



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2019

Coram:

The Honourable DR.Justice G.JAYACHANDRAN

Second Appeal No.1889 of 2004

T.Manickam,
Son of Periyasamy,
Door No.151, VEDIYAPPAN KOIL STREET,
TIRUVANNAMALAI TOWN & POST,
TIRUVANNAMALAI TALUK & DISTRICT. Appellant/Plaintiff
1.

Vs.

1. Arunai C.Vedi (Deceased),
Son of Chakkarapani Gounder,
Door No.5/1A, THIRUNAVUKKARASAR STREET,
TIRUVANNAMALAI TOWN & POST,
TIRUVANNAMALAI TALUK & DISTRICT.

2. The Commissioner,
Tiruvannamalai Municipality,
Tiruvannamalai.

3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Vengikkal,
Tiruvannamalai.

4. The Junior Engineer,
(Operation and Maintenance),
Kizhnathur,
Tamil Nadu Electricity Board,
Tiruvannamalai.

5. The Collector,
Tiruvannamalai District,
Tiruvannamalai.

6. The Tahsildar,
Tiruvannamalai.

7. Vasantha,

8. Kamalakannan,

9. Dhanalakshmi,

10. Indhumathi,

11. Anitha,

... Respondents/Defendants

Rrs 7 to 11 on record as LR's of the Deceased 1st respondent vide order of Court dated 22.12.2014 made in CMP.No.10 of 2013 in S.A.No.1889 of 2004.

PRAYER:- Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned District Judge, Tiruvannamalai, dated 12.07.2004 in A.S.No.115 of 2001, reversing the Judgment and decree of the Additional District Munsif Court No.1, Tiruvannamalai, dated 19.09.2001 in O.S.No.8 of 1998.

For Appellant : Mr.P.Dinesh Kumar
for Sarvabhauman Associates

For R5 & R6 : Mr.N.Manikandan
Government Advocate

For R7 to R11 : Mr.S.P.Gopi raja

For R2 to R4 : No appearance

J U D G M E N T

Heard the learned counsels for the appellant and the respondents.

2. The dispute is between the appellant and the first respondent (deceased) in respect of 1050 sq.ft of land. The appellant has put up a thatched hut on the said land, which is admittedly owned by the Tiruvannamalai Municipality.

3. The case of the appellant/plaintiff is that the property was earlier occupied by one Govindammal. She has put up a hut and living in it for the years together. Therefore, the Tiruvannamalai Municipality has assessed tax and collecting tax from her. After the death of Govindammal, her son took possession of the property and got the assessment transferred in his name. The Electricity service connection given to the said hut, was also transferred in his name. Alleging that the first respondent herein is trying to create records and trying to get patta in his name, which likely to be given to the person who is in long possession of the property. The plaintiff has filed the suit with multiple prayers particularly to declare his

possessory title, permanent injunction to grant patta, to restore the electricity service connection and to re-transfer the Tax assessment in his name.

4. In the written statement, the first respondent has contended that the suit property is adjacent to his patta land. Govindammal was a farm worker under his father. So she was permitted to occupy the hut put up by his father. After the demise of Govindammal, the suit portion land along with the hut came back to his possession. When he came to know about the act of the plaintiff that he has transferred the tax assessment and Electricity connection in his name claiming him as the son of Govindammal and the sole legal heir of Govindammal, he protested to the Government Authorities and got the Tax assessment cancelled. The electricity service connection was also withdrawn.

5. The trial Court, while considering the rival submissions granted permanent injunction in favour of the plaintiff and also directed the respondents 2 to 6 to restore the electricity service connection and to assess the hut in the name of the plaintiff.

6. Aggrieved by that, the first defendant has preferred appeal. In the appeal, the first defendant resulting in dismissal of the suit.

7. The learned counsel appearing for the Appellant/Plaintiff would contend that it is well settled Principle of law that if the suit property belongs to Government, the person who is in occupation of the property can seek injunction against all others, except the true owner, the Government. While so, the First Appellate Court has erred in dismissing the suit in toto reversing the considered judgment of the trial Court, which based on the documents and evidence protected the possessory right and enjoyment of the plaintiff.

8. Whereas, the learned counsel appearing for the legal representatives of the deceased First respondent would submit that the manner in which the documents were manipulated and the tax assessment got transferred in the name of the plaintiff has been fully exposed by the Lower Appellate Court. The very fact that the plaintiff had got the name transfer from Govindammal, which is based on his false claim that he is the son of Govindammal dis-entitles him the remedy sought.

9. Relying upon the legal heirs certificates produced by the Appellant/Plaintiff showing him as the son of Govindammal, the Government authorities have been misled to

transfer the assessment and service connection in favour of the plaintiff. When the fraud was brought to the notice of the Government Authorities, they have rightly cancelled it. Since, the name transfer was pursuant to the false legal heir certificate, the plaintiff claim not sustainable. While the trial Court has failed to appreciate the suppression of the fact by the plaintiff, the Lower Appellate Court has rightly reversed it by pointing out the falsehood of the plaintiff leading to transfer of name by mis-representation made by the plaintiff. Therefore, the judgment of the Lower Appellate Court needs no interference.

10. In response to the above submissions made by the respondents counsel, the learned counsel for the appellant would submit that once the transfer of Tax assessment by the Municipality and transfer of Electricity connection by the Electricity Board effected in favour of the plaintiff, before cancelling it, an opportunity should have been given to the plaintiff, which the concerned respondents have failed to give. Therefore, on the principle of violation of natural justice, the cancellation of Tax assessment and withdrawal of service connection is liable to be set aside. Therefore, the judgment of the Lower Appellate Court requires re-consideration.

11. If the transfer of Tax assessment and electricity service connection was obtained by the plaintiff through proper representation and in fair manner, the above said submission of the learned counsel for the appellant will carry merit. Contrarily when the name transfer has been effected by mis-representation and false representation, the right of seeking opportunity before cancellation does not arise. Admittedly, the plaintiff/appellant is not the son of Govindammal. However, by claiming himself as a son of Govindammal he was able to get the name transferred in his favour. When there is an act of fraud and mis-representation palpable seen the principle of Audi Alteram Partem cannot be employed to protect a person who has come with falsehood. Therefore, this Court finds no merit in this Second Appeal.

12. Further, it is represented by the Learned Government Advocate for the respondents 5 and 6, that before cancellation, the appellant herein was called to produce documents to substantiate his claim that he is son of deceased Govindammal. The plaintiff failed to produce documents. So, it is not correct to say that plaintiff was not given opportunity before cancelling the assessment. On this score also, the submission of the learned counsel for the appellant does not carry any merit.

13. For the said reasons, this Court finds there is no Substantial Questions of law involved in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Learned District Judge, Tiruvannamalai
2. The Additional District Munsif Court No.1, Tiruvannamalai.
3. The Commissioner,
Tiruvannamalai Municipality,
Tiruvannamalai.
4. The Superintending Engineer,
Tamil Nadu Electricity Board,
Vengikkal,
Tiruvannamalai.
5. The Junior Engineer,
(Operation and Maintenance),
Kizhnathur, Tamil Nadu Electricity Board,
Tiruvannamalai.
6. The Collector,
Tiruvannamalai District,
Tiruvannamalai.
7. The Tahsildar,
Tiruvannamalai.
8. The Section Officer,
VR Section, Madras High Court, Chennai.

+1cc to M/s.P.Gopi Raja, Advocate Sr.5210
+1cc to M/S.P.Dinesh Kumar, Advocate Sr.4847
+1cc to the Special Government Pleader Sr.4938

Second Appeal No.1889 of 2004

cnr[co]
srg 15/03/2019