



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 1066 of 2014

and MP No.1/14 & CMP 16420/18 in SA No.1066/14

and S.A.No.1207 of 2014

and MP No.1 of 2014 in SA No.1207 of 2014

1.The Metropolitan Transport Corporation  
(Chennai) Ltd. Division - I,  
Rep. By its Managing Director.

2.The Metropolitan Transport Corporation  
(Chennai) Ltd. Division - II,  
Rep. By its Managing Director,  
Pallavan House, Anna Salai, Chennai - 600 002.

..Appellants in both the appeals/  
Appellant/Defendant

Vs.

1.R.Ranga Pillai

2.B.Rajendran

..Respondents in both appeals/  
Defendants/Plaintiffs

Prayer in both the appeals: Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree in O.S.Nos. 5246 of 2006 and 6760 of 2006 respectively dated 01.03.2010 on the file of the II - Assistant City Civil Court at Chennai confirmed in A.S.Nos. 323 of 2010 and 310 of 2010 respectively dated 23.04.2014 on the file of the VII - Additional City Civil Court, Chennai.

For Appellants in both appeals : Mr. M.Chidambaram  
For Respondents in both appeals : Mr.T.Subramanian

#### C O M M O N J U D G M E N T

These two appeals arise out of two suits for injunction. The plaintiffs in O.S.No. 5246 of 2006 had filed the above suit seeking a decree for permanent injunction restraining the respondents namely, Metropolitan Transport Corporation from



interfering with their possession of the suit property.

2. According to the plaintiffs, the suit property situated in Survey No.11-A and 11B have been in possession of the plaintiffs for over 100 years and recognizing their possession, the subject land has also been assigned to them even during the year 1976. They would also claim title under a registered instrument of the year 1920. It is their further claim that the defendant without any manner of right is attempting to interfere with their possession of the suit property. On the above pleadings, the plaintiffs sought for a decree for permanent injunction.

3. The suit was resisted by the defendant Corporation contending that the suit property was alienated in favour of the defendant Transport Corporation vide G.O.Ms.No.2034 (Revenue Department) dated 18.10.1977. It was also claimed that the Chennai Corporation by its Resolution dated 07.11.1978 had handed over an extent of 50 cents that has been used as a market to the defendant Corporation for establishment of the Bus Terminus at Villivakkam. In compliance with the said Resolution, the Transport Corporation took possession of the property and has set up a bus stand.

4. According to the defendants, while the construction of Bus Terminus commenced, one Babu Pillai has filed a suit in OS No.910 of 1977 on the file of the District Munsif, Poonamallee, stating that a small portion of land on the South West corner belonged to him. The said suit was dismissed for default. The said Babu Pillai filed another suit in OS No.818 of 1984 against the defendants. He died pending suit and one Ranga Pillai and B.Rajendran/the plaintiffs in OS No.5246 of 2006 were impleaded as Legal Representatives of Late Babu Pillai. The second suit was decreed in favour of Babu Pillai. The same was challenged by the defendants in AS No.41 of 2004 and the appeal was pending on the file of the Sub Court, Poonamallee. Therefore, according to the defendant, the present suit is barred by res judicata.

Certain proceedings in a Writ Petition were also referred to.

5. The first defendant in OS No.5246 of 2006 filed a counter suit in OS No.6760 of 2006 seeking a decree for permanent injunction restraining the defendants from interfering with its possession of land measuring 82 cents in Survey No.11A/7B 2B (part) of Villivakkam Village and S.No.348/1 part of Konnur Village. The said suit was based on the Assignment made vide G.O.Ms.No.2034 (Revenue Department) dated 18.10.1977 and the Resolution of the Chennai Corporation dated 07.11.1978.



6. The defendants, who were the plaintiffs in OS No.5246 of 2006, resisted the suit setting up title on the basis of the Assignment made in the year 1976. Both the suits were tried by the same Court. During the pendency of the suits the appeal filed against the judgment in OS No.818 of 1984 in AS No.41 of 2004 came to be dismissed. Challenging the said dismissal, a Second Appeal was filed in this Court in SA No.1103 of 2008.

7. Upon considering the evidence on record, the Courts below found that the present suit filed by the Corporation is actually barred by res-judicata in as much as in the earlier suit for injunction filed by Babu Pillai in O.S.No. 818 of 1984, the Courts below have to find that the Babu Pillai is the last owner of the property and he has been in possession of the same and a decree for permanent injunction was granted in his favour. Even though the appeal was disposed of, it was claimed that the second appeal filed against the judgment in A.S.No.41 of 2004 is pending in this Court. It is now stated that the second appeal also came to be dismissed by this Court on 14.03.2016. Therefore, the judgment and decree in O.S.No. 818 of 1984 has now become final. The categorical findings of the Courts in O.S.No. 818 of 1984 is that Babu Pillai was owner of the property and he has been in possession and enjoyment of the property. A decree for injunction was also granted in his favour. Hence it was held the present suit filed by the Corporation seeking injunction in O.S.No. 6760 of 2006 is clearly barred by res-judicata.

8. On the above findings, the suit in OS No.5246 of 2006 filed by the respondents herein was decreed and the Suit in OS No.6760 of 2006 filed by the Transport Corporation came to be dismissed. Aggrieved, the Corporation preferred two appeals in AS No.310 of 2010 and 323 of 2010 and the Lower Appellate Court dismissed both the Appeals confirming the judgment and decree of the Trial Court. Challenging the dismissal of the Appeals by the Lower Appellate Court, the Corporation has come forward with these Second Appeals.

9. The following questions of law have been framed by this Court at the time of the admission :-

"i) Whether the Courts below rightly concluded that the respondents have violated the principle of res judicata?

ii) Whether the Courts below rightly concluded that Grama Natham land to be given to the private party instead of the Public Sector Undertaking Corporation ?

iii) Whether the Courts below rightly concluded that the Revenue Authority has already assigned the



land to the appellant and the same Authority may issue possession certificate (Exhibit A12)?" (sic).

10. The Courts below have found that the decree in O.S.No.818 of 1984 would operate as res-judicata in the present suit and in the suit for injunction filed by the respondents herein. The Courts below have found that the respondents have proved their possession. Despite having the knowledge of the construction that has been raised by the respondents, the Appellant / Corporation had not chosen to either seek declaration of its title or for recovery of possession. It had instituted suit for permanent injunction. The Courts below have rightly concluded that the present suit filed by the Corporation for injunction in O.S.No. 6760 of 2006 is barred by res judicata. Hence, the first question of law answered against the appellants. The Assignment in favour of the respondents is in the year 1976 and the alleged transfer of land by the Corporation of Chennai to the Metropolitan Transport Corporation is said to have taken place in the year 1978.

11. Mr.M.Chidambaram, learned counsel appearing for the appellants would contend that if the land had already been assigned to the predecessor of the respondents by the Revenue Authorities, the Chennai Corporation ought not to have assigned the same land to the appellant. Exhibit A14 filed in OS No.5246 of 2006 is the Order of Assignment passed by the Special Tahsildar which shows the land in Survey No.11/B/7-B-2 had been assigned in favour of one Dhanasekaran, son of Rangapillai. The truth and validity of the said document has been gone into in OS No.818 of 1984 and the same has been upheld. The said decree has been confirmed in Appeal as well as in Second Appeal by this Court. Hence, I do not think that the appellant Corporation can re-agitate the same issue by filing a suit for injunction.

12. In view of the fact that the person in possession is held to be the title holder in the earlier proceedings, the second question of law is also answered against the appellants. The third question of law does not strictly arise in view of the findings on the first and second questions of law. In view of the answers to the questions of law as above, the appeals fail and they are accordingly dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kkn/jv



To:-

1. The VII - Additional City Civil Court, Chennai.

2. The II Assistant Judge, City Civil Court,  
Chennai.

+2cc to Mr.M.Chidambaram, Advocate, S.R.No. 96508, 96509

+6cc to Mr.T.Subramanian, Advocate, S.R.No.96393 & 96394

S.A.No. 1066 of 2014  
and MP No.1/14 & CMP 16420/18  
in SA No.1066/14  
and S.A.No.1207 of 2014  
and MP No.1 of 2014 in SA No.1207 of 2014

PPA(CO)  
GN(03/01/2020)