

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :10.04.2018

PRONOUNCED ON:19.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.748 of 2004

R.P.Murugan

... Appellant

Vs.

Government of Tamil Nadu,
by District Collector,
Dharmapuri District.

... Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 09.09.2003 made in A.S.No.17 of 2002 on the file of Sub Court, Dharmapuri reversing the judgment and decree dated 08.02.1999 made in O.S.No.675 of 1992 on the file of District Munsif, Dharmapuri.

For Appellant : Mr.J.Nandagopal

For Respondent : Mrs.A.Madhumathi, AGP (CS)

J U D G M E N T

Challenge in this second appeal is directed against the judgment and decree dated 09.09.2003 passed in A.S.No.17 of 2002 on the file of Subordinate Court, Dharmapuri reversing the judgment and decree dated 08.02.1999 passed in O.S.No.675 of 1992 on the file of the District Munsif Court, Dharmapuri.

2.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(i)Whether the lower appellate court is correct in rejecting the appellants claim that he has not filed any document except the impugned notice when the notice itself is unsustainable?

(ii) Whether the lower appellate court is correct in rejecting the contention of the appellant, when the respondent has not followed the principle of natural justice while imposing the penalty?

(iii). Whether the lower appellate court is correct in taking into account of the order passed in the interlocutory application while disposing the main suit?

3. Briefly stated that the respondent has issued the impugned notice dated 03.11.1992 as against the appellant holding that the appellant has without any legal permission, illegally transported black granites by utilising forged documents and accordingly, directed the appellant to pay the necessary penalty charges imposed, failing which, the appellant would be mulcted with the liability of facing further action as per law. Challenging the abovesaid notice issued by the respondent, the suit has come to be laid by the appellant for the reliefs of declaration and permanent injunction.

4. The respondent has resisted the appellant's suit contending that on the interception of the lorries by the authorities concerned on the night of 20.10.1991 it has come to the knowledge of the respondent that the appellant, by creating forged documents had illegally transported black granites from his quarry without obtaining necessary permission from the respondent and inasmuch as, the involvement of the appellant in the abovesaid illegal transaction had been deducted by the respondent, it is the case that the impugned notice has been issued thereby directing the appellant to pay the necessary penalty charges for the violations committed by the appellant and therefore it is contended that there is no entitlement on the part of the appellant to seek the reliefs prayed for as regards the impugned notice.

5. Briefly stated, it is seen that the respondent had intercepted the lorries concerned and found that the illegal transport of black granites had been made with the use of forged documents without any permission from the respondent and also finding that, after due enquiry, by examining the lorry drivers and the owners of the lorry, it is only the appellant who had committed the abovesaid violations in the act of the transport of the black granites without necessary permission from the authority concerned as per the rules, it is found that the impugned notice has come to be issued by the respondent. To sustain that the respondent had complied with all the procedures obtaining in law before issuing the impugned notice, the respondent has filed Exs.B1 to B32 which documents have come to be marked without any resistance put forth by the appellant and on a perusal of the above said documents, as rightly determined

by the first appellate court, it is found that the respondent on the seizure of the lorries involved in the matter and on a perusal of the records recovered from the lorry drivers, finding that the records had been created/forged by the appellant and thereby the black granites had been lifted from the quarry of the appellant using the bulk permit number of the appellant which is ordinarily not disclosed and thereafter on the interaction of the lorry drivers and the owners, noticing the involvement of the appellant in the abovesaid illegal action, resultantly, chosen to issue the impugned notice directing the appellant to pay the penalty charges failing which further action would be initiated against him as per law.

6.As rightly determined by the first appellate court, when the appellant has come forward with the suit seeking the reliefs of declaration and permanent injunction, by way of challenging the impugned notice and when the case of the appellant has been stoutly repudiated by the respondent tooth and nail and when the respondent had placed all the materials available to evidence that only after due enquiry, the impugned notice has come to be issued against the appellant and when the appellant has not placed any contra material whatsoever, either by way of oral or documentary evidence and remained contended only by marking the impugned notice and not even caring to adduce oral evidence in support of his case, as rightly found by the first appellate court, inasmuch as the appellant has no case to sustain in impugning the notice issued by the respondent directing the appellant to pay the penalty charges, unable to put forth any resistance to the same, other than laying the suit, it is found that the appellant has not endeavored to adduce any evidence whatsoever to sustain his case, other than marking the impugned notice. Not stopping there, the appellant has also not chosen to repudiate the documents produced by the respondent marked as Exs.B1 to B32 by challenging the same and on the other hand, as above adverted to Exs.B1 to B32 have come to be marked by consent and as rightly determined by the first appellate court, on a perusal of Exs.B1 to B32 ex-facie it is noted that after conducting the proper enquiry and seizure of the incriminating materials involved in the matter and accordingly, inasmuch as the incriminating materials only pointed out the involvement of the appellant in the illegal action, accordingly, on finding that the violations had been committed by the appellant, directed him to pay the necessary penalty charges and in such view of the matter, it is found that unable to place any material to challenge the same, the appellant had not chosen to let in any proof in support of his case. In such view of the matter, I do not find any error or mistake in the reasonings and conclusions of the first appellate court in declining the reliefs sought for by the appellant by setting aside the judgment and decree of the trial court.

7.The appellant has not placed any material to hold that the respondent had issued the impugned notice without following the principles of natural justice and it is further seen that the first appellate court has taken into consideration, the orders passed in the interlocutory application only to discuss the approach/conduct of the appellant and in the light of the above discussions, though in my considered opinion, no substantial question of law is involved in the second appeal, in any event, the substantial questions of law formulated in the second appeal, for the reasons aforestated, are answered against the appellant and in favour of the respondent. Resultantly, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Sub Court,
Dharmapuri.
2. The District Munsif,
District Munsif Court,
Dharmapuri.
3. The Section Officer,
VR Section,
High Court.

+1cc to Government Pleader SR.No.29063

S.A.No.748 of 2004

KS (CO)
CS/25/05/18