

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.03.2019

PRONOUNCED ON:26.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1336 of 2005

N.Varadharajan Appellant/Plaintiff

Vs.

1.Government of Tamilnadu
rep. By District Collector,
Coimbatore.

2.Tiruppur Municipal Corporation,
rep. By its Commissioner,
Tirupur,
Coimbatore District.

.... Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge, Tiruppur in A.S.No.41 of 2004 dated 20.01.2005 confirming the judgment and decree of the District Munsif Court, Tiruppur in O.S.No.206 of 2002 dated 04.06.2004.

For Appellant : Mr.S.Kaithamalai Kumaran

For RR1 : Mr.N.Manikandan
Government Advocate, (CS)

For RR2 : Mr.G.Sankaran

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J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 20.01.2005 passed in A.S.No.41 of 2004 on the file of the Subordinate Court, Tirupur confirming the judgment and decree dated 04.06.2004 passed in O.S.No.206 of 2002 on the file of the District Munsif Court, Tirupur.

2. The second appeal has been admitted on the following substantial questions of law.

1. Are the Courts below justified in interpreting Ex.B10 Government Order as totally prohibiting Municipalities from alienating its properties, overlooking that it only gives directions as to how the same has to be done?

2. Is the finding of Court that the decision given in O.S.No.577 of 1989 (Ex.B2) would operate as resjudicata for the present suit correct, overlooking that the reliefs claimed in both the suits are different and distinct?

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

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The plaintiff/appellant has laid the suit against the defendants/respondents for the reliefs of mandatory injunction and permanent injunction. The relief of mandatory injunction is for directing the defendants to sell the suit property to the plaintiff as per the resolution passed by the Municipality dated 31.01.1969 and the relief of permanent injunction is sought to restrain the defendants from interfering with the plaintiff's possession and enjoyment of the suit property.

6. It is not in dispute that the suit property belongs to the Government and vested with the Municipality namely the second defendant. Materials placed on record go to show that the plaintiff's paternal uncle Arumugam was running a workshop in the suit property as per the permission granted to him by the second defendant Municipality. It is also seen that the resolution had been passed by the Municipality on 31.01.1969 to alienate the suit property in favour of the plaintiff's paternal uncle Arumugam. It is the case of the plaintiff that after Arumugam, his father Nachimuthu had taken the possession of the suit property and enjoying the same and furthermore, it has also been pleaded by the plaintiff that his father had bequeathed the suit property in favour of the plaintiff by way of a Will dated 29.09.1999 and accordingly on the abovesaid factors, the plaintiff has laid the suit that his father has the entitlement to purchase the suit property from the defendants based on the resolution of the Municipality abovestated and accordingly laid

the suit for appropriate reliefs.

7. The defendants resisted the plaintiff's suit contending that neither the plaintiff's paternal uncle, nor his father Nachimuthu or the plaintiff had been in the continuous enjoyment of the suit property and furthermore according to them, the plaintiff is not entitled to seek the sale of the suit property in his favour based on the resolution dated 31.01.1969 of the Municipality as a matter of right and hence the plaintiff is not entitled to seek and obtain the reliefs as prayed for.

8. As rightly determined by the Courts below, the materials placed on record go to show that originally the suit property was in the possession and enjoyment of the plaintiff's paternal uncle Arumugam. Thereafter, it is found that the plaintiff's father claimed that he had occupied the suit property and in this connection, the plaintiff's father had also laid the suit against the Municipality in O.S.No.577 of 1989 and after contest, it is found that the abovesaid suit has been dismissed. Furthermore, as per the defence version, the first appeal preferred by the plaintiff's father as against the judgment and decree passed in O.S.No.577 of 1989 has also been dismissed. The same has not been controverted by the plaintiff as such. It is thus found that as per the abovesaid factors, the defendants had been asserting their right over the suit property and accordingly, they had endeavored to recover the possession of the suit property and efforts made by the plaintiff's father to stall the same had ended in vein.

9. The main point that has been urged by the plaintiff is that, inasmuch as, the Municipality had passed the resolution on 31.01.1969 accepting to alienate the suit property in favour of the plaintiff's paternal uncle and pursuant to the same, the plaintiff is in the possession and enjoyment of the suit property and furthermore, as the suit property had been bequeathed in favour of the plaintiff by his father by a Will dated 29.09.1969 marked as Ex.A23 and furthermore, when the legal heirs of Arumugam had also expressed no objection in the plaintiff's taking steps to purchase the suit property from the Municipality marked as Ex.A20, it is the case of the plaintiff that the Municipality is bound to alienate the suit property in his favour and hence he has been necessitated to lay the suit for necessary reliefs.

10. On a perusal of the resolution of the Municipality dated 31.01.1969, it is thus found that the Municipality had passed a resolution agreeing to alienate the suit property in favour of the plaintiff's paternal uncle Arumugam. However, it does not stand to reason as to how on

the basis of the said resolution, the plaintiff, as such, would be entitled to direct the Municipality to alienate the suit property in his favour. It has not been established by the plaintiff by placing acceptable and reliable material that his paternal uncle had approached the Municipality to sell the suit property in his favour following the resolution dated 31.01.1969. That apart, as rightly determined by the Courts below, after the demise of Arumugham, no valid material has been put forth by the plaintiff to hold that his father Nachimuthu had occupied the suit property as per the permission granted by the Municipality. In such view of the matter, when there is no entitlement on the part of the plaintiff's father to remain in the possession and occupation of the suit property as per law, it does not stand to reason as to how he would be entitled to convey and bequeath the suit property in favour of the plaintiff under the Will marked as Ex.A23 and when no valid transfer of the suit property has been made in favour of the plaintiff's father by the Municipality, the alleged Will said to have been executed by him in favour of the plaintiff bequeathing the suit property to the plaintiff is found to be not valid in the eyes of law and therefore on the basis of the same, the plaintiff cannot be allowed to contend that he has the right to get the alienation of the suit property in his favour based on the resolution of the Municipality marked as Ex.A1. The legal heirs of Arumugham has given the letter in favour of the plaintiff marked as Ex.A20, permitting the plaintiff to take appropriate steps to purchase the suit property from the Municipality based on the resolution of the Municipality marked as Ex.A1 and that they have no objection with reference to the same. As rightly determined by the Courts below, even for the sake of arguments that the legal heirs of Arumugham would have some entitlement to purchase the suit property from the Municipality based on the resolution marked as Ex.A1, however, it does not stand to reason as to how they would be entitled to transfer the said right in favour of the plaintiff, when they have not approached the court seeking the alienation of the suit property in their favour. In such view of the matter, based on Ex.A20 letter said to have been given by legal heirs of Arumugham in favour of the plaintiff, the plaintiff cannot be allowed to contend that he has the right to get the suit property alienate in his favour.

11. As above seen, the resolution of the Municipality marked as Ex.A1 is dated 31.01.1969. The present suit has been laid by the plaintiff in the year 2002. If really the abovesaid resolution is legally enforceable, as such, the plaintiff's paternal uncle would have endeavored to purchase the suit property from the Municipality at the earliest point of time. On the other hand, he has not made any such move to purchase the suit property. As above seen, the plaintiff has not established that his father had occupied the suit property under the valid

permission or consent of the Municipality. Ex.A20 letter given by the legal heirs of Arumugam would not convey a valid right in favour of the plaintiff to purchase the suit property as such. Furthermore, when the plaintiff's occupation of the suit property is found to be not a valid one and as rightly put forth by the defendants, when the property belonging to the Government and vested with the Municipality cannot be alienated to private persons and when the same is barred by the Government under the G.O marked as Ex.B10, it is found that the plaintiff without any entitlement cannot seek the right to purchase the suit property from the Municipality particularly based on the resolution of the Municipality marked as ExA1, when no such right had been conferred in favour of the plaintiff under the said resolution. The plaintiff, at the foremost, should establish that he has a right to direct the Municipality to sell the suit property in his favour as per law. When no such right has been found to be existing in favour of the plaintiff as per law, when Ex.A1 resolution does not confer any such right in favour of the plaintiff and when the plaintiff has failed to establish that he and his father had been in the valid possession and enjoyment of the suit property and when the documents relied upon by the plaintiff for seeking the reliefs namely the letter said to have been given in his favour by the legal heirs of Arumugam, his paternal uncle marked as Ex.20 and the Will executed by his father marked as Ex.23, do not have any valid sanctity in the eyes of law, on that basis, the plaintiff cannot be allowed to seek and obtain the reliefs as prayed for.

12. The reliefs sought for by the plaintiff against the defendants not having the backing or support of any legal right as such on the part of the plaintiff and when there is a bar placed by the Government prohibiting the Municipality from alienating the properties vested with it and when the plaintiff has not established that his alleged possession and enjoyment of the suit property is valid and he is entitled to obtain the reliefs prayed for as per law, in all, it is found that the suit laid by the plaintiff is misconceived and rightly dismissed by the Courts below. The Courts below had assessed the materials placed on record in the right perspective, both oral and documentary and analysing the same in the proper perspective, both factualwise as well as legalwise and rightly declined the reliefs prayed for by the plaintiff. No valid material is placed warranting interference with the judgment and decree of the Courts below dismissing the plaintiff's suit. In my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law

formulated in the second appeal are accordingly answered against the plaintiff.

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

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Tiruppur.

2. The District Munsif,
Tiruppur.

Copy to

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

+1 CC to Mr. KAithamalai Kumaran, Advocate sr 28354.

+1 CC to Govt. Pleader sr 28349

S.A.No.1336 of 2005

MG (CO)
SP(10/06/2019)

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