

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.121 OF 2013

Maruthavanan,
S/o.Velukannu Chettiar

... Appellant/Appellant/
Plaintiff

Vs

1. The Assistant Divisional Engineer,
Highways and Rural Works
Sirkali, Nagapattinam District.
2. The Assistant Divisional Engineer,
Highways and Rural Works,
Mayiladuthurai, Nagapattinam District.
3. The Divisional Engineer,
Highways and Rural Works,
Nagapattinam, Nagapattinam District.
4. The Divisional Engineer,
Highways and Rural Works,
Thanjavur, Thanjavur District.
5. The Village Administrative Officer,
No.91, Melaiyur, Sirkali Taluk,
Nagapattinam District.
6. The The Tahsildar,
Sirkali, Nagapattinam District.
7. The District Collector,
Nagapattinam District,
District Collectorate,
Nagapattinam.

... Respondents/Respondents/
Defendants

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 11.09.2012 made in A.S.No.97 of 2011 on the file of the Principal Subordinate Court, Mayiladuthurai in confirming the Judgement and Decree

dated 24.06.2011 made in O.S.No.175 of 2008 on the file of the District Munsif Court, Sirkali.

For Appellant : Mr.A.Muthukumar
For Respondents : Mr.S.Jaganathan
Government Advocate (C)

J U D G E M E N T

The short point involved in the above Second Appeal is whether the suit is barred by the provisions of Section 63 of the Tamil Nadu Highways Act, 2001 (hereinafter called as the Act).

2.The unsuccessful plaintiff in both the Courts below is the appellant before this Court. The appellant had filed a suit O.S.No.175 of 2008, on the file of the District Munsif Court, Sirkali, for a declaration that the reclassification of Survey No.158/7B as road by the proceedings dated 11.01.1991, is invalid and consequently direct the defendants to reclassify the lands back to its original state and for a permanent injunction restraining the Revenue Officials from interfering with the peaceful possession and enjoyment of the suit property by the appellant.

3.The case of the appellant is that the suit property is his patta lands and without any notice to him the reclassification has been done by the Revenue Officials.

4.The defense to the above suit is that the allegations in the suit are misconceived and that the property was required for widening of Poompuhar to Sirkali road. They would contend that the building and the suit property is on the road edge and belongs to the government. They had further pleaded that the suit was highly belated since the reclassification was done as early as in the year 1991.

5.The parties have gone to trial and the learned District Munsif, Sirkali, had framed three issues in which there were no issues framed as to whether the suit was barred by the provisions of Section 63 of the Act, on the contrary the issues that had been framed were:

i)Whether the plaintiff was entitled to permanent injunction?

ii)Whether the plaintiff is entitled to the declaration and mandatory injunction as prayed for?

iii).What other reliefs the plaintiff was entitled to?

6.The issue regarding Jurisdiction/bar of the suit under Section 63 of the Act was never a point for consideration before the Trial Court. However the suit has been dismissed on the ground that the suit is barred under the provisions of Section 63 of the Act.

7.The matter was taken upon challenge to the Principal Subordinate Court, Mayiladuthurai. Unfortunately, the learned Principal Subordinate Judge, Mayiladuthurai, also concurred with the view taken by the learned District Munsif, Sirkali and proceeded to dismiss the appeal. Challenging the said Judgement and Decree the appellant is before this Court.

8.At the time of admission the following Substantial Questions of law has been framed:

"1.When the Defendants had admitted the plaintiff's title to the suit property and failed to prove that proper procedures were followed by issuing notice to him, whether the relief of declaration that the changes effected by the defendants in the Revenue Records is not barred under Section 63 of the Highways Acts, 2001?

2.When admittedly the Defendant had not followed any procedure, will the suomotto changes effected by them in the Revenue Records oust the jurisdiction of the Civil Court?

3.Whether the Courts below erred in law in rejecting the reliefs of declaration and mandatory injunction as the jurisdiction of Civil Court is barred?"

9.Heard the counsels on either side and perused the records. Mr.A.Muthukumar, learned counsel for the appellant besides reiterating the contentions raised before the Courts below would rely upon the Judgements reported in AIR 1969 SC 78 - Dhulabhai Etc. Vs. State of Madhya Pradesh and another and (1985) 4 SCC 10 - State of Tamil Nadu Vs. K.L.M.Ramamurthy and others in support his arguments that the suit is not barred by the provisions of Section 63 of the Act.

10.The issue that have to be decided is to whether the suit filed is barred by the provisions of Section 63 of the Act. To consider the issue it is necessary to extract Section 63 of the Act:

"63.(1)No suit or other legal proceedings shall lie against the Government of anything which is in good faith done or intended to be done by or under

this Act.

(2)(a) No suit, prosecution or other proceedings shall lie against the State Highways Authority or any Highways Authority, or officer or person for any thing done or intended to be done under this Act, without the previous sanction of the Government, and such suit, prosecution or proceeding shall be filed within thirty days from the date of the act complained of.

(b) No such authority or officer or person shall be liable in respect of any such Act in any Civil or Criminal proceedings, if the Act was done in good faith in the course of the execution of the duties or the discharge of the functions assigned to such authority or officer or person by or under this Act."

11. A reading of the above Section would clearly indicate that what is barred is any action challenging an action taken by the government or its officials under the Act namely the Tamil Nadu Highways Act. The issue involved in the present suit is the reclassification of patta lands as road by the Revenue Officials this by no stretch of imagination comes within the ambit of the Act. The Section has not been understood correctly by both the Courts below. This misconception has led to the erroneous Judgement being pronounced by both the Courts below. Therefore this Court answers Substantial Question of law No.1 in favour of the appellant.

12. As regards the Substantial Question of law Nos.2 and 3, it is the admitted fact that the property in question was the ancestral patta lands of the appellant. Before reclassifying the same, admittedly, there has been no notice that has been issued by the respondents 5 to 7. This fact has come to the knowledge of the appellant only in the year 2008. Immediately, the appellant has come forward with the suit. Therefore, the entire procedure adopted by the respondents in suo moto reclassifying the suit property is vitiated and cannot be countenanced by this Court. Hence, Substantial Question of law Nos.2 and 3, also answered in favour of the appellant.

In the result, the Second Appeal is allowed. The suit is decreed as prayed for. However there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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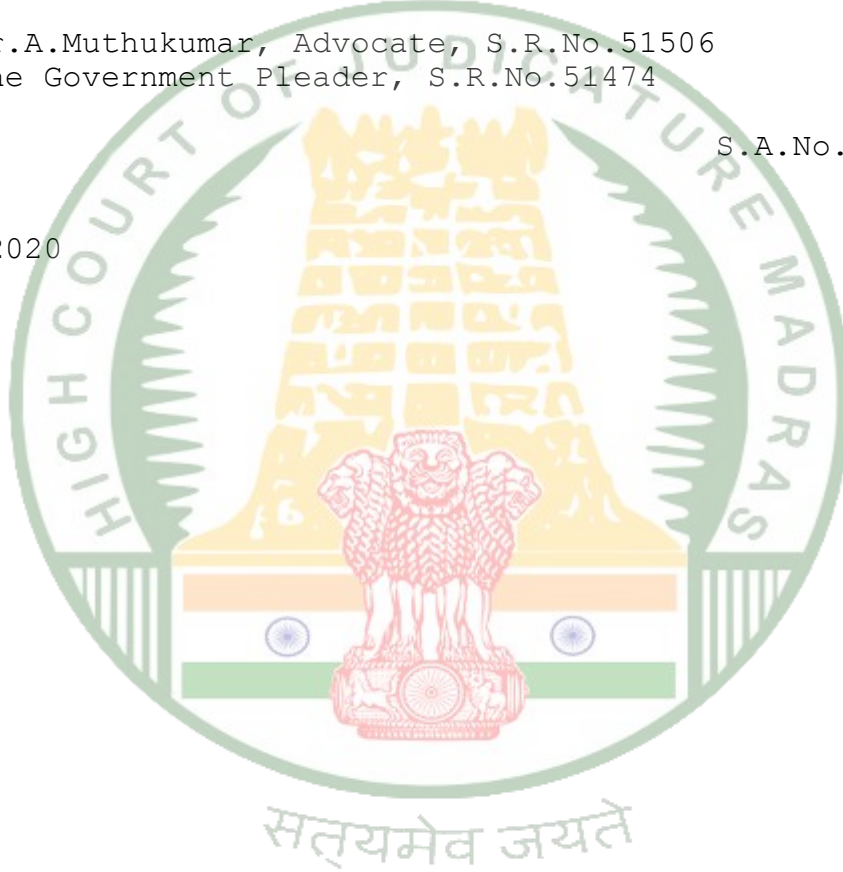
1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The District Munsif,
Sirkali.

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The Section Officer,
VR Section, High Court,
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+1cc to Mr.A.Muthukumar, Advocate, S.R.No.51506
+1cc to the Government Pleader, S.R.No.51474

S.A.No.121 of 2013

MR (CO)
CS/12/02/2020



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