



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

Coram:

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.1642 of 2004

Victoria @ Sithayammal,
W/o.Late Perumal,
Rep.by her Power Agent,
Govindasamy, S/o.Arumugam,
No.7/172, Choolaimedu,
Indira Nagar, Mettur Dam 1,
Mettur Taluk, Salem District. Appellant/Plaintiff

Vs.

1. The District Collector,
Salem District, Salem.
2. The Executive Engineer,
Public Works Department,
Mettur Dam 1, Mettur Taluk,
Salem District. Respondents/Defendants

PRAYER: Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment dated 17.08.2001 made in A.S.No.18 of 1999 on the file of Subordinate Judge, Mettur confirming the decree and judgment dated 31.08.1995 made in O.S.No.713 of 1989 on the file of District Munsif, Mettur.

For Appellant : Mr.S.Nedunchezhiyan
for Mr.G.Sankaran

For R1 & R2 : No Appearance

J U D G M E N T

Heard the learned counsel for the appellant.

2. The suit is for injunction to restrain the respondents herein from interfering the peacefully possession of the plaintiff/Appellant. The case of the plaintiff is that she is in enjoyment of the property by putting up a thatched hut on it and paying the tax to the local body. While so, the 2nd respondent/Executive Engineer, Public Works Department, Mettur

threaten to dispossess her forcibly without following the procedure. It is contended that for the past 30 years, the plaintiff/appellant Victoria @ Sithayammal is in possession and enjoyment of the suit property and paying tax to the Local Body, while fact being so, she cannot be evicted without following the process of law.

3. Whereas, in the written statement, it has been contended by the 2nd respondent/Executive Engineer, Public Works Department, Mettur, that the plaintiff is not in possession of the suit property for more than 30 years as claimed in the plaint. In the suit property, there are two residential quarters for the Public Works Department staffs. The property absolutely belongs to the Public Works Department and it is in possession of the Public Works Department.

4. The Trial Court has framed the following issues.

(i). Whether the suit property is enjoyment of the plaintiff?

(ii). Whether the plaintiff is entitled for permanent injunction?

(iii). What are the reliefs the plaintiff is entitled?

5. On behalf of the plaintiff 2 witnesses were examined and 20 documents were marked as Ex.A.1 to Ex.A.20. On behalf of the defendant 1 witness was examined and 5 documents were marked as Ex.B1 to Ex.B.5.

6. Though, the plaintiff/appellant has contended that the suit property has been classified as 'Nathan Poramboke', from the material records placed on either side, the trial Court has found that the property is held by Public Works Department.

7. Documents reveals, the plaintiff herself has made a request to the Public Works Department as early as on 07.10.1989 to allot the land encroached by her in Block No.20, T.S.7/12. In response to her request, the Executive Engineer, Mettur Division has sent a letter to the plaintiff vide f vz:: 683/90/Nfh233/t2/ehs::27.11.1990 intimating the plaintiff that the portion of land which has been encroached by the plaintiff belongs to P.W.D. The said land is required for Public Works Department and hence, the encroached land cannot be allotted to the plaintiff/Victoria @ Sithayammal. While so, the communication between the Revenue Department and Public Works Department regarding classifications of land which are also been marked and discussed by the trial Court will not take away the right of the 2nd defendant/The Executive Engineer, Public Works Department, Mettur, over the property. The possession of the plaintiff by way of trespass into the Government department land will not confer her any right to seek injunction against the

State the true owner.

8. For the reasons stated above, the trial Court has dismissed the suit. On appeal, the Appellate Court has also confirmed the judgment of the trial Court. While dismissing the suit, the Court has also pointed out that though the suit has been filed on behalf of Victoria @ Sithayammal by one Govindasamy in the representative capacity, he has anything to do with the suit property. Further, the tax receipts which has been relied by the plaintiff were also not in the name of the plaintiff or in respect of the portion of the land which alleged to be in occupation of the plaintiff.

9. In the said circumstances, both the Courts has rightly held that the plaintiff has no right to seek relief of injunction against the respondents who are the District Collector and The Executive Engineer, Public Works Department, Mettur.

10. While admitting the Second Appeal, this Court has framed the following substantial questions of law:

(i). Whether the Courts below are justified in rejecting Ex.A.2 and Ex.A.18 on the ground that the same were obtained after failing of the suit?

(ii). Whether the Courts below are justified in interpreting the document Ex.A.2 and Ex.A.18 which will prove the factum of classification of the land in question?

(iii). Whether the Courts below are correct and justified in rejecting the evidence of PW.1 on the ground that the plaintiff has no power before the Court to adduce evidence?

11. From perusal of Ex.A.2 which is the extract of the Town Planning Office register. The entry register say that the land retained by Public Works Department, not required by Public Works Department, hence it is proposed to be handed over to the Revenue Department. The suit area under T.S.No.7/12 has to be reclassified as Nathan Poramboke instead land in possession of PWD. This entry no way confer any right to the plaintiff, to seek injunction against the defendants. The suit was instituted

in the year 1989, whereas the Public Works Department has informed the Revenue Department that they may not require the said land on 23.01.1981 vide Ex.A.18. Later under Ex.A.20, the Executive Engineer on 27.11.1990 has informed the plaintiff that the said property is required for Public Works Department. The change in the stand of P.W.D regarding the property after 8 years has to be taken note of. Therefore, the Substantial questions of law is held in affirmative in favour of the defendants/respondents. The Courts below are fully justified in rejecting Ex.A.2 and Ex.A.8 as well as the claim of the plaintiff in the suit property, interpreting these two documents, in the light of the subsequent documents namely Ex.A.20.

12. Hence, this Court finds no merit in the Second Appeal to interfere well considered judgment of the Courts below.

13. In the result, this Second Appeal is dismissed. Therefore, the Judgment and decree passed by the Appellate Court is confirmed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

bsm

To,

1. The Subordinate Judge, Mettur, Salem District.
2. The District Munsif, Mettur, Salem District.

+1cc to Mr.G.Sankaran, Advocate SR.No.89221

+1cc to The Special Government Pleader SR.No.89094

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GJ II (CO)
GMY (18/02/2019)