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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :29.03.2019

PRONOUNCED ON:22.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.948 of 2005

Deivathal ... Appellant/Respondent/Plaintiff

Vs.

1.P.Palanisamy Gounder (Died))

2.Karuppasamy Gounder

[R2 is recorded as LR of the deceased
R1 viz., P.Palanisamy Gounder vide
order of the court dated 18.03.2019
as per memo dated 18.03.2019]

...Respondents/Appellants/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 12.11.2003 passed in A.S.No.19 of 2003 on the file of the Subordinate Court, Udumalpet, reversing the judgement and decree dated 24.09.2002 passed in O.S.No.146 of 1996 on the file of the District Munsif Court, Udumalpet.

For Appellant : Mr.R.K.Kannan

For Respondent 2 : Set exparte
(vide order dated 29.03.2019)

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 12.11.2003 passed in A.S.No.19 of 2003 on the file of the Subordinate Court, Udumalpet reversing the judgment and decree dated 24.09.2002 passed in O.S.No.146 of 1996 on the file of the District Munsif Court, Udumalpet.



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

1. Whether the appellate court is correct in dismissing the suit for bare injunction when the defendants tried to interfere with the possession of the plaintiff/appellant herein in respect of suit well by holding that the claim of the right in this suit well by defendants on the basis of Ex.B1 sale deed executed after the statutory notification under section 18(3) of TNL Reforms Act by which the entire land including the well, machineries, building, power line fixed in the land is vested with Government?

2. When the plaintiff/appellant herein has proved her possession and enjoyment of the suit land assigned by the Government under suit land assigned by the Government under Ex.A1 to 5 and such assignment of land includes the well in suit S.F.No.78/4 as contemplated under section 8 of TP Act, the appellate court is correct in dismissing the suit for bare injunction?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a 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. Suffice to state that the suit has been laid by the plaintiff for the relief of permanent injunction claiming that the suit property as described in the plaint had been assigned in the name of the plaintiff and further putting forth case that based on the said assignment, it is the plaintiff, who has been in the possession and enjoyment of the suit property and whileso, the defendants without authority interfered with her possession and enjoyment of the suit property and hence it is stated that the plaintiff has been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit challenging the assignment of the suit property in her favour by the Government as put forth in the plaint and it has also been stated by the defendants that the Government had acquired the lands belonging to Visalatchi Ammal in S.F.No.78/4 excluding the wells, service connection, motor pump sets etc., and the first defendant had acquired the wells, service connection, motor pump sets etc., from Visalatchi Ammal by way of a registered sale deed dated 18.08.1995 and in such view of the matter, according



to the defendants, the plaintiff cannot claim that she has been assigned the suit property by the Government as described in the plaint and accordingly contended that the plaintiff should have come forward with the relief of declaration of title to the suit property and also impleaded the Government as a necessary party to the suit proceedings and thereby sought for the dismissal of the plaintiff's suit.

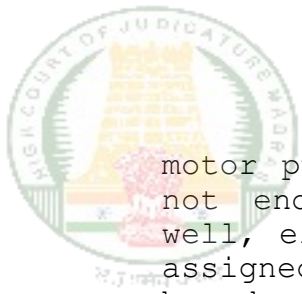
7. Based on the materials placed on record, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. On appeal, the first appellate court has reversed the judgment and decree of the trial court and dismissed the plaintiff's suit and impugning the same, the present second appeal has been laid.

8. It is not in dispute that the excess land belonging to Visalatchi Ammal had been acquired by the Government and thereafter the same had come to be assigned in favour of various persons and accordingly it is found that the Government, according to the plaintiff, had assigned the suit property in her favour under the assignment proceedings marked as Ex.A4. On a perusal of Ex.A4 assignment order as well as the delivery certificate issued in favour of the plaintiff marked as Ex.A1 and the chitta extract produced by the plaintiff marked as Ex.A3, in all, it is found and one could gather that the Government had assigned the land measuring an extent of [1 acre and 8 cents] 1.08 acres in S.F.No.78/4 in favour of the plaintiff. In none of the abovesaid documents, there is any mention of well, service connection, motor pump sets as described in the plaint. The suit property is described as lying in SF.No.78/4, 0.44.0 hectares surrounded by fixed boundaries with the well and 5HP electric motor pump sets with service connection No.37 with all other appurtenants thereon. However, as abovenoted, in the assignment order marked as Ex.A4 issued in the name of the plaintiff as well as the delivery certificate Ex.A1 and the Chitta extract Ex.A3, the property described therein is only stated to be lying in SF.No.78/4 of an extent of 0.44.0 hectares. The documents do not depict that the assignment had been issued in favour of the plaintiff inclusive of the well, 5 HP electric motor pump sets with service connection No.37 etc., and in such view of the matter, when the defendants have thrown a challenge to the claim of the plaintiff that she has been assigned the suit property inclusive of the well, 5HP electric motor pump sets with service connection No.37 etc., unless the plaintiff establishes her claim of title to the abovesaid properties also as having been assigned in her favour by the Government, when the land alone is found to have been assigned in favour of the plaintiff and when according to the defendants, the well owned by Visalatchi ammal has been the source of irrigation for not only S.F.No.78/4, but also to the



other lands belonging to her and when it is found that the excess lands belonging to Visalatchi Ammal which had been acquired by the Government had also been assigned in favour of the first defendant under Ex.B2 assignment proceedings, in such view of the matter, as rightly determined by the first appellate court to establish that the plaintiff had been granted the assignment in respect of the property inclusive of the well, 5HP motor pump sets, service connection No.37 etc., the plaintiff should have examined the Government authority to sustain her case that she had been granted the assignment in respect of the suit property as described in the plaint. In such view of the matter, as found by the first appellate court, the plaintiff should have also impleaded the Government as necessary parties to the proceedings for enabling the Government to put forth its views as regards the nature of the property assigned to the plaintiff by way of Ex.A4 proceedings.

9. As rightly determined by the first appellate court, on the publication of the notification under the concerned Act, the land specified in the notification together with trees standing on such land and buildings [machineries, plants, wells, filter points power lines] constructed, erected or fixed on the said lands and used for agricultural purpose shall be deemed to be acquired by the Government for public purpose and be vested with the Government free from all encumbrances. When the plaintiff claims that the suit property as described in the plaint is in her possession and enjoyment based on Ex.A4 assignment proceedings, however when Ex.A4 assignment proceedings does not depict that inclusive of the well, electric motor pump sets, service connection etc., the property had been assigned in favour of the plaintiff and to elucidate the abovesaid points, the plaintiff has not even endeavored to implead the Government as a party nor examined any Government official for throwing light on the nature of the property assigned in favour of the plaintiff, in such view of the matter, when the parties are at dispute only as regards the well, electric motor pump sets, service connection etc. and not in respect of the land as such, when the abovesaid well, motor pump sets, service connection etc., are claimed to be the source of irrigation not only for S.F.No.78/4 but also for the other lands belonging to Visalatchi Ammal and when the other lands of Visalatchi ammal on acquisition is also found to have been assigned in favour of the first defendant and accordingly the first defendant has also been claiming right over the well in question inclusive of the electric motor pump sets, service connection etc., and when the usage of the well, electric motor pump sets, service connection etc., by Visalatchi ammal has not been established as being confined only to S.F.No.78/4 and not to her other lands and when the assignment order in favour of the plaintiff does not cover in specific the well, electric



motor pump sets, service connection etc., and the plaintiff has not endeavored to establish that inclusive of the abovesaid well, electric motor pump, service connection etc., she had been assigned the property as described in the plaint, ipso facto, based on the materials projected by the plaintiff, we cannot hold that the suit property as described in the plaint is in the exclusive possession and enjoyment of the plaintiff.

10. Eventhough the claim of the defendants that they had acquired the right in respect of the well, electric motor pump sets, service connection etc., from Visalatchi ammal cannot be legally countenanced as such, however the fact remains that the plaintiff has miserably failed to establish that she had been assigned the suit property as described in the plaint under Ex.A4 proceedings, in all, it is seen that the first appellate court is justified in declining the equitable and discretionary relief of permanent injunction prayed for by the plaintiff and in my considered opinion, no interference is called for with reference to the same.

11. In the light of the above discussions, when the first appellate court has not dismissed the plaintiff's suit on the footing that the defendants had acquired the right over the well, electric motor pump sets in dispute by way of Ex.B1 sale deed and on the other hand, dismissed the plaintiff's suit, on the footing that the plaintiff has failed to establish that inclusive of the well, electric motor pump sets, service connection in dispute, she had been assigned the property and also dismissed the suit, inasmuch she had failed to establish her possession and enjoyment of the property as described in the plaint and when the assignment granted in favour of the plaintiff is governed by various conditions and unless the plaintiff establishes clearly that inclusive of the well, electric motor pump sets, service connection etc., she had been assigned the suit property and with reference to the same, the plaintiff should have endeavored to implead the Government as a party and examined the Government authority in support of her case to settle the issues between the parties one way or the other, in such view of the matter, in my considered opinion and as determined by the first appellate court, the plaintiff cannot be allowed to invoke the provisions of section 8 of the Transfer of Property Act for contending that the Court should deem and hold that inclusive of the well, electric motor pump sets, service connection etc., she had been assigned the property under Ex.A4. As rightly determined by the first appellate court only with a view to throw light on the same, the plaintiff should have taken steps to implead the Government as a party or the plaintiff should have endeavored to place acceptable evidence to hold that the property assigned in her favour also includes the well, electric motor pump sets, service connection



in dispute. In such view of the matter, I do not find any valid reason to interfere with the determination of the first appellate court in dismissing the plaintiff's suit by setting aside the judgment and decree of the trial court. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

12. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Subordinate Court,
Udumalpet.

2. The District Munsif,
District Munsif Court,
Udumalpet.

Copy to

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

+1cc to Mr. R.K. Kannan, Advocate SR.No.39357

S.A.No.948 of 2005

RSK(CO)
GMY(03/09/2019)