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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2021

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.1425 of 2005

and

C.M.P.No.18750 of 2005

1. State of Tamil Nadu
Represented by its District Collector,
Dharmapuri.

2. Tahsildar,
Krishnagiri.

...Appellants/Defendants 1 & 2

Vs.

1. Govindammal

2. Chairman,
Tamil Nadu Housing Board,
Chennai.

3. Executive Engineer cum Administrative Officer,
Tamil Nadu Housing Board,
Hosur.

4. Natarajan ...Respondents/Plaintiff & Defendants 3 to 5

Prayer : Second Appeal filed under Section 100 of the Civil Procedure against the decree and judgment dated 30.06.2004 in A.S. No.12 of 2004, on the file of the I Additional District Court, Krishnagiri at Dharmapuri, upholding the decree and judgment dated 20.11.2002 in O.S. No.39 of 1996 (Pauper Suit No.503/94), on the file of the Sub Court, Krishnagiri.

For Appellants : Mr.Edwin Prabakar
for Dr.S.Suriya,
Government Advocate

For Respondents : No appearance

JUDGMENT

The present Second Appeal is filed against the concurrent findings of both the Courts below directing the present appellants to pay a compensation of Rs.1,20,000/-



(Rupees One lakh twenty thousand only) per acre to the first respondent/plaintiff (since deceased).

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The first respondent/plaintiff was assigned the suit property through an assignment order Ex.A1 dated 23.01.1987. The suit property is a dry land in Survey No.737/1 of Mallapadi Village, Krishnagiri District, measuring 2.45 acres including a well. According to the first respondent/plaintiff, she developed the land and was cultivating the same even before the order of assignment, EX.A1 and later patta also came to be issued in her favour. Her further contention is that the defendants/appellants even without following due process of law had taken over the suit property for the purpose of construction of houses for the general public by the Tamil Nadu Housing Board. She therefore prayed for a declaration of her title to the suit property and for recovery of possession of the same from the appellants/defendants. She had further prayed for grant of past and future mesne profits. The appellants/defendants resisted the suit by contending that the first respondent/plaintiff, on her own will, handed over the suit property to them and in evidence of the same affixed her thumb impression in a proforma (Ex.B9) dated 18.11.1992.

4. Both the Courts below did not grant the larger relief of declaration and recovery of possession but however, directed the appellants/defendants to pay a sum of Rs.1,20,000/- per acre towards compensation to the first respondent/plaintiff.

5. It is also observed by both the courts below that,

- 1) Since the first respondent/plaintiff did not violate any of the conditions mentioned in the assignment order (Ex.A1), the appellants/defendants have no right to take back the suit property without following due process of law.
- 2) It cannot be accepted that the first respondent/plaintiff relinquished her rights on her own will by signing the form Ex.B9 and the same is also not valid especially when there is no cancellation of assignment order, Ex.A1.
- 3) Apart from this, there is no recital in Ex.B9 either that the first defendant had relinquished her rights over the



suit land or that she had handed over the land on her own will to the Government.

4) The acquisition of suit land by the Government is not for any public welfare scheme and the Housing Board is selling the constructed houses to various persons only after receiving consideration for the same, which is clearly commercial in nature.

5) Both D.W.1 and D.W.2, the officials of the Government, did not support the case of the appellants/defendants and it is clear from their evidence that the concerned authorities neither explained the procedure nor highlighted the contents of the Ex.B.9 to the plaintiff.

6. Since the Housing Board had already started putting up construction in the suit land and the learned counsel for the first respondent/plaintiff pleaded atleast for payment of compensation, the trial court fixed the compensation amount as Rs.1,20,000/- per acre and directed the appellants to pay the same to the first respondent/plaintiff together with interest at the rate of 9% per annum. This value was fixed based on the evidence of D.W.1 to D.W.3.

7. At the time of admission the following substantial questions of law were framed.

- i. Whether the suit of the plaintiff is not barred under the principles of estoppel when the plaintiff herself relinquished her right and execute Ex.B9 in respect of the plaint schedule mentioned property?
- ii. Whether the Trial Court is correct in fixing the value of the land without adopting the procedure contemplated under the appropriate act?
- iii. Whether the Courts below are correct in awarding sum of Rs.1,20,000/- per acre as a compensation without appreciating Ex.B9?

8. During the pendency of the present second appeal, first respondent/plaintiff died and till date no steps were taken by the appellants to bring on record the legal heirs of the deceased first respondent/plaintiff. This Court also on 24.08.2021, dismissed the appeal as against the first respondent/plaintiff for non prosecution. It is pertinent to point out that the first respondent/plaintiff is the sole contesting respondent. Therefore nothing survives for further adjudication in the present second appeal.



9. Apart from that, even on merits, both the Courts below, after assessing the entire oral and documentary evidence, had come to a conclusion that the first respondent/plaintiff should be paid a compensation of Rs.1,20,000/- per acre. At this juncture, it is appropriate to point out that the first respondent/plaintiff filed the suit for a declaration of her title to the suit property and also for recovery of possession. She had also prayed for granting past and future mesne profits. It seems, during the course of arguments before the trial Court, the first respondent/plaintiff restricted her claim only for the payment of compensation. She had not also filed any appeal against the decree and judgment passed by the trial Court.

10. The first respondent/plaintiff, in fact, had filed the suit as an indigent person and she is also an illiterate. In such circumstances, the contention of the appellants / defendants that she handed over the suit land back to the Government out of her own will is not convincing. Both the Courts below analysed the oral and documentary evidence adduced by the litigating parties in the suit in the proper perspective. Both the courts below had also assigned cogent reasons for coming to such a conclusion and therefore, this court does not see any reason to interfere with the same. In view of the above reasons, all the substantial questions of law are answered against the appellants.

11. In the result,

- i. the appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is also dismissed.
- ii. the decree and judgment dated 30.06.2004 in A.S. No.12 of 2004, on the file of the I Additional District Court, Krishnagiri at Dharmapuri, and the decree and judgment dated 20.11.2002 in O.S. No.39 of 1996 (Pauper Suit No.503/94), on the file of the Sub Court, Krishnagiri, are upheld.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



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To

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1. The I Additional District Court, Krishnagiri, Dharmapuri.
 2. The Sub Court, Krishnagiri.
 3. The Section Officer, VR Section, High Court, Madras.
- +1 CC to The Government Pleader sr 55520.

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