

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :04.10.2018
PRONOUNCED ON:29.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No174 of 2015

AREVA T & D
19/1 G.S.T.Road,
Pallavaram,
Chennai 600 043.
Rep.by its Company Secretary

.... Appellant/ Appellant/Plaintiff

Vs.

1.State of Tamil Nadu
Rep.by its Secretary,
Department of Revenue,
Fort. St.George,
Chennai.

2.The Collector of Kancheepuram District,
Saidapet,
Chennai - 600 015.

3.The District Revenue Officer,
Kancheepuram District,
Saidapet Taluk,
Saidapet,
Chennai - 600 015.

.... Respondents 1 to 3/ R1 to R3 D1 to D3

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree passed in A.S.No.93 of 2009
dated 06.11.2014 passed by the Subordinate Judge at Tambaram,
confirming the judgment and decree dated 21.07.2008 made in
O.S.No.500 of 1998 passed by the District Munsif, Alandur.

For Appellant : Mr.Krishna Srinivas
for M/s.S.Rama Subramaniam & Associates

For Respondents : Mr.A.Devendran
Government Advocate

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 06.11.2014 passed in A.S.No.93 of 2009 on the file of the Subordinate Court, Tambaram, confirming the judgment and decree dated 21.07.2008 passed in O.S.No.500 of 1998 on the file of the District Munsif Court, Alandur.

2. The Second Appeal has been admitted on the following substantial questions of law.

(a) When the parties had agreed to the terms and conditions of Lease Deed dated 14.09.1959 which is not violative of any law whether it would be open to the respondent not to accept the option of renewal exercised by the Appellant.

(b) Whether the Lower Courts were correct in interpreting that as there is no refusal on the part of the respondent to the option exercised by the Appellant, there is no cause of action for the Appellant to maintain the present suit.

(c) Whether the Appellant is entitled for a decree of Specific Performance in view of clause-III of the lease agreement dated 14.09.1959.

(d) Whether escalation of price or inadequacy of consideration will constitute a hardship under Section 20 of Specific Relief Act.

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Suffice to state that the plaintiff has laid the suit against the defendants for the specific performance of the covenants in the deed of lease dated 14.09.1959, so as to direct them to grant the renewal of the lease in respect of the plaint schedule property for a period of 30 years from 14.09.1989 and thereafter for a further period of 30 years on terms and conditions and in the manner as provided in the abovesaid lease deed.

5. Materials placed on record go to show that there is no dispute between the parties in respect of the execution of the lease deed dated 14.09.1959 in favour of the plaintiff by the defendants concerning the suit property and it is found that after the expiry of the period contemplated under the lease deed, it is the case of the plaintiff that it had sent a letter dated 24.09.1987 calling upon the defendants to renew the lease for a further period of 30 years and inasmuch as there had been no proper response to the same on the part of the defendants and there has been total inaction on their side with reference to the renewal of the lease in favour of the plaintiff as per the covenants contained in the lease deed abovestated, according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

6. The defendants have also in the written statement has not disputed the execution of the lease deed dated 14.09.1959 in favour of the plaintiff relating to the suit property and it is their case that the renewal request of the plaintiff qua the abovesaid lease is under the consideration of the Government and therefore, it is stated that the suit laid by the plaintiff is premature and not entitled to acceptance and that the plaintiff, as a matter of right, is not entitled to seek the renewal of the lease and the defendants, only after considering the subject matter qua the enhancement of the lease amount etc., as per the guidelines in existence from time to time, would be proceeding further in the matter and accordingly putting forth that the plaintiff has no cause of action to institute the suit, accordingly prayed for the dismissal of the plaintiff's suit.

7. Based on materials placed on record and the submissions made, the Courts below were pleased to reject the plaintiff's case. In addition to that it is to be noted that in the first appellate court, in support of the defence version, additional evidence had come to be marked as Exs.B1 to B3 and the first appellate court had taken into consideration the abovesaid evidence also, and not finding acceptance to the plaintiff's case, accordingly in toto, rejected the plaintiff's case. Impugning the same, the present Second Appeal has been laid.

8. The plaintiff's counsel mainly contended that as per the covenants contained in the lease deed dated 14.09.1959, the plaintiff is entitled to seek the renewal of the same and despite the communication sent by the plaintiff as regards the renewal of the lease, inasmuch as no action had been emanated on the side of the defendants with reference to the same, in other words, as there had been total inaction on the part of the defendants in renewing the lease in favour of the plaintiff, according to him, the plaintiff is entitled to seek the specific performance of the covenants of the abovesaid lease deed and

hence the suit.

9. The Courts below had invoked section 20 of the Specific Relief Act and found that merely because the plaintiff is entitled to seek the specific performance of the lease deed as claimed in the plaint, the said relief being the discretionary relief, the Court is not bound to grant such relief merely because it is lawful to do so and accordingly finding that by way of the renewal of the lease, the plaintiff would be put to unlawful enrichment and on the other hand, the defendants would be put to serious hardship and inconvenience and on that footing, refused the relief prayed for by the plaintiff. In addition to that, the first appellate court noting that the suit property i.e., the property leased to the plaintiff is comprised in the Odai portion belonging to the Government as could be seen from the additional evidence projected in the matter, accordingly, following the decision of the Supreme Court in Civil Appeal No.1132 of 2011 [SLPCC No.3109/2011] noting that the directions had been given by the Apex Court that no entity would be entitled to perpetuate their occupation in the Odai Proamboke land or the river bodies and that they must be restored to the Government for the common use of the general public, accordingly, on that footing also rejected the plaintiff's case.

10. As rightly found by the first appellate court, as could be seen from Ex.B2 document, the suit property is forming part of the river body area and when the Apex Court in the decision rendered in Ex.B3 document as well as in the decisions reported in 2005 (4) CTC 1 [L.Krishnan Vs. State of Tamil Nadu and others] and 2009 SCC Online Madras 2455 [kaliyamoorthy Vs. Samidurai], has held that, when no civil action could be legally instituted by a private party in respect of Odai lands or any water resources and when the Apex Court had given directions to all the Courts to maintain the ecological balance and prevent unlawful encroachment of the river bodies/Odai lands and thereby the Apex Court had asserted that all should endeavour to enforce the fundamental duties in protecting and improving the natural environment namely the river bodies in particular and the abovesaid duty should be, in particular, enforced by the Courts and accordingly had given directions to one and all to ensure that no one seeks perpetual possession and enjoyment of the river bodies, Odai lands etc to the detriment of the general public and accordingly when the duty is cast upon the Courts in particular, to ensure that the Government does not transfer the river bodies, Odai lands etc., to private parties either through Contractors, Lease etc., or other transactions not having the sanction of law, in such view of the matter, in my considered opinion, when the plaintiff has not placed any material to hold that the suit property i.e., the subject matter

of the lease in question, does not fall within the Odai area and in such view of the matter, by way of the renewal of the lease, the plaintiff cannot be allowed to occupy the Odai area/river body and such renewal would only amount to harming the general public and permitting the plaintiff to enrich the unlawful benefit to the detriment of the general public and in such view of the matter, the Court would not extend its arms in favour of the plaintiff in the renewal of the lease as prayed for by the plaintiff in respect of the Odai area/river body and in such view of the matter, the plaintiff's prayer for specific performance of the lease deed, being a discretionary relief and as per section 20 of the Specific Relief Act, the Court is not bound to grant the same merely because it is awful to do so, but can refuse the same on sufficient and reasonable grounds guided by judicial principles and when the principles of law had been formulated by the Apex Court as abovenoted that no private body should be allowed to perpetuate their occupation on the river body, Odai area forever and the Government is also not entitled to extend such protection to the private bodies by entering into the contract, lease with reference to the same etc., in all, it is found that the Courts below are wholly justified in non suiting the plaintiff by invoking section 20 of the Specific Relief Act as well as by adhering to the principles of law formulated by the Apex Court with a view to protect the river bodies, Odai area and in such view of the matter, the plaintiff would not be entitled to obtain the discretionary relief of specific performance of the lease deed in question seeking a direction to the Government to transfer the Odai area in their favour perpetually to the detriment of the interest of the general public.

11. In view of the above factors, in my considered opinion, the decisions relied upon by the plaintiff's counsel reported in

(i) 2013 (8) SCC 131 [Satya Jain (dead) Though Lrs Vs. Anis Ahmed Rushdie (Dead) though Lrs and others]

(ii) AIR 1952 Mad 389 [S.V. Sankaralinga Nadar Vs. P.T.S. Ratnaswami Nadar and Others.

(iii) 1986 (1) MLJ 253 [Bharat Petroleum Corporation Ltd. Vs. Nguyen Ngoc and Mariam Beevi and others]

(iv) AIR 2002 SC 2290 [Nirmala Anand Vs. Advent Corporation Pvt. Ltd. And Others]

(v) 2000 (1) MPLJ 102 [Babulal Agarwal Vs. Smt. Jyoti Shrivastava and Others]

(vi) 2004 (6) SCC 649 [P.D'Souza Vs. Shondrilo Naidu]

(vii) 2012 (5) SCC 712 [Narinderjit Singh Vs. North Star Estate Promoters Ltd]
would not enure to the plaintiff for seeking the relief of specific performance, as such, particularly when it is noted that the subject matter of the lease in question is the Odai area/river body and in such view of the matter, no interference is called for in the judgments and decrees of the Courts below rejecting the plaintiff's case. The plaintiff's case having been rejected for the reasons aforesaid and accordingly the Courts below are wholly justified in invoking the section 20 of the Specific Relief Act for non suiting the plaintiff, the substantial questions of law formulated in the second appeal are accordingly answered.

12. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge at Tambaram.

2. The District Munsif, Alandur.

Copy to

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

+1cc to Mr. S. Ramasubramaniam & Associates, Advocate, S.R.No.74066

+1cc to the Spl Government Pleader, S.R.No.74066

S.A.No.174 of 2015

RJI (CO)
GSP (17/12/2018)