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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.07.2018

PRONOUNCED ON: 25.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.88 of 2001

and

CMP.No.1098 of 2008

K.Jayakodi

... Appellant/Appellant/Plaintiff
Vs.

1.Govt. of Tamilnadu
rep. By Collector
Nagapattinam.

2.Superintending Engineer
Taluk Building Construction &
Maintenance, Thanjavur Public
Works Department.

3.District Superintendent of Police,
Nagapattinam.

4. Arulmighu Keyarchanasamy,
Neelayatheechiamman Temple,
Nagapattinam by its
Administrative Officer.

... Respondents/Respondents/Defendants

PRAYER:Second Appeal filed under Section 100 of C.P.C, against the judgment and decree dated 29.09.2000 and made in A.S.No.53 of 2000 on the file of learned Additional Sub-Judge, Nagapattinam, confirming the judgment and decree dated 28.03.2000 and made in O.S.No.115 of 1999 on the file of learned District Munsif Court, Nagapattinam.

For Appellant : Mr.R.Subramanian
for Mr.T.R.Rajaraman

For Respondents : Mr.S.Jaganathan
Government Advocate (Civil side)
for R1 to R3

: Mr.V.Sairam for R4



JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Additional Sub-Judge, Nagapattinam in A.S.No.53 of 2000 dated 29.09.2000, confirming the judgment and decree passed by the District Munsif, Nagapattinam in O.S.No.115 of 1999 dated 28.03.2000.

2. The appellant herein has filed a suit in O.S.No.115 of 1999 on the file of the District Munsif, Nagapattinam to restrain the defendants by means of permanent injunction from interfering with his peaceful possession and enjoyment of the suit property. The learned District Munsif, Nagapattinam by the judgment and decree dated 28.03.2000 has dismissed the said suit. Aggrieved by the same, the plaintiff herein has filed an appeal in A.S.No.53 of 2000 on the file of the Additional Sub-Judge, Nagapattinam. The learned Additional Sub-Judge, Nagapattinam has dismissed the said appeal confirming the judgment and decree passed by the trial Court. Aggrieved by same, the plaintiff has filed the present Second Appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

3.The averments made in the plaint are, in brief, as follows:

The suit site belongs to the 4th defendant. The 4th defendant had leased out the suit site to the plaintiff in the year 1971 and also executed a lease deed to that effect. The plaintiff, after taking possession of the suit site had put up a thatched shed and residing there. Door No.22 has been allotted to the said thatched shed. He also obtained an electricity connection and water connection. In the beginning, the plaintiff had paid Re.1/- as rent for the suit site to the 4th defendant and subsequently it was raised and at present the rent is Rs.6/-. In the year 1994, the plaintiff had removed the thatched roof and put up R.C.C. roof by spending huge amount. The defendants 1 to 3 had no right, title or possession over the suit property, but they called for tenders on 11.06.1999 in 'Dhina Malar' Tamil daily newspaper for constructing office of the Police Department. Further they had insisted the plaintiff to demolish his building and hand over the possession of the site to them. Hence, the plaintiff was forced to file the above suit.

4.The averments made in the written statement filed by the first defendant and adopted by the defendants 2 and 3 are, in brief, as follows:

Originally the suit site belonged to the 4th defendant. The said site was acquired by the Government for the purpose of constructing police quarters. The 4th defendant had no right to



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lease out the suit property to the plaintiff. The plaintiff is a rank trespasser and he is not entitled to get injunction against the true owner. The allegation that the defendants 1 to 3 made attempt to evict the plaintiff from the suit property is not correct. Therefore, the defendants 1 to 3 prayed to dismiss the suit.

5. The averments made in the written statement filed by the 4th defendant are, in brief, as follows:

As per the resolution passed by the trustees of the 4th defendant, the suit site was leased out to the plaintiff on 21.11.1971 for Re.1/- per month. It is not correct to state that the said land is the Government poramboke land. In the written statement filed by the first defendant, the particulars as to when the land was acquired and what was the extent acquired were not furnished. The plaintiff is in occupation of the suit property as tenant under the 4th defendant. Therefore, the 4th defendant prayed to grant a decree declaring that the 4th defendant is the owner of the suit property.

6. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and he has marked Ex.A1 to Ex.A11 as exhibits. On the side of the defendants 1 to 3, two witnesses were examined as D.W.1 and D.W.2 they marked Ex.B1 to Ex.B9 as exhibits. On the side of the 4th defendant, one witness was examined as D.W.3. The 4th defendant has not marked any exhibits.

7. The learned District Munsif, after considering the materials placed before him, found that the suit site belongs to the defendants 1 to 3 and the plaintiff is only a trespasser. Accordingly, he dismissed the suit on the ground that injunction cannot be granted against the true owner. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.53 of 2000 on the file of the Additional Sub-Judge, Nagapattinam. The learned Sub-Judge has dismissed the said appeal, confirming the judgment and decree passed by the trial Court. Feeling aggrieved, the plaintiff herein has filed the present Second Appeal.

8. At the time of admitting this Second Appeal, this Court has formulated the following substantial questions of law:-

"1) When the acquisition proceedings regarding the specific suit survey numbers is not proved, is the learned Additional Subordinate Judge correct in dismissing the suit holding that the suit property was acquired by defendants?



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2) When it is proved in evidence that the re-survey proceedings commenced only in 1926 coupled with the evidence of DW.2 only in 1926 and new survey T.S.No.2820 came to be allotted to the old T.S.No.206 is the learned subordinate Judge right in dismissing the suit holding that the acquisition proceedings with reference to T.S.No.2820 came to be finalised in the year 1911?"

9. At the time of argument, the learned counsel for the appellant has filed a memo requesting to formulate the following additional substantial question of law. After hearing both sides, the following additional substantial question of law was formulated.

"In the light of repealing of Land Acquisition Act, 1894 by Act 30 of 2013, has not the entire acquisition proceedings abated as per Sec. 24 (2) of the Right to Fair Compensation and transparency in land acquisition, Rehabilitation and Resettlement Act, 2013 and consequently, the defendants cannot rely on the acquisition proceedings?"

10. During pendency of this Second Appeal, the appellant / plaintiff has filed an application in C.M.P.No.1098 of 2008 under Order 41 Rule 27 of C.P.C., to receive a copy of the resurvey register No.91 as additional documentary evidence and in the said application also, arguments have been heard along with the main appeal and order is passed in this judgment itself.

11. Heard Mr.R.Subramanian for Mr.T.R.Rajaraman, learned counsel for the appellant / defendant and Mr.S.Jaganathan, learned Government Advocate (Civil.side) for the respondents 1 to 3 and Mr.V.Sairam, learned counsel appearing for the respondent No.4.

12.Question Nos.1 and 2 and additional question:-

The learned counsel for the appellant / plaintiff has submitted that the Courts below failed to consider that the defendants 1 to 3 have not proved that the suit site was acquired by the Government. He further submitted that in Ex.B9, it is stated that the land situated in town survey No.2820 (suit property) was acquired by the Government and compensation was awarded on 28.03.2011, whereas the evidence of D.W.2 would show that the Resurvey Settlement came into force only on 31.03.1926 and as such no reliance can be placed on Ex.B9. He further submitted that the defendants 1 to 3 failed to prove that the Government had taken possession of the suit land from the 4th



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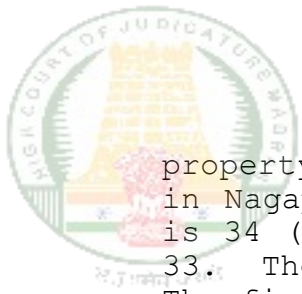
defendant. He further submitted that it is the admitted case of the defendants 1 to 3 that the plaintiff is in possession of the suit property and the Courts below also came to the conclusion that the plaintiff is in possession of the suit property, but the Courts below dismissed the suit on the ground that no injunction can be granted against the owner. He further submitted that even if it is assumed that the plaintiff is a trespasser, he can be evicted only by due process of law and hence he prayed to allow the Second Appeal and decree the suit as prayed for. In support the said contentions, he relied upon the decision in Rame Gowda (Dead) By LRS Vs. M.Varadappa Naidu (Dead) By LRS. and another (2004) 1 SCC 769.

13. The learned counsel for the appellant also submitted that the additional documentary evidence sought to be produced by the appellant (copy of the Resettlement Register) would show that the resettlement for the suit Village was introduced only in the fasli 1333 and the said fasli is corresponding to the year 1926. He further submitted that D.W.2 gave evidence referring to the aforesaid Resettlement Register, but unfortunately the said document was not marked as exhibit and therefore he requested to receive the said document as additional evidence.

14. The learned Government Advocate (Civil Side), on the contrary, has submitted that the documents filed by the defendants 1 to 3 would clearly show that the suit site was acquired by the Government and has been handed over to the Police Department for constructing quarters. He further submitted that since the plaintiff is a trespasser, the Courts below have rightly dismissed the plaintiff's suit by applying the principle that no injunction can be granted against the true owner and therefore he requests to dismiss the Second Appeal.

15. The learned counsel for the 4th defendant has submitted that the defendants 1 to 3 have admitted in their written statement that originally the suit property belonged to the 4th defendant and as such it is for them to prove that they had acquired the suit property. He further submitted that the defendants 1 to 3 have not produced any documentary evidence to show that they have taken over the possession of the property. He further submitted that the oral evidence of P.W.1 and D.W.3 and Ex.A1 and Ex.A7 would clearly show that the suit site belongs to the 4th defendant and the 4th defendant had leased out the suit land to the plaintiff as per the resolution passed by the trustees of the 4th defendant dated 21.11.1971 and therefore he prayed to decree the suit as prayed for.

16. The document, sought to be produced by the appellant / plaintiff is the copy of the Resettlement Register of the Village of Nagoor, No.33, Nagapattinam Taluk, whereas the suit



property is not situated in Nagoor Village. It is situated only in Nagapattinam Village and the number for Nagapattinam Village is 34 (vide Ex.B7) whereas Village number for Nagoor Village is 33. The document now sought to be produced contains six sheets. The first five sheets relating to the village of Nagoor (No.33), but the 6th sheet relates to Village No.34 i.e., Nagapattinam Village. The defendants 1 to 3 themselves have produced a copy of the erratum to the settlement register to No.34, Nagapattinam Village and marked as Ex.B7. Along with the said document, the particulars containing Resettlement Register of the Village No.34 (Nagapattinam Village) relating to suit property also has been enclosed. Therefore, the document which is now sought to be produced by the appellant is not at all related to the suit property and hence the petition to receive the said document as additional documentary evidence (C.M.P.No.1098 of 2008) is liable to be dismissed.

17. Exs.B1, B2, B7 and B9 would show that the suit site is the Government poromboke land. Though D.W.2 has stated that the Resurvey settlement came into force only in the year 1926, Ex.B9 would show that even in the year 1911 itself T.S. Number had been assigned to the suit property. The documentary evidence will prevail over the oral evidence. The documents produced by the defendants 1 to 3 would clearly show that the suit land belongs to the Government. To controvert the same, the 4th defendant has not produced any documentary evidence.

18. It is also to be pointed out that in the written statement filed by the 4th defendant, it was not specifically denied that the land was acquired by the Government. On the contrary, the 4th defendant, in the written statement, has pleaded that the defendants 1 to 3 have not furnished the particulars as to when the land was acquired and what was the extent of the land acquired. As per Order 6 Rule 2 of CPC every pleading shall contain only statement of material facts and not evidence. In this case, as already stated that the 4th defendant has not specifically denied that the land was acquired by the Government. Further, the 4th defendant has not produced any documentary evidence to show that on the date of the suit, it was the owner of the suit site. In the absence of any contra evidence, the case of the defendants 1 to 3 has to be accepted.

19. According to the defendants 1 to 3, the suit land acquired in the year 1911. At that time the Land Acquisition Act, 1894 was in force. Whereas the learned counsel for the appellant relying upon Section 24(2) of the Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, argued that since physical possession has not been taken, the land acquisition proceedings shall be deemed to have lapsed.

Section 24(2) of the aforesaid Act reads thus:-



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"Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

20. A plain reading of the aforesaid provision would show that in the case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under Section 11 has been made 5 years or more prior to the commencement of the new Act, but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings deemed to have lapsed. But in this case, according to the defendants 1 to 3, the suit site was acquired in the year 1911 itself and as such, the aforesaid provision will not attract.

21. It is also to be pointed out that if at all any lapse on the part of the Government in acquiring the lands, it is for the owner of the land (4th defendant) to challenge the said land acquisition proceedings. The plaintiff being the tenant under the 4th defendant, he cannot have any right to question the acquisition proceedings.

22. Admittedly, the plaintiff is in possession of the suit property for a long period. But he has not obtained any permission from the owners of the land viz., the defendants 1 to 3. So, as rightly held by the courts below, he is only a trespasser. In Rame Gowda (Dead) By LRS Vs. M.Varadappa Naidu (Dead) By LRS. and another, (supra), the Hon'ble Supreme Court has held that if the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict trespasser or interfere with his



possession. It was also held that the law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking law in his own hands. The relevant portion of the said judgment is extracted here under:

''8.It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force."

23. In view of the aforesaid decision of the Hon'ble Supreme Court, the defendants 1 to 3 are not entitled to dispossess the plaintiff by force. They shall have to take recourse to law. Therefore, the plaintiff is entitled to the relief of injunction to restrain the defendants 1 to 3 from evicting him from the suit property except under due process of law. Accordingly, the substantial questions of law and additional substantial question of law are answered.

24. In the result, C.M.P.No.1098 of 2008 is dismissed. The Second Appeal is partly allowed. The judgments and decrees passed by the Courts below are modified as follows:-

(i) that the defendants 1 to 3 are restrained by means of permanent injunction from evicting the plaintiff from the suit property except under due process of law; and

(ii) that the parties are directed to bear their own cost.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar



To

1.The Additional Sub-Judge,
Nagapattinam.

2.The District Munsif Court,
Nagapattinam.

+1cc to Mr.T.R.Rajaraman, Advocate sr.no.50109

+1cc to Additional Government Pleader(CS), SR.50035

S.A.No.88 of 2001
and
CMP.No.1098 of 2008

GJ(CO)
NR 09/10/2018