



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.(MD)No.352 of 2020

and

C.M.P.(MD)No.4189 of 2020

WEB COPY

Mariappan : Appellant/ Appellant/Plaintiff

-Vs-

1. Tamil Nadu Government,
Through District Collector,
Tirunelveli.

2. The Tahsildar,
Sankarankovil Taluk Office,
Sankarankovil.

3. The President,
Veerasigamani Village Panchayat,
Sankarankovil Taluk,
Tenkasi District.

: Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed in A.S.No.1 of 2016 on 14.11.2019 on the file of the Subordinate Judge's Court, Sankarankovil, confirming the Judgment and decree passed in the O.S.No.53 of 2014 on the file of the Principal District Munsif Court, Sankarankovil, order dt.26.10.2015.

For Appellants

: Mr.F.X.Eugene

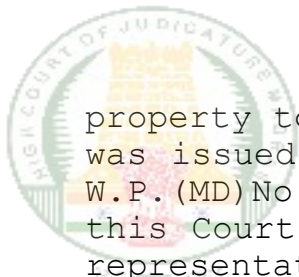
For Respondents

: Mr.J.Gunaseelan Muthiah,
Additional Government Pleader
for R1 & R2

JUDGMENT

The appellant/plaintiff has filed a suit for bare injunction restraining the respondent/Government and its Officials from disturbing his peaceful possession of his property. The parties would be referred to by their rank before the trial Court.

2.The case of the plaintiff is that he and before him, his father were in continuous occupation of the suit property for close to over 40 years and that he has applied for assignment of this



property to him. When he faced the threat of dispossession, when he was issued a notice by the respondents, he approached this Court in W.P.(MD)No.6248 of 2012. The said Writ Petition was disposed of by this Court Vide its order dated 12.02.2013 and it directed that the representation of the plaintiff dated 20.04.2012 be enquired into before any coercive action was contemplated. The third defendant had filed the written statement and contended that the plaintiff is an encroacher of the suit property.

3.The matter went to trial and both the Courts below found that the plaintiff is an encroacher and dismissed the suit. The plaintiff has now approached this Court with this appeal.

4.The following substantial question of law was raised:-

"Were not the Courts below gone in error when it overlooked the fact that the respondents ignored the order of this Court in W.P.(MD)No.6248 of 2012?"

5.The learned counsel for the appellant/plaintiff submitted that the the order passed in the writ petition was marked as Ex.B1. While in the plaint, the plaintiff has referred to about the issuance of notice by the third respondent/ third defendant on 23.08.2012 and Ex.B1, the Order passed in W.P.(MD)No.6248 of 2012 referred to the representation given by the petitioner dated 20.04.2012, no documents are produced to show that an enquiry was caused based on Ex.B1 Order.

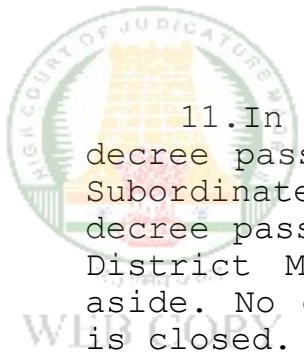
6.Inasmuch as the respondents have ignored the order passed W.P (MD).No.6248 of 2013 on 12.02.2013, and have not conducted the enquiry, the petitioner is entitled to protection. Law requires that even if the appellant/plaintiff is considered as an encroacher, he has to be evicted only in terms of the Tamil Nadu Land Encroachment Act, 1905.

7.This Court required the learned Government Advocate to produce the files pertaining to the appellant as to what action was taken pursuant to Ex.B1, Order.

8. He reported that the said file could not be traced.

9.The said statement is recorded.

10.When there is nothing on record to show that Ex.B1 Order has been complied with, this Court necessarily has to direct the respondents to resort to the provisions of the Tamil Nadu Land Encroachment Act, 1905. Till such time, the plaintiff is vacated in the manner provided by law, his possession shall not be disturbed.



11. In fine, this Second Appeal is allowed and the judgment and decree passed in A.S.No.1 of 2016 on 14.11.2019 on the file of the Subordinate Court, Sankarankovil, confirming the Judgment and decree passed in the O.S.No.53 of 2014 on the file of the Principal District Munsif Court, Sankarankovil, order dt.26.10.2015 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

1. The Subordinate Court,
Sankarankovil.
2. The Principal District Munsif Court,
Sankarankovil.

Copy to: 1. The District Collector,
Tirunelveli.

2. The Tahsildar,
Sankarankovil Taluk Office,
Sankarankovil.

3. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai - 2 Copies.

+1 CC to Mr.J.GUNASEELAN MUTHIAH, Advocate SR-17753.

+1 CC to the SPL GP SR-17814.

+1 CC to Mr.F.X.EUGENE, Advocate SR-18072.

S.A. (MD) No.352 of 2020

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