

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.02.2019

Judgment Pronounced on : 29.07.2019

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.Nos.322 & 323 of 2010
and M.P.No.1 of 2010 in S.A.No.322 of 2010

B.C.Abbulu Chetty ..Appellant in both the appeals/Plaintiff

Vs

- 1.The State of Tamil Nadu
Rep by District Collector
Collectorate,
Now at Krishnagiri District.
- 2.The Tahsildar
Office at Bangalore Road
Krishnagiri - 635 001.
- 3.The Tamil Nadu Text Books Corporation
Rep by its Chairman and Managing Director
College Road,
Nungambakkam
Chennai - 600 006.

...Respondents in both the appeals/Defendants

Prayer in S.A.No.322 of 2010 : Second Appeal filed under Section 100 of CPC against the common judgment and decree dated 30.09.2008 in A.S.No.78 of 2006 on the file of the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 27.2.2006 in O.S.No.144 of 1994 on the file of District Munsif Court, Krishnagiri.

Prayer in S.A.No.323 of 2010 : Second Appeal filed under Section 100 of CPC against the judgment and decree dated 30.09.2008 in A.S.No.44 of 2006 on the file of the Principal Subordinate Judge, Krishnagiri, reversing the judgment and decree dated 27.2.2006 in O.S.No.144 of 1994 on the file of District Munsif Court, Krishnagiri.

For Appellant : Mr.D.Shivakumaran

For Respondents : Mr.Manikandan
Government Advocate [R1 & R2]
Mr.K.R.A.Muthukrishnan [R3]

COMMON JUDGMENT

The plaintiff in a suit for declaration of title and for allied reliefs have come forward with these appeals. Parties would be referred to by their ranks before the trial Court.

2. The brief sketch of the allegations in the plaint may be stated as below :

- There are two items of properties scheduled to in the plaint. The first item measures 1.43 acres in S.F.No.736/1 and the second item has an extent of 1.64 acres in S.F.No.736/3. Both these properties lie in Mallapadi Village, Bargur Taluk, Dharmapuri District, and lie contiguously. These lands originally belonged to the first defendant, the Government. On 23.01.1981, under Ext.A1, the first defendant has assigned Item No.1 to the plaintiff, and on the same day under Ext.A2, it assigned Item No.2 to the mother of the plaintiff.
- The suit properties were dry agricultural lands and the plaintiff has been in enjoyment of the property, engaged in agricultural activity by contributing his physical labour. His mother too has been engaged in similar agricultural activity with regard to the properties described in Item No.2. After the demise of plaintiff's mother, the plaintiff came to succeed to her property.
- Be that as it may, sometime in May 1993, the second defendant (Tahsildar) visited the plaintiff's property along with the Revenue Inspector, obtained some signatures in some Forms, representing to him that his signature was necessary for obtaining some agricultural loans. Trusting the same, the plaintiff has signed the document. Subsequently, sometime in September, 1993, the respondents attempted to take possession of the property, and in these circumstances, the plaintiff issued a suit notice dated 26.9.1993 (Ext.A19). There was no reply.
- Again on 15.11.1993, the Revenue Inspector visited the plaintiff and required him to surrender possession. It is in this circumstance, apprehending a threat to his title and possession, the plaintiff has laid the suit in O.S.No.144 of 1994 on the file of District Munsif Court, Krishnagiri for declaration and for injunction.
- During the pendency of the suit, sometime in March, 1998, the defendants had stealthily taken possession of both the items of properties and following which, the plaintiff had moved the trial Court, amended the prayer seeking a decree for mandatory injunction, and for mense profits. There was also an alternative prayer requiring the defendants to acquire the property in the manner known to law, should they intend to continue possession.

3. The first defendant-State, represented by the Collector, chose not to prefer a written statement, but opted to defend the action based on the written statement of the Tahsildar, the second defendant. The only ground of defence taken in the written statement is, as per Clause-16 of Form-D, which contains the stipulations for assignment of suit property, the Government is free to resume the lands assigned by it for meeting any larger public purposes. Further the plaintiff on 18.12.1992, had voluntarily executed the document surrendering the possession of the property. This is consistent with the procedure contemplated in BSO 3(33), 33(4) and 33(7). The suit property had since been handed over the third defendant for constructing buildings for its benefit.

4.1 The matter went to trial. The plaintiff examined himself as P.W.1, whereas the second defendant/Tahsildar was examined as D.W.1. D.W.2 is the Village Administrative Officer, and D.W.3 is an official of the third defendant, the Tamil Nadu Textbook Corporation.

4.2 The document of assignment under which Item No.1 and Item No.2 were assigned to the plaintiff and his mother respectively were marked (as already indicated) as Exts.A1 and Ext.A2, and both dated 23-01-1987. The suit notice was marked as Ext.A19. Ext.B1 is the document dated 22.12.1992, under which, according to the defendants, the plaintiff had surrendered possession of the property. The proceedings by which the suit property was granted to the third defendant were marked as Exts.B2 and B3.

5.1 On appreciating the evidence before it, the trial Court has held, that contrary to the contentions of the defendants, the Government has not reserved any right to resume the suit properties in the proceedings of assignment of the suit properties under Exts.A1 and A2. So far as Ext.B1 is concerned, this has been procured fraudulently by the authorities concerned from an illiterate that the plaintiff is, and also without following the procedure contemplated. It then proceeded to declare plaintiff's title to the suit property. And, it had passed a further decree directing the Government to acquire the land in terms of Land Acquisition Act.

5.2 Aggrieved by the said decree, the defendants moved the First Appellate Court in A.S.No.44 of 2006. The plaintiff preferred a cross objection, which appears to have been treated as a cross appeal in A.S.No.78 of 2006, challenging the said decree in O.S.No.144 of 1994.

5.3 On a re-appreciation of the same evidence, the first Appellate Court has held that Ext.B1 was a genuine document, and allowed A.S.No.44 of 2006 filed by the appellant, and dismissed the suit. As a necessary consequence, it dismissed

the appeal filed by the cross-objector/plaintiff in A.S.No.78 of 2006.

6. Challenging both the decrees of the First Appellate Court, the plaintiff has come forward with the present twin appeals in S.A.No.322 of 2010 and S.A.No.323 of 2010. The appeals are admitted for considering the following substantial questions of law :

1. When assignment of lands has been made to the appellant and his mother, after their enjoyment of the same over and above the period of ban for alienation, if the Government is in need of the same land for a public purpose, can the lands be resumed back to Government, without following the procedure prescribed under Order No.33 of the Revenue Standing Orders and the Land Acquisition Act?
2. Is the Lower Appellate Court correct in law in holding that the Revenue Standing Orders have been correctly followed by the defendants at the time of revoking the assignment?
3. Whether the State can assume possession of the assigned land without cancelling the assignment or following the procedure for acquiring the land or following the provisions of the Transfer of Property Act?

The Arguments:

7. The learned counsel for the appellant seriously contended:

- That Ext.B1 document was fraudulently procured by misrepresenting to the plaintiff, that some bank loan was being arranged for his benefit. If the conduct of the plaintiff before Ext.B1 and after Ext.B1 is taken into consideration, it will be only too evident that he had not conducted himself in a manner which is reconcilable with his alleged willingness to surrender the land under Ext.B1. In this regard, both the testimonies of D.W.1 and D.W.2, expose themselves, and go to probalilise that Ext.B1 only be a fraudulent document. The foundation for the first appellate court is its finding that Ext.B1 is genuine, but the first appellate court has opted for an easy course on just acting on the admitted statement of the plaintiff that Ext.B1 is his. This apart, the procedure contemplated under the Board Standing Orders have not been followed.
- Secondly, even going by the fundamental defence raised by the defendants in the written statement, none of the conditions stipulated in Ext.A1 or Ext.A2 have reserved the power of resumption in the Government as was contended. Therefore, unless the plaintiff has

volunteered to surrender the property under Ext.B1, there is nothing like a power of resumption as has been pleaded in the written statement. If Ext.B1 fails, necessarily the advantage thereof shall be tilted in favour of the plaintiff.

- Thirdly, if the assertion of the defendants that Ext.B1 had been voluntarily executed fails, then the suit properties could only be acquired.

8. The learned Government Advocate appearing for the respondents argued along the line of the pleadings in the written statement and the reasoning of the first appellate court.

Discussion:

9.1 The first appellate Court's decree is premised on its finding that Ext.B1 was genuine. This is primarily a question of fact, but the trial court and the first appellate court differed in their opinion on it. The issue is, if the approach of the first appellate court to its finding is marred by perversity? To state it differently, has it ignored its duty to appreciate the entire evidence logically without disassociating life's experience in the process?

9.2 This now requires an investigation as to if Ext.B1 dated 12-12-1992, was executed consciously by the plaintiff, and did he surrender the suit properties voluntarily, and that too without claiming compensation? The plaintiff having admitted that the signature in Ext.B1 was his, the point, in the context of his contention is, if he was duped by the authority when the signature in Ext.B1 was obtained.

10. Here there are a few facts that require to be stated:

- To start with the appellant here belongs to the landless class. It could be inferred from Clause 18 of Exts.A1 and A2, both dated 23-01-1981 (the proceedings under which the plaintiff and his mother were assigned the suit properties) that the assignee thereunder are dalits.
- The document of assignment does not contain any clause for resumption of the land by the assignor Government except, (a) by an Order of the appellate or revisional authority in any proceeding challenging the assignment; and (b) where any of the conditions of assignment are violated. The right granted is heritable, and where the assignee does not leave a heir then the land would re-vest in the assignor by escheat. In effect, what is conferred in the assignees of the land is absolute title which are liable to be resumed, only under the stated circumstances and no other. They were granted patta and Exts.A3 and A5 are the patta passbook originally issued, and Exts.A4 and A6 are the related patta issued during UDR proceedings. The assignees have paid land tax (kist) as could be seen from Exts.A11 to A18.

- There is no case that the assignees here have violated any of the conditions of assignment. This implies their title remained in tact, and, it could be interfered with only by the due process of law.

11. It is now, the allegation of voluntary surrender of the suit properties under Ext.B1 comes into existence. This document is dated 12-12-1992. The point is, is this document genuine? In other words, has the plaintiff lent his signature to this document because it was represented to him by the authorities of the Government that it would obtain him a bank-loan?

12. As in any civil dispute, the basic tool for appreciation of evidence is the ordinary course of his conduct of a reasonable man, guided by his natural instinct in relation to the fact in issue, or to facts relevant to facts in issue. And, the endeavour of the Court is to test, if this, when taken alongside the evidence on record, preponderates the probability of the case advanced before the Court. After all Courts deal with the rights of the homo sapiens, and have not yet reached a stage where it is required to consider that of the robo(t)-sapiens, and hence Courts can neither divorce, nor insulate its approach, from being influenced by the ordinary conduct of ordinary men.

13. The plaintiff contends that he was duped into signing Ext.B1. There is a conduct of his in relation to Ext.B1 which at one level he admits, but another level he qualifies. He admits the signature, but qualifies this conduct when he says that he signed because it was misrepresented to him that the signature was required for a bank loan. This has to be gathered not just by looking at a paper with the signature of the plaintiff (Ext.B1), but also how he has conducted himself in relation to Ext.B1? The point is, would he have done that which he had done in the circumstances that evidence create?

14. As already indicated, the guiding tool for this court is ordinary course of human conduct guided by ordinary human instinct. Here, it requires to be reminded with emphasis, that attachment to property is a basic human instinct. Is it not true that crave for money and property generally defy the law of diminishing utility? The plaintiff who stands before this court does not however, belong to the class of the moneyed and the propertied, till he was given some properties under Exts.A1 and A2. Naturally as a first generation landless dalit, who has not hitherto experienced the privileges of the propertied, nor experienced the dignity that goes with it, could not be presumed to have accepted the properties with a saintly-dispassion towards them. The point is, would he have easily relented to parting with the properties assigned to him, and would he have shown the willingness to vanish in the streets without an identity to

preserve? It should not be forgotten that this is a Country where even encroachers of land exhibit immense propensity and stamina to protect their possession.

15. Now comes Ext.B1. It is stated to have been signed on 12-12-1992. And one Subramonai and another Ali Basha had attested it as witnesses. Turning to proof, neither of them were examined. The controversy is now reduced to: plaintiff's word Vs defendants' word. Here comes two significant pieces of documents: (a) Exts.A7 and A8. They are kist receipts and both are dated 03-01-1993, and in the context of the case, after the alleged date of surrender of the property under Ext.B1 (b) Ext.A19, notice dated 26-09-1993. In this, it is alleged that sometime in May, 1993, the RDO and the Tahsildar had arrived at the property, and informed the plaintiff that his properties were required for construction of some buildings. The notice informed the defendants that the plaintiff could not be dispossessed except by resorting land acquisition proceedings. In this context it is relevant to state that the District Collector has issued proceedings dated 03-03-1993 (Ext.B2) assigning the land to the Tamilnadu Textbooks Corporation, the first defendant. Therefore, till at least Ext.B2, there was, or at least there could not have been, any threat to plaintiff's possession of the suit properties. And, when the threat actually came, he reacted with a notice in Ext.A19.

16. Up till now, the plaintiff appears to have conducted most naturally the way an ordinary person would have conducted his affairs under circumstances.

17. To speak to the genuineness of Ext.B1, a certain Tahsildar, who was not associated with the circumstance under which Ext.B1 was alleged to have been executed, was examined as D.W.2. Though he is primarily incompetent to speak about the circumstance, he still provides a fact that possession of the suit property was deemed to have been handed over on the day the assignee of land (the plaintiff) relinquished his rights over the same as in Ext.B1. What defies logic coupled with the human conduct that is associated with it is, if only this plaintiff had consciously and voluntarily relinquished the suit properties assigned under Exts.A1 and A2 and surrendered possession of the properties on 12-12-1992 under Ext.B1, then why had he paid the land tax/kist on 03-01-1993 as evidenced by Exts.A7 and A8? The inference that could be derived is that he most probably did not believe that the document he signed (Ext.B1) was one relinquishing his rights over the property and hence, he paid the land tax. It is not so much whether the receipt of land tax post Ext.B1 would constitute an estoppel or not, but it is about the conduct of the plaintiff vis a vis Ext.B1. Does it not now make it more probable that the plaintiff might have been duped into signing Ext.B1? Here, the first appellate court is found to have adopted a very easy course, oversimplified the process

of appreciation of evidence when it eliminated the ordinary conduct of ordinary men in relation to a fact from its realm of consideration.

18. The plaintiff has built, in the assessment of this Court a strong probability of his case. What is the contra evidence to rebut it? Here the attesting witnesses to Ext.B1 is crucial, and as already indicated they were not examined.

19. It is now apparent that the Government that has chosen to rehabilitate a landless dalit when it assigned the properties, has adopted devious means to deny him the very properties that it had assigned. If it required the suit properties for some public purpose, it could have acquired the lands, In stead, it through its officers, had chosen to cheat a poor man of his holding without payment of any compensation. It is now important that the Government acquires the land at least now as an expost facto to legitimize its invasion of citizen's right.

20. All the substantial questions of law are thus answered in favour of the plaintiff/appellant. In conclusion these appeals are allowed, and the judgment and the decree of the first appellate Court, dated 30.09.2008 in A.S.No.78 of 2006 and A.S.No.44 of 2006 on the file of the Principal Subordinate Judge, Krishnagiri, is set aside and that of the trial Court in O.S.No.144 of 1994 on the file of District Munsif Court, Krishnagiri, dated 27.2.2006 is hereby restored. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III-MDU)

//True copy//

Sub Assistant Registrar

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To:

1.The Principal Subordinate Judge, Krishnagiri.

2.The District Munsif Judge, Krishnagiri.

3.The District Collector
Collectorate, Now at Krishnagiri District.

4.The Tahsildar
Office at Bangalore Road, Krishnagiri - 635 001.

5.The Chairman and Managing Director
The Tamil Nadu Text Books Corporation
College Road, Nungambakkam Chennai - 600 006.

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VR Section, High Court, Madras.

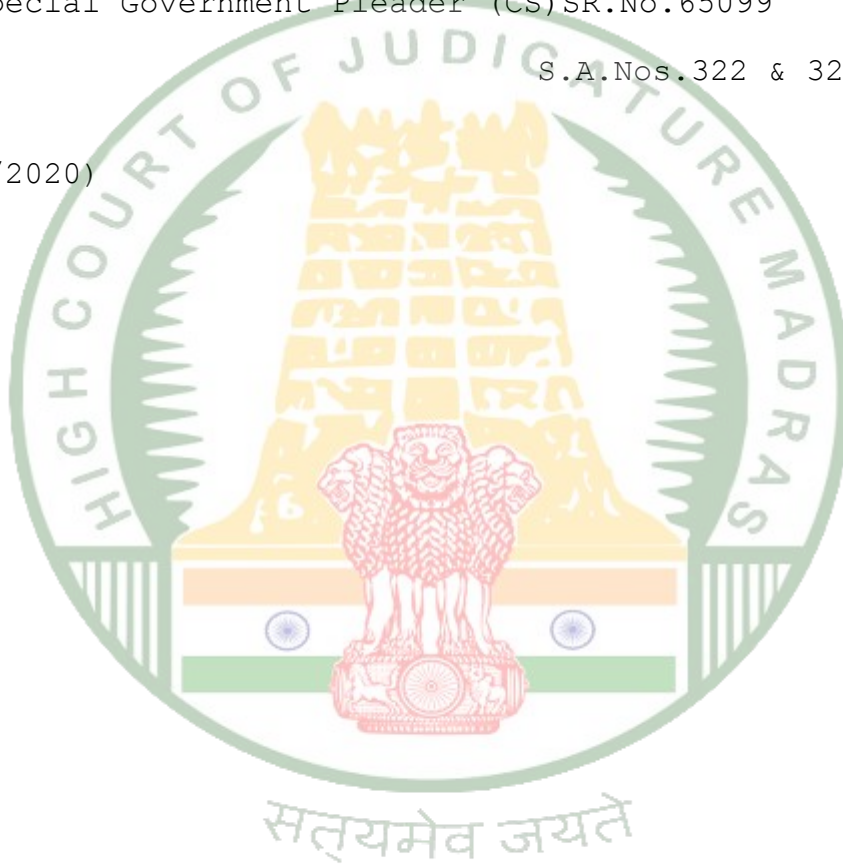
+1cc to Mr.D.Shivakumaran, Advocate SR.No.64873

+2cc to Mr.K.R.A.Muthukrishnan, Advocate SR.No.65447

+1cc to Special Government Pleader (CS)SR.No.65099

S.A.Nos.322 & 323 of 2010

SAI (CO)
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