

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : .01.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2776 and 2778 of 2019 and
C.M.P.nos.14194 and 14188 of 2019

The Commissioner,
Palladam Municipality,
Palladam

... Appellant in both the Appeals

Vs.

1. A.Jaganathan
 2. J.Soundarajan
 3. Sumathi
 4. The District Collector,
Tirupur
 5. The District Revenue Officer,
Tirupur
 6. The Revenue Divisional Officer,
Tirupur
 7. The Tahsildar,
Palladam
 8. The Settlement Tahsildar -II
Gobichettipalayam
(now represented by the
Assistant Settlement Officer,
(South) and the Additional Personal Assistant
to the Director of survey and Settlement,
Chepauk, Chennai - 600 005
- ... Respondents in both the appeals

Civil Miscellaneous Appeals are filed under Order XLIII Rule 1 of Civil Procedure Code to set aside the Fair and Decreetal order passed by the learned II Additional District and Sessions Judge, Tiruppur dated 12.04.2019 in I.A.Nos.1652 and 1653 of 2018 in O.S.No.234 of 2018 and allow the present Appeals.

For Appellant : Mr.S.R.Rajagopal,
Additional Solicitor General assisted by
Mr.A.S.Thambuswamy

For Respondents : Mrs.Chitra Sampath
Senior Counsel for
Mr.A.E.Ravichandran - R1 to R3

Mr.S.Jaganathan
Government Advocate [C.S.]

COMMON JUDGMENT

Since the issues involved in both the cases are one and the same, they are taken up together and a common order is being passed.

2. The brief facts leading to the filing of the present appeals are as follows:

(a) The respondents 1 to 3 / plaintiffs have filed a suit in O.S.No.234 of 2018 to declare that they are absolute owners of the property described in the plaint schedule therein and to grant consequential permanent

injunction against the respondents 4 to 8 and others. Also, earlier, the respondents 1 to 3 have filed I.A.Nos.1652 and 1653 of 2018 to grant temporary injunction till the disposal of the suit restraining the respondents 4 to 8, their agents, subordinates or any one claiming through them not to disturb the peaceful possession and enjoyment of the property. A detailed counter affidavit was filed by the appellant stating that the construction of micro compost center is entirely for the welfare of the public at large and the waste management project will give employment for nearly 200 persons directly. If the construction of the micro compost centre is not carried out or stopped, it will cause severe set back in disposing the tons of wastage, which eventually shall produce bad odor and spread various health hazards to the public, therefore, sought to dismiss the petitions.

(b) Thereafter, the learned Second Additional District Judge, Tiruppur had passed an order of permanent injunction in I.A.Nos.1652 and 1653 of 2018 dated 25.10.2018 against the respondents 1 to 6. Aggrieved against the same, the appellant, had earlier filed C.M.A.Nos.3088 and 3089 of 2018 before this Court to set aside the order passed in I.A.Nos.1652 and 1653 of 2018 in O.S.No.234 of 2018 dated 25.10.2018. This Court, on 01.02.2019 had allowed the said C.M.As by setting aside the orders

passed in I.A.Nos.1652 and 1653 of 2018 and directed to consider the same afresh within a period of two weeks.

(c) In consequence, a detailed counter affidavit was filed by the respondents 1 to 3 on 20.02.2019 to the said I.A.s. Again, on 12.04.2019, the court below had granted permanent injunction and allowed the said I.As. As against which, the present appeals are filed by the appellant.

(d) In the meantime, originally, C.M.A.No.8 of 2013 was filed by the respondents 1 to 3 and others before the learned Principal Subordinate Judge, Tiruppur, however, the same was dismissed for default and W.P.No.5664 of 2019 was filed by the 3rd respondent seeking a Writ of Mandamus forbearing the appellant and the respondents 4 and 7 not to interfere with the peaceful possession and enjoyment of the property in S.P.No.872 Madapur Village, Palladam Taluk, Tiruppur District till the disposal of the O.S.No.234 of 2018 on the file of learned II Additional District Judge, Thiruppur. Since the counsel for the petitioner therein / 3rd respondent had sought to dismiss the said petition, this Court on 27.02.2019 had dismissed the petition.

3. The learned counsel for the appellant submits that the order passed by the court below is against law and weight of evidence. Though the appellant by way of documentary evidence established that the suit lands in S.F.No.872 are only government assessed waste dry land the same was allotted legally to the appellant by government authorities for construction of micro compost centre for the public purpose.

4. The learned counsel for the appellant contends that the 1st respondent's wife viz., Amirtham challenged the order of the 8th respondent dated 06.11.1968 after a period of 28 years, filed C.M.A.No.22 of 1996 on the file of the learned Principal Subordinate Judge, Coimbatore cum-minor Inams Appellate Tribunal, Coimbatore and filed stay application in I.A.No.1207 of 2004 and the stay petition was dismissed by the order dated 14.12.2005. Against the order of dismissal, no appeal was filed and the said order became final.

5. The lower appellate court failed to consider that the suit property is a government assessed waste dry lands, the possession is solely and entirely vested with the Government since 06.11.1968. Further, the lower court failed to consider that the special officer, Madhapur Village

Panchayat had passed a Resolution no.46 dated 24.11.2016 giving approval for the transfer of lands in S.F.No.872 into the name of the appellant for establishing a micro compost centre.

6. That apart, the learned counsel for the appellant represented that the Municipal Administration, Chennai by the order being No.ROC.No.22866/P3/2018 dated 23.08.2018 accorded sanction for the construction of solid waste management of micro compost centre at S.F.No.872 at the cost of Rs.68.50 Lakhs. Further, the balance of convenience is in favour of the appellant because the property belongs to the Government and the public importance scheme to be implemented is for the general public. Hence seeks to set aside the Fair and decreetal order passed by the learned II Additional District and Sessions Judge, Tiruppur dated 12.04.2019 in I.A.No.1652 of 2018 in O.S.No.234 of 2018.

7. In contrary, 3rd respondent, viz., Sumathi has filed a detailed counter affidavit on behalf of respondents 1 and 2 stating that the dismissal of C.M.A.No.8 of 2013 dated 26.07.2018 had come to know belatedly, however, applications were filed to set aside the dismissal order. Further, the respondents 1 to 3 have traced their title through number of

registered documents of title right from 25.08.1885, 08.05.1896, 05.04.1902, 24.05.1910, 11.07.1952, 12.07.1952, 20.12.1955, 07.08.1973 and a partition deed dated 30.06.1960 and all these documents would clearly show that the respondents 1 to 3 have clear title to the suit property. The revenue officials refused to receive kist on the ground that the land is described to be assessed waste in their records, whereas in the plaint, the respondents 1 to 3 clearly stated that their predecessors were in possession and title of the suit property. The appellant did not even produce a scrap of paper to show that the Government is the owner of the property and the appellant is trying to put fence in the suit property. The appellant had filed a counter reiterating the same facts stated in the written statement.

8. The said counter affidavit proceeds to state that the appellant had already started to interfere with the possession of the respondents 1 to 3 and the appellant, who is to give protection to lawful owners and law abiding citizens fails in its duty and on the basis of an entry characterising the suit property as 'assessed waste' started resisting lawful suit of the respondent.

9. The respondents 1 to 3 in support of their contentions, relied on the **Full Bench Judgment of this Court reported in 1998(l) CTC 630 [Srinivasan and six others V. Sri Madhyarjuneswaraswami, Pattaviathalai, Thiruchirappally District and 5 others]** at paragraph No.15, it is held as follows:

15. Further, the mere fact that the orders passed or decisions rendered under these acts were given finality for the purposes of those acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata, does not have the effect of ousting the jurisdiction of the Civil Court once and for all. It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved and existence of such decisions. Similarly, even in cases where the principles of resjudicata are rendered applicable, the jurisdiction of the competent Civil court to go into principles of res judicata exist in a given case or not cannot be denied to the Civil courts and from the mere fact of according finality to the orders of decisions rendered under the Act or the application of the

principles of res judicata, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied.....'

10. On earlier occasion, viz., 09.07.2019, this Court by recording the submission of the learned Additional Advocate General for the appellant, has granted interim stay by stating as follows:

'I also find merits on his submission for the reason that when the Settlement Tahsildar-II, Gobichettipalayam, the 8th respondent had passed an order on 06.11.1968 making it clear that the suit property covered in Survey No.872 measuring 9.60 acres of dry land in No.54, Madhapur Village, Palladam Taluk, Coimbatore District shall be treated as Government assessed waste dry land and that order also became final consequent to the dismissal of the C.M.A.No.8 of 2013 filed by the 1st respondent's wife for default on 26.07.2018, it is not known how the present orders can be passed. Therefore, issue notice to the respondents returnable in four weeks. Private notice is permitted. There shall be an order of interim stay of the impugned orders, in the meanwhile.'

11. The 3rd respondent, viz., Sumathi has filed a common affidavit stating as follows:

(i) The suit, viz., O.S.No.234 of 2018 was filed against the appellant

and respondents 4 to 8 herein for declaration of title and consequential injunction and also filed I.A.No.1652 of 2018 and I.A.No.1653 of 2018 for interim injunction restraining the appellant and others herein from interfering with peaceful possession and enjoyment of the suit property and the trial court has granted interim injunction in their favour by an order dated 12.04.2019. Aggrieved by the same, the appellant and others preferred C.M.A.Nos.2776 and 2778 of 2019 before this Court and this Court remanded the matter for fresh consideration on 01.02.2019 and the trial court after giving opportunity to the appellant and others had granted interim order of injunction in favour of the respondents 1 to 3 by order dated 12.04.2019 and as against the same, the appellant herein has filed the present appeals.

(ii) Further, caveat petitions against the appellant herein, anticipating that the appellant herein will prefer an appeal, however, when the appellant moved the said CMAs against the orders passed by the trial court, inspite of caveat pending, the name of the counsel for the respondents 1 to 3 was not printed and obtained an order of stay of the order dated 09.07.2019 in I.A.Nos.1652 and 1653 of 2018 and after coming to know about the same, the present appeals were argued.

(iii) That apart, during the pendency of the above appeals, the appellant herein taking advantage of the stay order granted by this Court had taken possession by putting up a compost yard in a portion of the suit property, measuring about 20 cents, by using government machinery. When the suit was filed, the property was vacant and only during the pendency of the suit, the appellant had taken possession. If the suit is decreed in favour of the respondents 1 to 3, the appellant shall acquire the land measuring about 20 cents, in which compost yard has been put up, as per the then existing land acquisition law and the remaining extent of the land in S.F.No.872 Madhapur Village shall be maintained as vacant land and possession shall be taken by the successful party in the suit.

12. Admittedly, the Settlement Tahsildar-II, Gobichettipalayam / 8th respondent had passed an order on 06.11.1968 making it clear that the suit property covered in Survey No.872 measuring 9.60 acres of dry land in No.54, Madhapur Village, Palladam Taluk, Coimbatore District shall be treated as Government assessed waste dry land and that order also became final consequent to the dismissal of the C.M.A.No.8 of 2013 filed by the 1st respondent's wife for default on 26.07.2018. Also, according to the affidavit filed by Sumathi / 3rd respondent, when the suit was filed in

the year 2018, the property was vacant and only during the pendency of the suit, the appellant had taken possession. It is the further averment of the 3rd respondent that though caveat petitions were filed against the appellant herein, anticipating that the appellant herein will prefer an appeal, however, when the appellant moved the said CMAs against the orders passed by the trial court, inspite of caveat pending, the name of the counsel for the respondents 1 to 3 was not printed and the appellant had obtained an order of stay of the order dated 09.07.2019 in I.A.Nos.1652 and 1653 of 2018 and after coming to know about the same, the present appeals were argued.

13. Be that as it may, considering the aforesaid facts and circumstances of the case and without delving deep into the merits of the matter and taking note of the affidavit of 3rd respondent herein / Sumathi, this Court hereby remands back the orders dated 12.04.2019 in I.A.Nos.1652 and 1653 of 2018 in O.S.No.234 of 2018 and O.S.No.234 of 2018 to the learned II Additional District & Sessions Judge, Tiruppur to consider the suit afresh without being influenced by any of their earlier observations as well as the observations made by this Court and pass orders in accordance with law, as expeditiously as possible, preferably,

within a period of six months, i.e, on or before 30.06.2020. The status quo regarding the open space to be maintained till then.

In result, the present Civil Miscellaneous Appeals are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

09.01.2020

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment

ssd

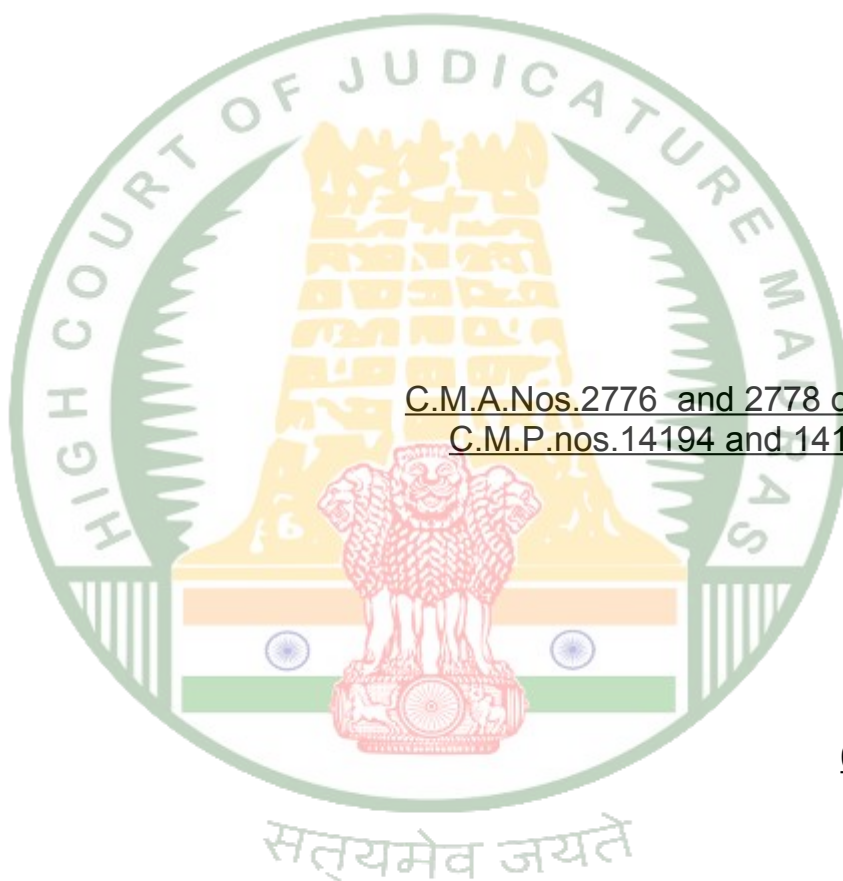
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to the Director of survey and Settlement,
Chepauk, Chennai - 600 005

V.BHAVANI SUBBAROYAN, J.,

ssd

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



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C.M.P.nos.14194 and 14188 of 2019

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