

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 23.03.2021
CORAM:
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI
C.M.A.No.2170 of 2011

A.Selvaraj

.. Appellant/petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by District Collector,
Namakkal.

2.The Special Tahsildar,
Land Acquisition,
Salem to Karur Broad Gauge Railway,
Line Project,
Paramathi Road,
Namakkal.

3.The Deputy Chief Engineer,
(Construction),
Southern Railway,
Sooramangalam,
Salem - 636 005.

4.Tmt.Athayammal

5.Vijayalakshmi

6.Saraswathy

7.Gomathi

.. Respondents/Respondents

(Respondents 4 to 7 remained exparte before the lower
Court. Hence, service of notice may be dispensed with)

PRAYER : Civil Miscellaneous Appeal is filed under Order 43
Rule 1(na) of C.P.C, against the judgment and decree dated
11.11.2010 made in P.O.P.No.31 of 2006 on the file of the
Principal District Judge, Namakkal and praying to set aside the
same.

For Appellant : Mr.P.Jagadeesan

For Respondents : Mr.Y.T.Aravind Gosh

Additional Government Pleader (CS)

for R1 and R2

No appearance for R3

ex-parte for R4 to R7

JUDGMENT

The appellant herein is the plaintiff, who filed a
suit for relief of recovery of possession with alternative
relief for payment of prices of the land value of Rs.25,00,000/-
along with a petition in P.O.P.No.31 of 2006 filed under Order
33 Rule 1 of CPC to grant permission to file the suit in informa
pauperis.

2. The defendants also contested the said original
petition. After full enquiry, the trial Court dismissed the

said petition concluding that he is having sufficient means to pay the Court fee. Aggrieved by that the plaintiff filed this Civil Miscellaneous Appeal.

3. Point for consideration:

Whether the trial Judge, erroneously dismissed the claim of the petitioner by considering the sale transaction made by him with third parties in the year 1995?

4. At the time of the arguments, the learned counsel appearing for the appellant submits that the appellant not possessed any immovable property, but on the date of filing the suit in his name the property, which he possessed was already sold by him. But, the trial Judge erroneously appreciated the sale transaction of this appellant with third parties in the year 1995 and concluded that he is a person of means. He would further submit that the respondent taken away the land belonging to him except that he is not possessed any properties nor he is having any source of income. So he prayed to allow this appeal by permitting him to file a suit as *informa pauperis*.

5. The learned Additional Government Pleader submits that the appellant encroached the Eri-Poramboke land and the same was acquired by the Government by issuing notice for the purpose of laying the railway track as encroached, he is not entitled to file the suit for recovery of possession and also contended that the appellant having sufficient means to pay the Court fee. For that he relied the sale deed marked as Exs.R1 to R11. All those documents were related to the sale transaction by the appellant and to the third parties through which he sold immovable properties for valid consideration from the year 1995-2003. Only in 2006, within three years after that, he filed a suit against these defendants and claimed themselves as a person of no means. But the trial Judge rightly appreciated those sale deeds and concluded that he is having sufficient means, because before filing of the suit, he sold many of his immovable properties for valid consideration. Furthermore, he encroached the Eri-poramboke land belonged to the Government. Therefore, the claim of the appellant is unsustainable in law. The trial Judge rightly concluded this aspect, which calls for no interference.

6. Accordingly, the Civil Miscellaneous Appeal is dismissed. The Appellant is directed to pay the Court fee within a period of four months. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.District Collector,
The State of Tamil Nadu,
Namakkal.

2.The Special Tahsildar,
Land Acquisition,
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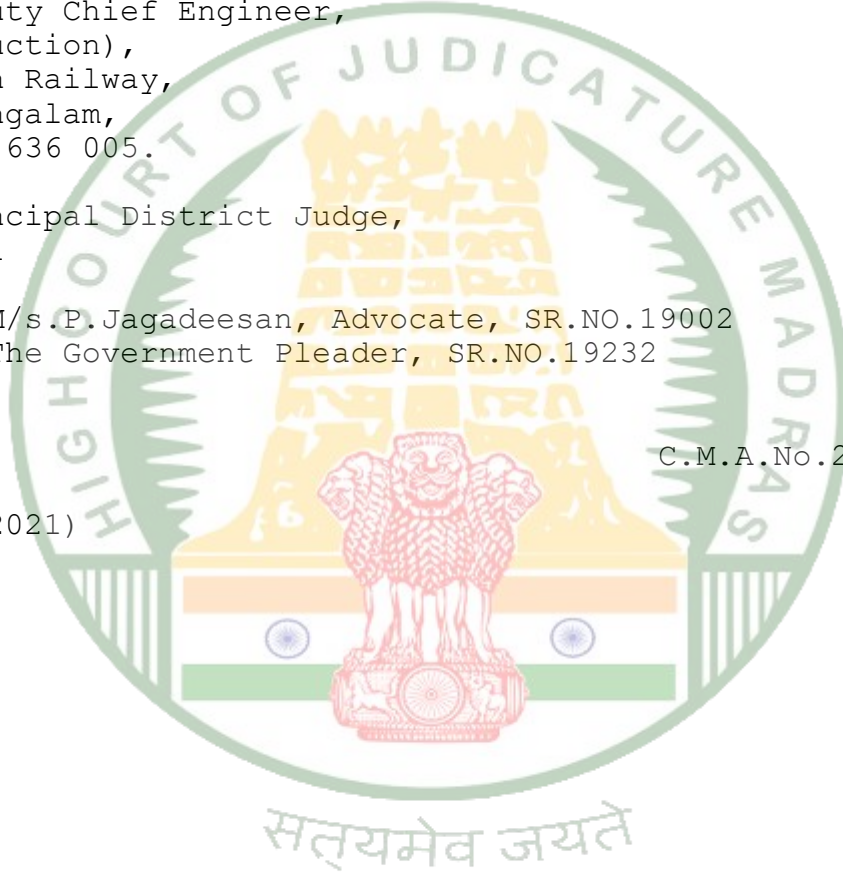
4.The Principal District Judge,
Namakkal

+1 cc to M/s.P.Jagadeesan, Advocate, SR.NO.19002

+1 cc to The Government Pleader, SR.NO.19232

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CP(CO)
NS(13/05/2021)



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