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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01 / 09 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.969 OF 2013
AND MP NO.1 OF 2013

1.Balasubramanian Pillai
2.Srinivasan

... Appellants/Defendants in Trial Court

Vs.

1.Seethapathy (Died)
2.S.Jayalakshmi
3.Varadharajan
4.Sakunthala
5.S.Sathishkumar
(Sole respondent died - RR2 to 5 brought
on record as LRs of the deceased sole
respondent vide Court order dated 07.07.2021
made in CMP No.11100/2019 in SA No.969/2013)

...Respondents/Plaintiff in Trial Court

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.65 of 2008 dated 16.08.2010 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai, in reversing the judgment and decree passed in O.S.No.227 of 2006 dated 14.12.2007 on the file of the Court of Principal District Munsif, Mayiladuthurai.

For Appellants : Mr.A.Muthukumar
For Respondents : Mr.K.Muthukumarasamy

J U D G M E N T

Aggrieved over the reversal of the decree and judgment granted by the Trial Court, the present Second Appeal has been preferred by the appellants / defendants.

2.For the sake of convenience, the parties are called as per their ranking in the Suit.



3.The Suit was filed for delivery of possession. The defendants are the appellants. The Suit schedule property contains two items situated in (i) R.S.No.497/2 measuring an extent of 0.07 cents; and (ii) R.S.No.497/1 measuring an extent of 0.01 1/3 cents. The Trial Court after framing appropriate issues had dismissed the Suit against the respondent / plaintiff. On appeal, the Lower Appellate Court, partly allowed the same granting recovery of possession in respect of first item of the Suit property and confirming the decree in respect of second item of the Suit property. Aggrieved over the same, the defendants/appellants have preferred the above Second Appeal.

4.The brief facts leading to the Suit are as follows:

(a) Originally, a vast extent of lands belonged to the family of defendants. The plaintiff was working as an Accountant for the Estate of the defendants. In the year 1982, the lands were acquired by the Land Ceiling Authority under Land Reforms Act. The first item of the property in S.No.497/2 measuring an extent of 0.07 cents was assigned in favour of one Ponnaiyan and Anjammal wife of Ponnaiyan.

(b) It is the case of the plaintiff that he was cultivating the lands as tenant under the defendants and after acquisition, as a tenant, under the assignees. He filed a Suit for injunction against the defendants in O.S.No.95/2003, which was dismissed against the respondent / plaintiff and the appeal preferred was also dismissed. During the pendency of the appeal, the respondent / plaintiff purchased an extent of 0.07 cents in R.S.No.497/2 from the assignee's, namely, Ponnaiyan and Anjammal wife of Ponnaiyan. In so far as second item of the suit property is concerned, it is a dung pit. He claimed recovery of possession on the strength of the "B" Memo issued by the Government.

(c) The appellants / defendants have taken a categorical stand that both the properties were in their possession and the plaintiff does not have any valid title over the property, in view of the violation of the assignment conditions that the property was purchased within the prohibitory period specified in the Act. Therefore, he cannot claim title and consequently, is not entitled for recovery of possession.

(d) The Trial Court has proceeded on the basis of identity of the property. Since the plaintiff failed to prove the identity of the property as well as his possession, dismissed the Suit. While doing so, it omitted to go into the



impact of the statutory conditions, as it was considered unnecessary.

(e) On appeal, the Lower Appellate Court has held that the defendants are not claiming possession on their own right. After divesting of the property from them by the Land Ceiling Authority, the possession of the defendants is illegal. Therefore, they cannot deny the claim of the plaintiff on the basis of violation of assignment conditions. It is for the Government to take action for violation of assignment condition. Since the Government has not taken action so far, it was presumed that the purchase by the plaintiff was valid.

5. On 29.10.2013, this Court has admitted the Second Appeal on the following substantial question of law:-

"Whether the learned Subordinate Judge erred in law in holding that though the sale in favour of the plaintiff under Ex.A5 in contravention of law is valid contrary to the decision of this Hon'ble Court and reported in 1991 (1) MLJ 90 ?".

6. When the matter is taken up for hearing, the learned counsel for the appellants would vehemently content that as per Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules 1965, the land does not vest with the assignee till the expiry of the period specified in the rules. As per Rule 9(1)(i) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, the land assigned shall not be sold or otherwise alienated before the expiry of period specified in sub-clause (a) of clause (iii). As per sub-clause (a) of clause (iii) the land will vest absolutely with the assignee only after the value of the land and the buildings and trees thereon is paid in full or after the expiry of a period of twenty years from the date of assignment, whichever is later. Therefore, the land vests with the assignee only after the expiry of twenty years. Even assuming as per the assignment order issued by the Authority, Clause 6 of the assignment condition is that the lands shall not be alienated within a period of ten years.

7. In the instant case, the assignment order was passed in the year 1996, whereas, the sale was made in the year 2004, which is within the period of ten years. Therefore, the sale by the assignee, who has no title, is illegal and no valid title was passed on the respondent / plaintiff. Therefore, on the basis of illegal and invalid sale, the respondent / plaintiff does not derive any title. A person, who does not hold title has no locus to claim recovery of possession. Therefore, according



to him, the relief granted by the Lower Appellate Court is erroneous and is liable to be set aside.

8. In support of his contention, the learned counsel for the appellants would rely on the judgments of this Court in MUNIAMMAL VS. MUTHU GOUNDER [2003 (1) CTC 475] and SMT.G.VEDA VS. MRS.M.MANORANJITHAM [C.S.NO.1012 OF 2007 DECIDED ON 28.11.2016].

9. I have considered the submissions made on either side.

10. It is not in dispute that the Suit property was originally belonged to the family of the appellants/defendants. In the year 1982, the Land Ceiling Authority has seized the properties and it was assigned to various persons. The assignment order issued on 18.12.1996 in favour of one Anjammal wife of Ponnaiyan contains six items of properties. The sixth item of property is situated in R.S.No.497/2A. It is also mentioned that the date of publication in the Notification under Section 18(1) of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 was "21.05.1980". By virtue of the assignment order dated 18.12.1996, the land was put in possession of Anjammal. The appendix of the assignment order imposed certain conditions for assignment. Clause 6 of the assignment condition is that the lands shall not be alienated within a period of ten years.

11. From the above, it is clear that the land assigned cannot be sold before the expiry of ten years, whereas, it was sold within eight years. In so far as the identity of the property is concerned, the findings of the Lower Appellate Court is not disputed. Therefore, the crucial issue to be decided is as to whether the respondent / plaintiff has any legal right or locus standi to claim recovery of possession in the absence of perfect title to the property.

12. This Court in ROHAYYA BEEVI AND ANOTHER VS. C.VARADARAJULU NAIDU (DIED) AND OTHERS [1992 (1) MLJ 90] has held as under:

"10. Under Sub-section (1) of section 15-A of Act XL of 1971, no occupant of Kudiyiruppu or his legal representative, is entitled to alienate the Kudiyiruppu or any portion thereof without the previous sanction of the Authorised Officer. In the absence of such sanction, the transferee under such alienation is not entitled to go before the Civil Court or a



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Tribunal or any other Authority and claim any relief on the basis of such alienation. Sub-section (2) provides for the Authorised Officer declaring the alienation to be null and void on his getting information about such alienation effected without his prior sanction. Sub-section (2) does not mean that, though the Authorised Officer declares the alienation to be null and void, the alienation is valid for all other purposes and could be enforced through court of law or a Tribunal or other authority. Once the prohibition under Sub-section (1) is absolute in that no occupant of any Kudiyiruppu shall without the previous sanction of the Authority Officer alienate the Kudiyiruppu or a portion thereof, it is not open to the alienee under such prohibited alienation to get relief from any authority acting under law, including the Civil Court."

13.As per the above judgment, the sale of land without prior permission from the Authorised Officer under the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 is invalid. As per Sub-section (1) of Section 15 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971, no occupant of kudiyiruppu in whom, the kudiyiruppu or the superstructure is vested under Section 3 or kudiyiruppu deemed to be vested under Section 3-A and no heir or legal representative of such occupant shall, except with the previous sanction of the Authorised Officer, sell, mortgage, lease or otherwise alienate the whole or any portion or such kudiyiruppu or superstructure within a period of ten years from the date of the commencement of this Act. The Authorised Officer is entitled to declare such alienation as null and void and it cannot be challenged before any Court of Law or Tribunal or other Authority by the transferee. Even if the Authority has not declared the alienation as null and void, the transferee cannot claim "it is valid" before any Court of Law. Therefore, the ultimate finding that the alienation in violation of the assignment condition will automatically render it null and void and the transferee cannot claim any title through the illegal alienation.

14.On the other hand, it is relevant to note that in a case of assignment of land under Board's Standing Orders, it was decided by K.Sampath, J. (as the learned Judge then was) in MUNIAMMAL VS. MUTHU GOUNDER (DIED) AND FIVE OTHERS [2003 (1) CTC 475] wherein the judgment of this Court in VASANTHA VS.



RATHINASAMI [1988 (2) MLJ 192] was cited for the above said proposition held by him in ROHAYYA BEEVI AND ANOTHER VS. C.VARADARAJA NAIDU AND OTEHRS [1992 (1) MLJ 90]. However, the learned Judge has distinguished the judgment and has taken a different stand. The relevant portions of the judgment in Muniammal's case (cited supra) are extracted hereunder:

"8. Mr. R. Margabandhu, learned counsel for the respondents, submitted that the sale deed in favour of the defendant was void and the possession of the plaintiff had been admitted by the defendant, that when once it was held that the sale deed in favour of the defendant was void it must be deemed that the defendant had no title and the possession of the plaintiff must be protected by a decree of injunction. The learned counsel also submitted that the lower appellate Court had found that the plaintiff had put up a permanent structure in the property, that the defendant had stood by and not objected to the same, and that it must be deemed that she had acquiesced in the construction, and the decree by the lower appellate Court had to be confirmed. The learned counsel referred to a number of decisions in support of his contentions.

9.

10. We are now left with two aspects - Whether the sale in favour of the defendant is not valid, and if it is not valid whether by reason of that the plaintiff can protect his possession. The above will be an additional substantial question of law to be answered in the second appeal. The terms of the assignment are as follows:

"Revenue Board, Standing Order Clause 41 Sub-clause (iii) - If the condition of non-alienation is violated or if the land ceases to be owned by the assignee or his legal heirs or (after ten years) other members of their class, owing to sale by process of law or otherwise, or if default is made in the payment of the government revenue on the dates prescribed, the grant will be liable to be resumed by the government who will be entitled to re-enter and take



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accepted and protected is also clearly erroneous. Another aspect in respect of which the lower appellate Court has made a mistake is that it accepted the documents as pertaining to the suit property on the specious reasoning that the defendant had not shown that the documents produced by the plaintiff related to some other property forgetting that it was for the plaintiff to show that the documents produced by him related to the suit B schedule property.

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15. In *Vasantha v. Rathinasami*, 1988 (2) MLJ 192 Srinivasan, J. [as the learned Judge then was] in a Civil Miscellaneous Appeal against an order dismissing the application by the plaintiffs for injunction restraining the defendants therein from interfering with the possession of the plaintiffs, observed as follows:

"There is a general misconception that in every application for injunction the court should be satisfied about the existence of a prima facie case, the necessity for Court's interference and the balance of convenience. Very often prima facie case has been wrongly understood as prima facie proof of title. It is forgotten that a prima facie does not mean anything more than that there is a serious question to be tried and there is a probability of success if the allegations of fact made by the party are proved. In an application under Order 39, Rule 1(c), C.P.C., the prima facie case has to be proved in that the plaintiff is in possession. The rule was introduced specifically in the Code in order to enable the court to maintain the status quo during the pendency of the proceedings. Even before the introduction of the rule, courts were preserving the status quo under inherent powers. In a case falling under Rule 1(c) it is meaningless to consider the question of prima facie title for it is well-known that even a



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trespasser in possession could protect his possession against whole world excepting the real owner. Hence, in an application for injunction restraining the defendant from interfering with the possession of the plaintiff, it is the primary duty of the plaintiff to prove his possession the date of the suit."

On the basis of this decision, the learned counsel contended that the possession of the plaintiff in the instant case was an admitted fact and his possession had been rightly protected by the lower appellate Court. The case dealt with by Srinivasan, J. relates to interim orders. Even otherwise, the principle laid down is that even in the case of a trespasser, his possession must be protected against the whole world except the true owner. I am not accepting the position that the defendant in the instant case is not the true owner. She has purchased the property from the true owner. Perhaps the conditions of assignment had been given a go-by by the parties, but it is for the government to proceed against the vendor and the vendee and resume possession. But as long as such an action is not taken by the government, the position of such purchaser, in my view, is better than a person like the plaintiff in the instant case, who is a rank trespasser. He cannot take advantage of the alleged flouting of the conditions of assignment by the defendant and her vendor. The case relied on by the learned counsel is of no assistance."

In the above said judgment, it is categorically held that a trespasser cannot protect his illegal possession taking advantage of the alleged floating of conditions of assignment by the vendor of the transferee.

15. In a similar circumstance, the Hon'ble Mr. Justice M. Sundar in SMT. G. VEDA VS. MRS. M. MANORANJITHAM [C.S. NO. 1012 OF 2007 DECIDED ON 28.11.2016] has observed as under:

"17. Learned counsel for the defendant herein also argued that the alienation of the suit property by D. Vimala in favour of the plaintiff herein is in violation of the conditions of assignment of the Government. On



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a demurrer, even if it was correct, that does not cloth the defendant herein with any legitimacy, qua, impugned decree. If at all there is a violation, it is for the Government to look into it which again may at best lead to proceedings like resumption by the Government, but that certainly does not cloth the defendant herein with any legal .. qua the impugned decree."

16. From the admitted facts, it is noted that the appellants/defendants divested of the property as early as 1982. From then onwards, they have no right to enter into the lands seized off by the Authorities. They cannot possess the land in their individual right. It is also an admitted fact that by virtue of the order in MRIV 302A/58-61/A2-A.O.No.62/96 dated 18.12.1996, the land was assigned in favour of one Anjammal wife of Ponnaiyan. It is also clearly endorsed therein that the assigned land was put in possession of the assignee. Therefore, it is deemed that the land is in legal possession of the assignee. This fact has been admitted by the defendants who deposed as D.W.1. In his deposition, he has categorically stated that he was aware that the land was assigned in favour of Anjammal and it was purchased by the respondent / plaintiff. The identity of the property and the boundaries were also admitted. His contention is that the sale in violation of assignment condition is not valid and does not convey any perfect title to the respondent / plaintiff. But the fact remains that the appellants/defendants does not have any title much less better title than the respondent/plaintiff.

17. I do respectfully follow the view taken by the K.Sampath, J (as he then was) in Muniammal's case (cited supra). A person who is divested of the property cannot high handedly commit trespass and seek for protection of his possession. If at all he wants to sustain his possession, he shall do it on his own right. He cannot take advantage of the alleged contravention of the terms of assignment. It will not confer any right to encroach upon the property which was taken away from him and commit trespass.

18. A reading of sub-rule (2) of rule 9 of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, specify that where any violation of the conditions of assignment as prescribed in sub-rule (1) or in the deed of assignment in Form-F is noticed, the assigning authority shall cancel the assignment. Proviso to sub-rule (2) of rule 9, further states that no such cancellation shall be ordered without giving the assignee an opportunity to make his representation.



19. Till the date of the judgment and decree passed by the Trial Court or even today, the assignment was not cancelled by the assigning authority. In that view of the matter, even if it is presumed that the purchase was made by the respondent/plaintiff in violation of the assignment condition, appropriate order shall be passed by the assigning authority and there are possibilities that the assigning authority may ratify the sale or cancel the assignment. Going one step further, it can be said that the title of the respondent / plaintiff is a defective one. But that will not give any right to the defendants / appellants to commit trespass into the property and seek for protection. Till the sale is declared as null and void, the respondent / plaintiff has a better title than the appellants / defendants. In that view of the matter, the appellants cannot claim that his illegal possession by way of trespass should be protected. Therefore, the substantial question of law raised in the Second Appeal by the appellants / defendants is answered in the negative.

20. In fine, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

TK

To

1. The Principal Subordinate Judge
Mayiladuthurai.

2. The Principal District Munsif
Mayiladuthurai.

+1CC to Mr.A.Muthukumar, Advocate, Sr.No.43852

+1CC to Mr.V.Sanjeevee, Advocate, Sr.No.44317

SECOND APPEAL NO.969 OF 2013

GPL (CO)

K.RK. (09.11.2021)