

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

S.A.No.956 of 2002

M/s. Deccan Fun Island and
Hotels Ltd., by its Director,
H.Anraj,
46, North Boag Road,
T.Nagar, Chennai - 17. ... Appellant/Plaintiff

vs.

The Government of Tamil Nadu,
rep. by its Secretary to Government,
Land and Revenue Department,
Fort. St.George, Chennai - 19. ... Respondent

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.113 of 1996 on the file of Principal City Civil Court, Chennai dated 27.02.1997 reversing the Judgment and decree passed in O.S.No.11062 of 1992 on the file of IV Asst City Civil Court dated 06.04.1993.

For Appellant : Mr.G.Saravana Kumar
For Respondent : Mr.M.Sricharan Rangarajan
Spl.Govt. Pleader (CS).

J U D G M E N T

The present second appeal on hand is preferred against the Judgment and decree passed in A.S.No.113 of 1996 reversing the judgment of the IVth Assistant City Civil Court, Chennai passed in O.S.No.11062 of 1992.

2. The ranking given in the Trial Court is followed as the ranking in the present judgment. The plaintiff filed a suit for permanent injunction restraining the defendant and their men from interfering the right title and peaceful possession of the plaintiff. The schedule mentioned property measuring an extent of 4 acres and 34378 Sq.ft. is the absolute property of the plaintiff and he is in possession and enjoyment of the same ever since from the date of purchase from his previous owners under three sale deeds dated 15.12.1991, 19.12.1991 and 08.06.1992. The properties were in possession and

enjoyment of the predecessors in title for over 100 years and the predecessors obtained absolute right over the property including the power of alienation and transfer.

3. The claim of the plaintiff was that, he spent several lakhs of rupees for levelling and putting up construction for business purposes. They are paying kists and taxes for the property. They secured an extract of the permanent land register for the said property. The transfer has also been effected in the permanent land register. However, the defendant began to throw cloud on the title of the plaintiff. Thus, the plaintiff earlier filed a suit in O.S.No.3714 of 1992 on the file of the City Civil Court, Chennai, to declare its right, title and interest over the property. The suit was contested by the defendant and the plaintiff obtained the decree dated 16.10.1992. Thus, the defendant is not having any right or interest in respect of the suit scheduled property.

4. In spite of the decree, the defendant made an attempt to interfere with the possession and enjoyment of the property on 20.11.1992, 24.11.1992 and 05.12.1992. The plaintiff prevented the defendant and thereafter a suit was filed for grant of permanent injunction. The defendant contested the suit by filing written statement contending the right over the suit property which is a Government poramboke land. The Government poramboke land are vested with the State Government and the plaintiff's possession over the said land is illegal.

5. The schedule mentioned property is the Government poramboke land which was originally leased out to Mrs.A.A.Ignatius in 1845 by East India Company for a period of 99 years and the said period expired on 20.03.1944. The lease hold rights were last acquired by Mrs.C.A.Ganon to whom the lease was renewed for a further period of 15 years up to 20.03.1959. As there was already a violation of condition by the transfer of lease hold rights besides the expiry of the lease period in the year 1959, there is no subsisting right to anybody over the property. The Government also have issued orders in G.O.683 revenue department dated 20.03.1980, resuming the land after giving show cause notice to the then occupier of the land Mrs.M.N.David. The alleged purchase of the property by the plaintiff is illegal as the vendor Hindustan Institute of Engineering Technology had no right over the property. The representation dated 05.03.1984 to Government against the resumption order was also negated by the Government by letter dated 18.08.1984 and in connection with the same W.P.No.5622 of 1985 and another suit in O.S.No.4821 of 1985 were also

pending at the time of filing of the second appeal.

6. The suit property does not fall within the jurisdiction of the City Civil Court, Madras and plaintiff has no right over the property. The contention of the plaintiff is that they are carrying on business after investing several crores of rupees and putting up on construction for business purposes is also untenable because as per condition No.2 of the original lease deed, the premises must have not been occupied for the purpose of the hospital, bank, hotel, shop or school or by a railway administration without the previous sanction of the general officer of the division. B Memo charges are collected from the plaintiff for its unauthorized occupation of encroachment.

7. The defendant contended that the filing of the suit itself was without jurisdiction as the suit scheduled property falls within the territorial jurisdiction of the Civil Court of Chengalpattu district. The Trial Court failed to frame any issue in respect of the jurisdiction to entertain the Civil Suit. However, the Trial Court proceeded the matter on merits and decreed the suit in favour of the plaintiff. The Government of Tamil Nadu represented by its Secretary to Government, Land and Revenue Department, Madras filed A.S.No.113 of 1996 mainly on the ground that the City Civil Court has no any jurisdiction in respect of the suit scheduled property as the property passed within the territorial jurisdiction of Chengalpattu district and therefore, the suit cannot be entertained.

8. Further it is contended that, the Trial Court has erroneously omitted the issue of jurisdiction which is vital in respect of entertaining of a civil suit by the City Civil Court, Chennai. The First Appellate Court framed the issue as follows:-

"7. The points for consideration in the appeal are;

- 1) Whether the city civil court madras has got jurisdiction to entertain the suit?
- 2) Whether the plaintiff is entitled to the relief of permanent injunction?"

9. It was brought to the notice of this Court that, under Section 16 of the Code of Civil Procedure, the City Civil Court, Madras has no jurisdiction to entertain the suit filed by the plaintiff. Further in the written statement the defendant has categorically taken a stand that the property is situate in St.Thomas Mount Village, Saidapet Taluk in Chengalpattu MGR District and as such City Civil Court, Madras has no jurisdiction to entertain

the civil suit.

10. The First Appellate Court also found that the said issue goes to the root of the matter and such a preliminary issue ought to have been decided at the first instance by the Trial Court and the Trial Court failed to do so. In respect of the grounds raised before the First Appellate Court that in the event of framing an issue of jurisdiction the suit to be remanded to the Trial Court for re-trial. The said point was also met out by the First Appellate Court by stating that, normally when an additional issue is framed, it is just and necessary that the suit has to be remanded back to the lower Court for fresh disposal according to law after giving opportunity to let in evidence either oral or documentary. However, in respect of the present case, the First Appellate Court expressed its view by stating that it is a absolutely unnecessary to remand the case again because no useful purpose would be served. The documents filed by the plaintiff themselves under Ex.A1 to A3 clearly indicated that the property is situate in St.Thomas Mount at Saidapet Taluk, Chengalpattu MGR District. Moreover, there are recitals in Ex.A4 and A5 tax receipts produced by the plaintiff to show that this property is situated in Chengalpattu District. If that be so there is prima facie evidence to come to the conclusion that the suit ought to be filed within the jurisdiction allowed under law. There cannot be any dispute that the City Civil Court, Madras will not have any jurisdiction over the property situated in Chengalpattu district. When it is admitted by the parties, that the property is situated in Chengalpattu MGR District, there is no difficulty in coming to the conclusion that the City Civil Court, Madras has no jurisdiction to entertain the suit.

11. Considering the documents marked before the Trial Court, the First Appellate Court arrived a conclusion that the suit cannot be entertained by the City Civil Court at Madras as admittedly, the property is situated within the jurisdiction of Chengalpattu MGR district. Accordingly, the first appeal was allowed.

12. Challenging the order passed in A.S.No.113 of 1996, the present second appeal has been filed.

13. The substantial question of law framed in the present second appeal is "Whether on the facts and circumstances of the case, the lower Appellate Court was right in dismissing the suit instead of returning the plaint for presentation before the proper court?"

14. Even in respect of the substantial question of

law it is not disputed by the plaintiff that the property is situate in St.Thomas Mount within the territorial jurisdiction of Chengalpattu MGR district. Further it is admitted that all the documents produced by the plaintiff before the Trial Court categorically denotes that the property situate in St.Thomas Mount within the jurisdiction of the Chengalpattu district. Even there is no substantial question of law in respect of the merits of the issues.

15. The learned counsel appearing on behalf of the respondent Government relying on Order 41 Rule 24 of the Code of Civil Procedure contended that the Appellate Court may determine the case finally where the evidence submitted before the Sub-ordinate Courts are sufficient to arrive a conclusion.

16. Order 41 Rule 24 enumerates that "where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds". In the present case on hand, undoubtedly, the issue in relation to the point of jurisdiction was raised by the defendant at the first instance. However, the issue was omitted by the Trial Court at the time of adjudicating the suit. The appeal was filed by the defendant before the First Appellate Court and the Appellate Court rightly framed the issues in respect of the jurisdiction to entertain the civil suit.

17. The First Appellate Court while considering the documents arrived a conclusion that all the documents filed by the plaintiff themselves under Ex.A1 to A3 clearly indicated that the property is situated in St.Thomas Mount at Saidapet Taluk, Chengalpattu MGR district. Moreover, there are recitals in Ex.A4 and A5 tax receipts produced by the plaintiff to show that this property is situate in Chengalpattu District. All the documents produced by the plaintiff themselves revealed that the property is situated in St.Thomas Mount at Saidapet Taluk, Chengalpattu district and therefore, the City Civil Court, Madras has no jurisdiction to entertain a civil suit with reference to Section 16 of the Code of Civil Procedure.

18. The First Appellate Court further considered the ground raised by the plaintiff that the suit is to be remanded back to the Trial Court. The First Appellate

Court considered the said ground also and arrived a conclusion by stating that it is unnecessary to remand the matter back to the lower Court as the documents produced by the plaintiff themselves revealed that the property is situate in St.Thomas Mount at Saidapet Taluk, Chengalpattu district and this being the fact, the First Appellate Court decided the point of jurisdiction independently and dismissed the suit for want of jurisdiction.

19. The learned counsel appearing on behalf of the appellant reiterated the grounds raised by stating that the earlier judgment and decree passed in favour of the plaintiff operates against the defendant and therefore the relief ought to have been granted by the First Appellate Court. Even in the substantial question of law raised in the present second appeal, the appellant pleaded that whether the lower Appellate Court was right in dismissing the suit instead of returning the plaint for presentation before the proper Court.

20. The very substantial question of law raised in the present second appeal runs contrary to the order passed by the First Appellate Court in A.S.No.113 of 1996. The First Appellate Court in para 8 categorically granted liberty to the plaintiff to file a suit before the Competent Court if necessary. When the liberty is granted to the plaintiff to institute a fresh suit before the Court having jurisdiction, there is no reason to entertain the present question of law which is raised in the present second appeal. The First Appellate Court categorically held that, even as per the documents filed by the plaintiff, the suit cannot be entertained for want of jurisdiction.

21. Further, the First Appellate Court held that, the plaintiff is at liberty to institute a suit before the Competent Court if he has chosen to do so. This being the order passed by the First Appellate Court, there is no reason to entertain the substantial question of law as well as the present second appeal filed by the appellant. Taking note of the fact that the suit scheduled property is the Government poramboke land vested with the State Government and the possession of the plaintiff itself was illegal.

22. The defendant Government, at the first instance in the written statement has enumerated that the land was originally leased out to one Mrs.A.A.Ignatius in 1845 by East India Company for the period of 99 years and the lease period expired on 20.03.1944. The lease hold rights were last acquired by Mrs. C.A.Ganon to whom the lease

was renewed for a further period of 15 years up to 20.03.1959. As there was already a violation of condition by the transfer of lease hold right, besides the expiry of the lease period 20.03.1959, the Government issued orders in G.O.Ms.No.623 dated 20.03.1980 resuming the land after giving the show cause notice. The order of resumption is marked as Ex.B1 in the case. In the circumstances the alleged purchase of the suit property by the plaintiff is illegal and as the vendor had no right over the property.

23. In view of the said statement made by the Government who is the respondent in the present second appeal, this Court is of an opinion that, the respondent Government officials are bound to look in to the present status of the property and initiate appropriate action to protect the Government properties and the Government land in the interest of the public at large. If the lease period was over and if the Government had already passed an order to resumption of land, it is for the Government officials to verify the revenue records and all other connected files and take appropriate action under the law to protect the Government lands and properties belongs to the Government.

24. However, with reference to the substantial questions of law raised in the present second appeal, this Court do not find any merits as the First Appellate Court itself granted liberty to the plaintiff to institute a fresh suit and the question of remanding the matter does not arise at all and there is no infirmity or perversity in respect of the judgment and decree passed by the First Appellate Court in A.S.No.113 of 1996.

25. Accordingly, the order dated 27.02.1997 in A.S.No.113 of 1996 on the file of Principal City Civil Court, Chennai, reversing judgment and decree dated 06.09.1993 passed in O.S.No.11062 of 1992 on the file of IV Assistant City Civil Court, Chennai is confirmed and the second appeal is stands dismissed. There shall be no order as to costs.

Sd/-d/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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To :-

<https://hcservices.ecourts.gov.in/hcservices/>

1.The Principal City Civil Court, Chennai.

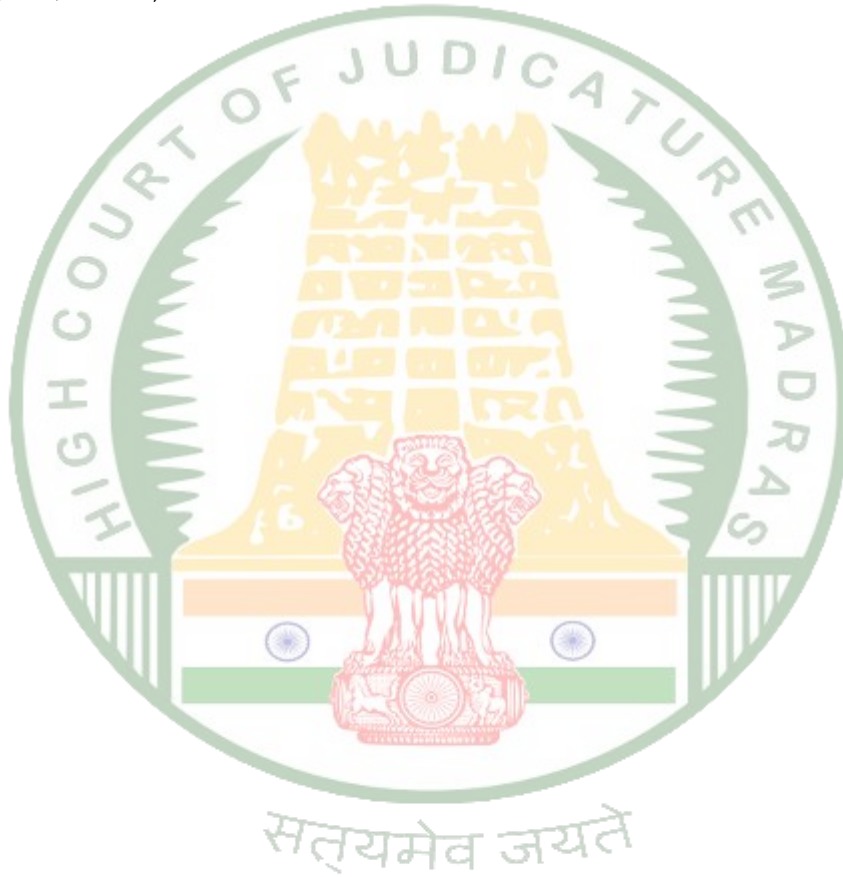
2.The IV Assistant Judge, City Civil Court, Chennai

+1cc to Mr.G.Saravana Kumar , Advocate SR.No. 79459

+1 CC TO GOVERNMENT PLEADER SR.NO. 79602

S.A.No.956 of 2002

A.SK(30/01/2019)



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