,8/
Respondents 1,2,4,5,6,7,8

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment of the Additional District Court, Nagapattinam dated 11.02.1999 in A.S.No.47/97 reversing the decree and judgment of the Additional Sub Court, Nagapattinam dated 18.10.1996, in O.S.No.168/91.

For Appellant : Mr.S.Sounthar

For R1 : Mr.A.Muthukumar, for R1

For R2 : Minor, Shahul Hameed

For R3 & R4 :Mrs.A.Madhumathi,
Additional Government Pleader (CS)

For R5 to R9 : Given up

JUDGMENT

The appellant is the third defendant in O.S.No.168 of 1991 on the file of the Additional Subordinate Judge, Nagapattinam. One Mumtaj Begum (since deceased) filed a suit in O.S.No.168 of 1991 before the Sub-ordinate Judge, Nagapattinam, for declaration of her title to the suit property situate in R.S.No.73/1B of Naranamangalam, Village, Kodavasal Taluk, Nagapattinam District and also for recovery of possession from the defendants. She further prayed for damages to the tune of Rs.35,000/- from the defendants 1 to 3 jointly and separately and a sum of Rs.3,000/- for reclamation of land. She also prayed for future mesne profits under Order 20 Rule 12 of the Code of Civil Procedure.

2. The case of the plaintiff briefly is as follows:-

The suit property belonged to her, through a registered sale deed dated 27.05.1976 (Ex.A6) and patta was also issued to her. The respondents/defendants 1 and 2 declared an extent of 1.76 acres in R.S.No.73/1 as surplus lands in excess of the fourth defendant's holding. According to the plaintiff, she filed an objection dated 23.05.1985 (Ex.A13) and despite her objection, the tahsildar issued a separate patta to the fourth defendant for an extent measuring 1.80 acres in R.S.No.73/1A in patta No.277.

3. It is the further contention of the plaintiff that she has filed a suit in O.S.No.130 of 1991 against the defendants 5 to 8 before the District Munsif Court, Nannilam, for a permanent injunction and during the pendency of the said suit, an order of ad-interim injunction was obtained in I.A.No.852 of 1991 by her. According to the plaintiff, the surplus land acquired by the Government did not belong to the fourth defendant and that it actually belonged to the plaintiff. She therefore filed the suit in O.S.No.168/1991 before the Additional Subordinate Judge, Nagapattinam, for declaration and also for recovery of possession, apart from claiming damages from the defendants.

4. The suit was resisted by the defendants 1 and 2 on the following grounds:-

i) The Gazette notification under Section 18(1) was published for the excess land in R.S.No.73/1B measuring 1.91 acres.

ii) The plaintiff did not raise any objection in this regard.

iii) The Tahsildar of Kodavasal revised

the revenue entries.

iv) The settlement Tahsildar did not inform the District Collector before transferring the patta in favour of the assignee.

v) Based on his order, the special Deputy Tahsildar/third defendant handed over the possession of the notified surplus lands to the assignees on 04.09.1991.

vi) Further, the suit is not maintainable as per the provisions of Section 77 (G) of the Tamil Nadu Land Reforms Act and Section 9 of the Civil Procedure Code.

5. The learned Additional Subordinate Judge, Nagapattinam, dismissed the suit after full contest. Aggrieved over the same, the legal heirs of the deceased plaintiff filed the first appeal before the Additional District Judge, Nagapattinam. The learned Additional District Judge, Nagapattinam, after analysing the entire evidence on record set aside the decree and judgment passed by the Additional Subordinate Judge, Nagapattinam, dated 18.10.1996 and decreed the suit filed by the plaintiff.

6. Now, the second appeal is filed by the third defendant on the following substantial question of law:-

(d) whether the Judgment of the Lower Appellate Court is vitiated in awarding compensation to plaintiffs towards loss of income and other heads without discussing anything regarding negligence and actual loss suffered by the plaintiffs.

7. Now the present Second Appeal is filed only by the third defendant on the ground that he cannot be directed to pay compensation to the plaintiff since he carried out only the orders passed by the defendants 1 and 2.

8. Mr.S.Sounthar, the learned counsel appearing for the appellant, drew the attention of this Court to the observation made by the first Appellate Court that the first and second respondents had mistakenly measured the suit property in R.S.No.73/1B belonging to the deceased first plaintiff as surplus land of the fourth defendant.

9. He would further contend that when the first Appellate Court has clearly found that respondents 3 and 4/the defendants 1 and 2 were negligent in their act, they should not have fastened the liability on the third defendant, (who is the present appellant) to pay damages to the respondents 1 and 2. It is also contended by him that the third defendant, who is the appellant herein is only a deputy tahsildar attached to the office of the tahsildar and he handed over the land based on the instructions given by the defendants 1 and 2 and since he has not committed any mistake, he cannot be asked to pay a compensation of Rs.35,000/- and Rs.3,000/- towards reclamation of land.

10. A perusal of the decree and judgment passed by the first appellate Court clearly shows that the first appellate Court did not record a finding that the present appellant was negligent in handling the entire matter and therefore, he cannot be asked to pay the damages.

11. The learned counsel for the respondents did not raise any serious objection in allowing this Appeal. However, he pointed out that the second appeal filed by the assignee in S.A.No.1948 of 1999 was dismissed as abated by this Court on 29.06.2012.

12. A perusal of the judgment dated 29.06.2012 passed by this Court clearly shows that the present appellant was given up in S.A.No.1948 of 1999. Therefore, the order passed by this Court in S.A.No.1948 of 1999 would not be an impediment in passing any orders in the present Second appeal.

13. In the facts and circumstances of the present case, the decree and judgment passed by the First Appellate Court is set aside to the extent that the third defendant/the present appellant should jointly and separately to pay a sum of Rs.35,000/- towards damages and Rs.3,000/- for reclamation of land. The cost imposed on the present appellant is also set aside. On all other aspects the decree and judgment passed by the first appellate Court is upheld.

14. Hence, this Second Appeal is allowed as mentioned above. No costs.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

gbi/dna

To

1. The Additional District Judge, Nagapattinam

2. The Additional Sub Judge, Nagapattinam

+1cc to Mr.A.Muthukumar, Advocate SR.No.68721

+1cc to Mr.S.Sounthar, Advocate SR.No.69018

+1cc to Government Pleader SR.No.68983

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SSD(CO)
GMY(22/01/2019)



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