

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.02.2019

PRONOUNCED ON:28.02.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 641 of 2005

K.Jayachandran ... Appellant/Plaintiff

Vs.

1.Special Tahsildar No.1,
Land Acquisition Officer,
Neyveli -2.

2.The Deputy Collector,
Land Acquisition Officer,
Neyveli -2.

3.The Collector of South Arcot,
Cuddalore.

4.Duraimayil

5.Chairman,
Neyveli Lignite Corporation Ltd.,
Neyveli.

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 20.07.2004 in A.S.No.61 of 2003 on the file of the Subordinate Court at Virdhachalam confirming the Decree and judgment dated 27.06.2002 in O.S.No.25 of 1996 on the file of the District Munsif Court at Neyveli.

For Appellant : Mr.G.R.Lakshmanan

For RR1 to R3 : Mr.N.Manikandan

For RR5 :Mr.N.Nithyanandan

For RR4 :No representation/No appearance
set exparte vide order dated
12.02.2019

J U D G M E N T

Challenge in this second appeal is directed against the judgment and decree dated 20.07.2004 passed in A.S.No.61 of 2003 on the file of the Subordinate Court, Virdhachalam confirming the judgment and decree dated 27.06.2002 passed in O.S.No.25 of 1996 on the file of the District Munsif Court at Neyveli.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff in brief is that the suit property belonged to his father Kodiveeran by virtue of the sale deed dated 31.08.1972 and since then, his father had been in the possession and enjoyment of the suit property by putting up a thatched house in the same and living therein till his lifetime with his family members and he died in the year 1979 intestate leaving behind his wife Kundumani ammal and the sons namely the plaintiff and his brother Raman and except the abovesaid persons, no other person is entitled to derive title to the suit property. In the oral family arrangement made between the plaintiff's brothers and mother, the suit property was allotted to the share of the plaintiff as early as 1980 and at that point of time, the plaintiff was only 18 years old without having any worldly knowledge and when the suit property was acquired by Neyveli Lignite Corporation Limited in the year 1980, the plaintiff was not served with any notice and he was kept in dark about the acquisition proceedings and only recently, the plaintiff came to know that the suit property had been acquired by the defendants 1 to 3 on behalf of Neyveli Lignite Corporation Limited and the award had been passed behind the back of the plaintiff and also without his knowledge, in the name of the 4th defendant, who has nothing to do with the suit property and the 4th defendant is a stranger and the defendants 1 to 3 colluded with the 4th defendant and disbursed the award amount in his favour and consequently the 4th defendant is representing himself as a displaced person and attempting to obtain employment on permanent basis in Neyveli Lignite Corporation Limited, however, when he has no title to the suit property, he is not entitled to receive any consequential benefit and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the 4th defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the suit property belonged to the plaintiff's father and the same had been acquired by Neyveli Lignite Corporation Limited. The suit property had been

acquired as belonging to the plaintiff's brother Ilaiya perumal and accordingly the award had come to be passed and the same had been transferred by Ilaiya perumal in favour of the 4th defendant and in connection with the same, he had received a sum of Rs.638/- and on the assumption that he would get employment, the award amount had been apportioned between the plaintiff's brother Ilaiya Perumal and the 4th defendant. However, the 4th defendant has not been given any employment by Neyveli Lignite Corporation Limited and on the other hand, the plaintiff's brother had secured employment in view of the acquisition proceedings and the 4th defendant is employed in Neyveli Lignite Corporation Limited on contract basis and the same had not been given to him based on the acquisition proceedings and therefore the plaintiff has no cause of action against the 4th defendant and the suit is liable to be dismissed.

6. The case of the 5th defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the suit property lying over an extent in R.S.No.111/8 standing in the name of Kodiveeran and others was acquired for the expansion activities of Neyveli Lignite Corporation Limited and an extent of 0.10 acres and 0.13 acres were under the enjoyment and ownership of Kasinathan and Illaiya Perumal, the sons of Kodiveeran. In connection with the disbursement of the award amount, Kasinathan had agreed to pass the award both in his favour as well as in favour of the 4th defendant by apportioning the 10 cents at the rate of 5 cents each and accordingly the compensation amount had been disbursed to the abovesaid persons and Kasinathan was provided with an employment in Neyveli Lignite Corporation Limited under the scheme for the employment of displaced persons and therefore the question of providing one more employment in favour of the 4th defendant does not arise and therefore the plaintiff's suit is liable to be dismissed. No property belonging to the plaintiff has been acquired and the plaintiff's ownership to the suit property is specifically denied and the suit has been laid by the plaintiff with an ulterior motive and malafide intention. The acquisition proceedings had been initiated by the defendants 1 to 3 and in accordance with law and it is false to state to that the plaintiff was not served with any notice and kept in the dark about the same. There is no scope for providing employment either in favour of the plaintiff or the 4th defendant by Neyveli Lignite Corporation Limited and there is no cause of action for the suit and therefore the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 was marked. On the side of the defendants, D.Ws.1 to 3 examined. Exs.B1 and B2 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were dismissed the plaintiff's suit. Aggrieved over the same, the present Second Appeal has been preferred. 9. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

1. Whether the Courts below are right in dismissing the suit when the declaration sought for by the plaintiff is based and admitted to be the owner of the plaint schedule mentioned property as one of the legal heir of the father and the fourth defendant being a total stranger and when no document of title has been produced by him to substantiate his claim as owner of the plaint schedule mentioned property?

2. Whether the Courts below are correct in discarding the evidence of P.Ws. 1 to 3 when all the three witnesses have categorically asserted the partition in the family and the plaint schedule mentioned property allotted to the plaintiff on the basis of having no knowledge of acquisition proceedings which is totally irrelevant to the purpose for which they have been examined?

3. Whether the Courts below are right in upholding the acquisition proceedings when admittedly no notice of any proceedings have been served on the plaintiff? And

4. Whether the Courts below are right in holding that the suit is barred by limitation when admittedly no notice was issued to the plaintiff in any proceedings?

10. It is not in dispute that the suit property along with other extent in R.S.No.111/08 belonged to Kodiveeran, the plaintiff's father. The same could be gathered from the copy of the sale deed dated 31.08.1972 marked as Ex.A1. It is also not in dispute that the acquisition proceedings were initiated by the defendants 1 to 3 with reference to the land owned by Kodiveeran for the benefit of Neyveli Lignite Corporation Limited and accordingly the materials placed on record would go to show that the suit property had also been acquired in connection with the same. Now according to the plaintiff, Kodiveeran died intestate leaving behind his wife Kudumani Ammal, the plaintiff and one Raman, the sons and thus it is pleaded by the plaintiff that after the demise of Kodiveeran, in the family arrangement effected amongst his legal heirs

abovestated in the year 1980, the suit property was allotted to the plaintiff. Thus, the plaintiff claims title to the suit property based on the oral family arrangement, which according to him took place in the year 1980. At the foremost, the plaintiff has failed to establish that Kodiveeran died intestate leaving only his wife Kundumani Ammal, the plaintiff and one Raman as his legal heirs. On the other hand, the plaintiff examined as P.W.1 has admitted that his father Kodiveeran died leaving behind his four sons namely ThangaRaj, Illaiyaperumal, Kasinathan and the plaintiff and also one daughter and his wife. In such view of the matter, the case projected by the plaintiff in the plaint that Kodiveeran died leaving behind only his wife Kundumani Ammal and the plaintiff and his brother Raman as the only legal heirs, as such, is found to be a false case. As abovenoted, the plaintiff claims the ownership of the suit property based on the oral family arrangement, which according to the plaintiff, took place in the year 1980. The abovesaid case of the plaintiff is seriously challenged by the defendants in particular by the contesting 5th defendant. In such view of the matter, it is for the plaintiff to establish that he had been allotted the suit property in the family arrangement put forth by him. However, with reference to the same, there is no acceptable and convincing material placed on the part of the plaintiff. In connection with the same, the plaintiff has not come forward with the clear case as to what are the properties left behind by his father Kodiveeran and who are all his legal heirs and what are the shares allotted to the legal heirs and on the other hand, very vaguely pleaded that in the family arrangement which took place in the year 1980, the suit property had been allotted to him. During the course of evidence, the plaintiff would state that his brother Illaiya Perumal owns 13 cents of land and his another brother Kasinathan owns 10 cents of land and not come forward with the clear case as to how they came to acquire the abovesaid extent of land and with reference to the same, there is no clear plea put forth by the plaintiff in the plaint as regards the oral family arrangement /partition and as rightly found by the Courts below, during the course of cross examination, the plaintiff has admitted that he is not aware of the alleged partition/family arrangement directly and only came to know through others and accordingly, it is seen that he is unable to substantiate the abovesaid case by placing reliable and convincing material. P.W.2 examined on behalf of the plaintiff has not spoken anything about the alleged family arrangement put forth in the plaint. In such view of the matter, his evidence would be of no use to sustain the abovesaid aspect of the plaintiff's case. P.W.3 examined on behalf of the plaintiff, though during the course of chief examination would claim that he has knowledge about the partition effected amongst the family members of Kodiveeran and the share allotted to the plaintiff, however,

during the course of cross examination, he has admitted that he does not know the survey number in respect of which the family members had effected partition and further admitted that he does not know the details of partition and also admitted that he does not know whether the partition had been effected by way of a written instrument and when they had effected partition and also admitted that he does not know about the acquisition proceedings. The evidence of P.W.3 being as above, as rightly determined by the Courts below, his evidence cannot be relied upon for upholding any partition particularly for upholding the case of the plaintiff that the suit property had been allotted to him in the oral family arrangement in the year 1980. To evidence that following the abovesaid allotment of the suit property in favour of the plaintiff in the oral family arrangement in the year 1980 and following the same, the suit property had been in his possession and enjoyment, no material whatsoever has been projected by the plaintiff with reference to the same. In such view of the matter, when the plaintiff has miserably failed to establish his claim of title to the suit property as put forth by him, the Courts below are found to be wholly justified in rejecting the plaintiff's case, on the footing that the plaintiff has failed to establish his claim of ownership to the suit property as projected by him.

11. Now according to the plaintiff, he was only 18 years old when the family arrangement took place and the suit property had been allotted to him. Further, according to the plaintiff, he is not aware of the acquisition proceeding initiated in respect of the suit property as no notice was issued to him and he was kept in dark with reference to the same. When the plaintiff has failed to establish that he has a valid title to the suit property as put forth by him, as rightly put forth by the defendants, the question of sending a notice to the plaintiff in the acquisition proceeding does not arise. As per the materials placed on record, it is found that the property owned by the legal heirs of Kodiveeran had come to be acquired and accordingly the award had come to be passed and the compensation had been disbursed to the title holders. Furthermore, it is found that the plaintiff's brother Kasinathan had accepted the apportionment of the award amount of the property owned by him of an extent of 10 cents by allowing the disbursement of compensation in respect of 5 cents of land to the fourth defendant and furthermore, the materials placed on record go to show that the employment had been provided only to Kasinathan and accordingly, it is found that as put forth by the 5th defendant, the question of further providing employment to the plaintiff or the 4th defendant in the light of the acquisition proceeding does not arise. The 5th defendant has come forward with the clear case that there is no question of providing any employment to the 4th defendant inasmuch as Kasinathan had been

already provided employment by the Neyveli Lignite Corporation Limited and in such view of the matter, as rightly determined by the Courts below, the relief of permanent injunction sought for by the plaintiff restraining the defendants 1 to 3 and the 5th defendant from providing employment to the 4th defendant does not arise for consideration and as such it is seen that the abovesaid relief sought for by the plaintiff has no cause of action at all and the same had been rightly rejected by the Courts below.

12. Inasmuch as the plaintiff has failed to establish his claim of ownership of the suit property as pleaded by him, the question of issuing notice to the plaintiff in connection with the acquisition proceedings initiated with reference to the suit property does not arise. Furthermore, when from the materials placed on record, particularly, the evidence adduced on the part of the plaintiff that when he has admitted that he was aged 18 years at the time of acquisition proceedings and when according to the plaintiff, he is a resident of the village, in such view of the matter, if really, the suit property had been allotted to him towards his share in the family arrangement, the plaintiff would have initiated necessary action challenging the same as per law either on attaining majority or immediately thereafter as provided under law and on the other hand, the plaintiff has come forward with the suit nearly 16 years after the acquisition proceedings and the abovesaid factors would only go to establish that inasmuch as the plaintiff has not been conferred any title to the suit property as put forth by him, it is found that the plaintiff has not endeavored or initiated any action challenging the land acquisition proceedings in the manner known to law and on the abovesaid set of facts, as could be gathered from the materials placed on record, the Courts below have also held that the suit laid by the plaintiff is hit by the law of limitation. Furthermore, when the employment opportunity is provided by Neyveli Lignite Corporation Limited on compassionate ground, the plaintiff cannot claim the same as a matter of right and furthermore, when in particular, the 5th defendant had put forth his clear case that they have no idea of providing any employment to the 4th defendant, in such view of the matter, it is seen that, the plaintiff's case has to fail.

13. In the light of the abovesaid factors, when the plaintiff has failed to establish his title to the suit property or placed any material that the 5th defendant has endeavoured to provide employment to the 4th defendant in any manner and the plaintiff having not challenged the acquisition proceedings in the manner known to law for several years and when the plaintiff's witnesses have failed to support the plea of family arrangement put forth by the plaintiff in any aspect as above

discussed and in such view of the matter, it is seen that the Courts below, based on the materials placed on record, both oral and documentary, have correctly held that the plaintiff has no title to the suit property and the plaintiff has no cause of action to levy the suit and the plaintiff's suit is barred by limitation and accordingly, it is found that no interference is called for as regards the dismissal of the plaintiff's suit by the Courts below. 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 and in favour of the 5th defendant.

14. The counsel for the 5th defendant in support of his contentions, placed reliance upon the decision rendered by the Hon'ble Supreme Court dated 07.12.1998 in Civil Appeal No.11912 of 2018 [Rajasthan Housing Board and Another Vs. Chandi Bai and others]. The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

15. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa
To

1. The Subordinate Judge,
Subordinate Court at Virdhachalam.
2. The District Munsif, सत्यमेव जयते
District Munsif Court at Neyveli.

Copy to : The Section Officer,
VR Section, High Court, Chennai.

- +1 cc to The Special Government Pleader, Sr.No.19567
- +1 cc to Mr.G.R.Lakshmanan, Advocate, Sr.No. 18691
- +1 cc to Mr.N.Nithyanandan, Advocate, Sr.No. 18657

judgment made in
S.A.No.641 of 2005

SV(CO)
CSL/23.07.2019