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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2021
PRONOUNCED ON : 08.12.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.1221 of 2019
and C.M.P.No.26595 of 2019

Ariznar Anna Taxi Drivers and Owners Association
Represented by its Secretary Alex @ M.D.Salamon,
S/o.Devasanan,
Petter Street,
Periya Modachur,
Modachur Village,
Gobichettipalayam Town,
Erode District

...Appellant/Plaintiff

Vs.

The Commissioner
Gobichettipalayam Municipality,
Gobichettipalayam,
Erode
District

...Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 12.03.2019 made in A.S.No.5 of 2017 on the file of the learned Sub Court, Gobichettipalayam confirming the judgment and decree dated 19.12.2016 made in O.S.No.248 of 2010 on the file of the learned District Munsif Court, Gobichettipalayam by allowing this Second Appeal.

For Appellant : Mr.N.Manoharan
For Respondent : Mr.B.Anand

JUDGMENT

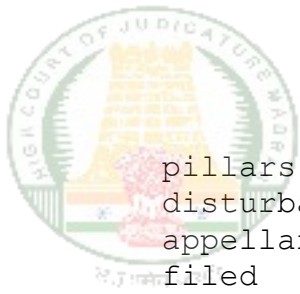
This Second Appeal is directed against the judgment of the learned Sub Judge, Gobichettipalayam, in A.S.No.5 of 2017 confirming the judgment of the learned District Munsif, Gobichettipalayam in O.S.No.248 of 2010.



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2. It is the case of the appellant that appellant/plaintiff filed the suit for the relief of permanent injunction restraining the respondent from interfering with the appellant's use of suit property as taxi stand till the respondent allots a specified place. Appellant was registered as Society No.14/1999 on 15.03.1999. There are 90 members in the society and taxi owners and taxi drivers are the members of this society. Appellant's society is functioning outside Gobichettipalayam town bus stand near Urban Bank building. They put up a shed and parking their cars. That place belongs to respondent's Municipality. Originally, they put up thatched hut. When Mr.Ansul Mishra, the Sub Collector, Gobichettipalayam, came for inspection, he instructed the change of shed as iron shed to avoid fire accident. For the past over 45 years, the appellant is using the place in and around Gobichettipalayam town bus stand as a parking place (i.e taxi stand) for parking their taxis. They provided 36 chairs to the use of the public, donated Rs.5100/- during Kargil War, donated Rs.5000/- to Gobichettipalayam Municipality Middle School Parents Teachers Association. They are engaged in social service activities. At the instance of some persons, respondent's officials threatened the appellant to vacate the taxi stand within two days from 16.07.2010. On the South and east of Gobichettipalayam town bus stand, there situate SDN colony. It a lay out area and recognized in ROC.No.5979/67C3 dated 21.06.1968. However, residential area is being converted as commercial area contrary to the rules. There is a road on the South of Urban Bank building. Some persons have encroached this road and built hotel. Respondent is not taking any action against those violators. However, respondent is trying to disturb appellant's enjoyment of the suit property as their taxi stand. Therefore, the suit for the aforesaid reliefs.

3. Respondent filed written statement denying the allegations made in the plaint. It is the case of the respondent that the claim of the appellant that the appellant has been using the place on the east of Gobichettipalayam bus stand for parking taxis for 45 years is not true. The bus stand was constructed only before twenty years. Roughly two hundred buses have ingress and egress through the road in which the appellant claims that they have their taxi stand. Because of the parking of taxis, public are put to severe hardship. Many accidents had happened and many suffered injuries. Public had been complaining about the taxi stand. Despite warning given not to park the taxis, appellant's society does not pay heed to the advice. Suddenly, appellant put up iron



pillars and shed made of iron sheet much to the annoyance and disturbance of the public. When the respondent demanded the appellant to remove the shed, they promised to remove it, but filed the suit on false allegations. On 20.07.2010, the Municipality officials have removed the shed with the help of Police. Appellant has no right to use the suit property as taxi stand. Therefore, the suit is liable to be dismissed.

4. On the basis of the above pleading, the Trial Court framed the following issues:

i) Whether the plaintiff is entitled for the relief of permanent injunction prayed for?

ii) What relief, if any, plaintiff is entitled?

5. During trial, PW1 and PW2 were examined. Exhibit A1 to A47 were marked on the side of the plaintiff. DW1 and DW2 were examined and Exhibit B1 to B4 were marked. That apart, Commissioner's report and plan were marked as Exhibit C1 and C2.

6. On considering the oral and documentary evidence, Trial Court found that appellant's claim that it has been using the suit property as taxi stand for over 45 years is not proved and the appellant has not made out any legal right to use the suit property as parking place (i.e. taxi stand). Appellant could only be considered as encroachers and therefore, respondent is entitled to remove the encroachment. In this view of the matter, the suit was dismissed. Appellant filed appeal in A.S.No.5 of 2017. The learned Sub Judge, Gobichettipalayam, has also agreed with the finding of the learned Trial Judge, confirmed the judgment of the Trial Court and dismissed the appeal. Therefore, the appellant has filed this Second Appeal.

7. The learned counsel for the appellant submitted that appellant has been using the suit property as parking place (i.e. taxi stand) for more than 45 years. They have produced voluminous documents in the form of Exhibit A1 to Exhibit A47 to show their continued possession. However, both the Courts below have not considered that appellant's long possession has given them right to continue to enjoy the suit property as parking place (i.e. taxi stand). One more submission made by the learned counsel for the appellant, not before the Trial Court, not before the Appellate Court, but before this Court is that, the suit property has not been handed over to the respondent Gobichettipalayam Municipality by the developers of plot, namely SDN colony. Therefore, respondent cannot claim any right in the suit property and cannot restrain or prevent the appellant from using suit property as parking place (i.e. taxi



stand). Even if the appellant is considered to be an encroacher, encroachment cannot be removed without following the procedure established by law. The fact that the respondent allowed the appellant to use the suit property as a taxi stand shows that appellant possession is recognized by the respondent and therefore, it has become a legal possession. This legal possession cannot be disturbed unless by due process of law. In support of his submission, the learned counsel for the appellant relied on the following judgments 2018 (12) SCC 647 Sunkamma Vs. S.Pushparaj

"6.....Be it noted, the plaintiff's suit O.S.No.424 of 1995 was only for permanent injunction in which the plaintiff is only required to prove that he is in lawful possession of the suit property. The High Court based upon the general power of attorney and the evidence of PW2 held in favour of plaintiff that he is in possession of site no.47. These findings of fact cannot be said to be perverse warranting interference.

7. Contention of appellants/defendants is that site no.47 is not covered under the sale deed in favour of Madhavan Pillai (21.04.1975). Further contention of appellants is that merely on the basis of registered power of attorney, title and ownership of immovable property (site no.47) could not have been transferred to the plaintiff. We refrain from going into the merits of this contention for two reasons. Firstly, since the present suit and further appeal thereon emanates from the suit pertaining to permanent injunction where the touchstone upon which the suit has to be decided is "lawful possession" and not "ownership". Secondly, appellants/defendants have filed separate suit in O.S.No.5327 of 1995 against Madhavan Pillai and the respondents, for a declaration that appellants are the owners of 'B' Schedule property thereon (which includes site no.47) and other reliefs. As seen from the additional documents filed before us, the said suit has been dismissed on 17.12.2016 against which an appeal is said to have been filed and pending. Therefore, we deem it appropriate, not to express any opinion on the question of title and ownership of respondent/plaintiff on the basis of registered general power of attorney".



1982 (2) SCC 134 Government of Andhra Pradesh Vs. Thummala Krishna Rao and another

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"9. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Meharunnissa Begum V. State of Andhra Pradesh*, which was affirmed by a Division Bench. (2) It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts " which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law.

10. The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in- title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by



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adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily".

2015 (4) CTC 25 The Commissioner, Bhavani Municipality,
Bhavani Vs. C.Ramasamy

"The Trial Court as well as the first Appellate Court dealt with the phrase "Boosthathi" refers to patta land belonging to private individuals and the same was also admitted by PW2 in evidence. It is a tar road on patta land and no evidence was let in by the appellant to the effect that the pattadars who are the owners of the land on which road was laid dedicated the same to the panchayat or Municipality".

8. In response, the learned counsel for the respondent submitted that appellant was never given permission to use the suit property as taxi stand. Despite objection and protest, it used the suit property as taxi stand and put up some structures which was removed by the respondent. There is no more structure available now in the suit property. The claim that suit property does not vest with the respondent is a new case advanced without any basis and in fact contrary to the pleadings in the plaint. Appellant is only an encroacher and therefore does not deserve any sympathy from the Court. Indiscriminate parking of taxis cause lot of hindrance to the movement of the buses, vehicles, general public and results in accidents. Both the Courts below have rightly considered the issue properly and dismissed the suit filed by the appellant. The learned counsel for the respondent prayed for confirming the judgments of the Courts below and for dismissal of this Second Appeal.

9. Considered the submissions of counsel appearing for either side and perused the records.

10. As rightly pointed out by the learned counsel for the respondent that a new plea is set up in the Second Appeal that the suit property did not vest with the respondent. This is contrary to the pleadings set up in the plaint and the evidence of PW1. It is plainly and clearly averred in the plaint that the suit property belongs to respondent Gobichettipalayam Municipality. Appellant sought to rely on the information received under the Right to Information Act, which had been marked as Exhibit A27, Exhibit A44 and Exhibit A46 in support of his case that the suit property did not vest with respondent



Gobichettipalayam Municipality. In the reply, received from respondent Gobichettipalayam Municipality dated 24.08.2010, (Exhibit A27) it was informed that the place is used for common purpose in LPDM/DTP No.102/67 was not gifted to the respondent Gobichettipalayam Municipality. Therefore, now it is claimed that the suit property is not vested with the respondent Gobichettipalayam Municipality. However, it is seen from information by respondent Gobichettipalayam Municipality dated 21.12.2010 (Exhibit A44), it is clearly and categorically stated that survey No.205/EP town, Ward 'D' Block-15, S.No.47 an extent of 0.0246.0square meter is classified as sarkar porambok road. Thus, it is clear from this information that the suit property shown in plaint is sarkar porambok salai. PW1 has clearly admitted in his evidence that the place where they put up shed is a public road and it does not belong to them. Again he reiterated that the suit property belongs to the respondent. Therefore, the new plea set up by the appellant in the Second Appeal that the suit property did not vest with the respondent and therefore, respondent cannot object to the use of the suit property as a taxi stand and prevent the appellant from using it as a taxi stand cannot be accepted.

11. The reading of evidence of PW1 shows that he did not know whether any permission was obtained from the respondent Gobichettipalayam Municipality before putting up the shed. It is his admission that permission is required to put up a shed, whether it is a private land or the land of the respondent. He admitted that the buses coming on the East and North to the Gobichettipalayam town bus stand should pass through the suit road. It is his clear admission that appellant cannot put up shed without getting permission from the respondent and no such permission was obtained from the respondent. It is seen from the evidence that the shed was put up without any permission from the respondent Gobichettipalayam Municipality in a place belongs to the respondent Gobichettipalayam Municipality. It is seen from the cross examination of DW1 that the shed had been removed by the respondent. That was also pleaded in the written statement of the respondent. Thus it is clear that, as on date, there is no shed available as on ground. Both the Courts below have on the basis of oral and documentary evidence, found that the appellant has not obtained any permission to use the suit property as taxi stand. They are not using the suit property as taxi stand for 45 years as claimed by the appellant. Using the suit property as taxi stand causes hindrance and nuisance to public and vehicle transport.



12. The judgment reported in 2018 (12) SCC 647 in (Sunkamma Vs. S.Pushparaj) is relied for the proposition that legal possession of person has to be protected. That was a suit filed on the basis of purchase of two plots, site No.47 and 53. It was found that in a suit for permanent injunction, the plaintiff was required only to prove that he is in lawful possession of the suit property. Finding that plaintiff was able to prove his lawful possession, the possession of the plaintiff was protected.

13. Here, in this case, appellant/plaintiff's possession cannot be considered as lawful possession. The documents filed by it would not establish that appellant has any legal right to possess the suit property and enjoy it as a taxi stand. Most of the documents are petitions, postal receipts, photos, CD's, registration certificate, telephone receipts and other receipts of the appellant society. These documents will not establish that appellant was given any legal right to possess and occupy the property as a taxi stand. It is seen from the submission of the respondent that despite objection of the respondent, appellant started using the suit property as a taxi stand. Therefore, appellant's possession cannot be considered as legal possession and the aforesaid judgment is not useful to the case of the appellant.

14. The next judgment relied on by the learned counsel for the appellant is the judgment reported in 1982 (2) SCC 134 in (Government of Andhra Pradesh Vs. Thummala Krishna Rao and another). This judgment deals with eviction of unauthorized occupants under the provisions of the Land and Encroachment Act, 1905. The ratio of this judgment is that when the question as to the title of the land is involved, it cannot be appropriately decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. It must be decided by a competent Court by way of properly instituted suit.

15. Here, the suit is filed by the appellant to claim protection of its possession of the suit property. In the cited case, the suit property was said to have been acquired for the benefit of Osmania University. However, it was found that plot No.111 was not acquired and that plot Nos.94 and 104 though acquired, university failed to prove its possession within twelve years prior to filing of the suit. Therefore, the suit filed by the university was dismissed and the appeal was also dismissed. Then the State Government took possession again under Andhra Pradesh Land Encroachment Act. In such circumstances, it



was observed that when serious question of title is involved, the issue cannot be decided summarily under Sections 6 and 7 of the Act. That is not the situation here. It was already found that appellants has no legal right to be in possession of the suit property and therefore, this judgment is not useful to the case of the appellant. It is no doubt that the respondent has to follow the procedure known to law while removing the appellant.

16. The judgment reported in 2015 (4) CTC 25 in (The Commissioner, Bhavani Municipality, Bhavani Vs. C.Ramasamy) is relied for the proposition that when the land is not vested with the panchayat, panchayat cannot take any claim in the disputed property. It was already stated that the appellant has clearly admitted that respondent Gobichettipalayam Municipality is the owner of the suit property. It was admitted by PW1 in his evidence. Exhibit A44 reply received under Right to Information Act also shows that the suit property is classified as sarkar puramboku salai. In this case, there is no doubt that respondent is the owner of the suit property. Therefore, this judgment is also not useful to the case of the appellant.

17. Both the Courts have found that appellant is not entitled for the relief claimed in the plaint and dismissed the suit. This Court for the reasons stated above finds no reason to interfere with the judgment of the Courts below. There is no substantial question(s) of law involved in this Second Appeal. Therefore, the judgment and decree of the learned Sub Judge, Gobichettipalayam, in A.S.No.5 of 2017 confirming the judgment and decree of the learned District Munsif, Gobichettipalayam, in O.S.No.248 of 2010 is confirmed.

18. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge

Subordinate Court, Gobichettipalayam

2. The District Munsif

The District Munsif Court

Gobichettipalayam

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.N.Manoharan, Advocate sr 65495

+1 CC to Mr.A.S. Thambusamy, Advocate sr 64919.

S.A.No.1221 of 2019

and C.M.P.No.26595 of 2019

VGII(CO)

SP(07/02/2022)