



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA.(MD)No.1075 of 2006 &
CMP (MD)No.1 of 2006

Janaki

... Plaintiff/ Respondent/
Appellant

Vs.

1.The State of Tamil Nadu,
Represented by District Collector,
Kanyakumari District, Nagercoil.

2.The Revenue Divisional Officer,
Nagercoil, Kanyakumari District.

3.The Tahsildar,
Agasteeswaram Taluk,
Nagercoil, Kanyakumari District.

... Defendants/ Appellants/
Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 26.07.2004 in A.S.No.128 of 2003 on the file of the II Additional Sub Court, Nagercoil, reversing the Judgment and Decree dated 20.08.2003 in O.S.No.710 of 2000 on the file of the Additional District Munsif Court, Nagercoil.

For Appellant : Mr.M.Saravanan

For Respondents : Mr.R.Ragavendran,
Government Advocate

JUDGMENT

The plaintiff in OS.No.710 of 2000 on the file of the District Munsif Court, Nagercoil is the appellant in this Second Appeal. The said suit was filed for permanent injunction restraining the respondents herein from dispossessing the plaintiff except by due process of law. The suit was decreed vide Judgment and Decree dated 20.08.2003. The I Appellate Court at the instance of the respondents herein reversed the same by the impugned Judgment and Decree dated 26.07.2004. Challenging the same, this Second Appeal came to be filed.



2. The Second Appeal was admitted on the following substantial questions of law.

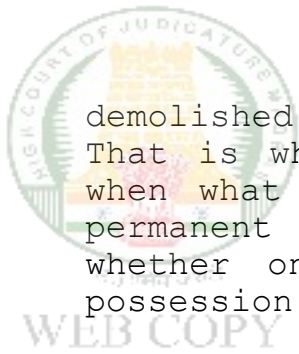
"a) Whether the lower appellate Court had failed to discharge its duty as required under Section 96 of CPC, 1908?

b) Whether the Judgment of the lower appellate Court is correct, as it is contrary to the law laid down by the apex Court in its Order reported in 2004(3) LW 143, wherein, it has been held that persons in settled possession cannot be dispossessed except by due process of law?"

3. The learned counsel appearing for the appellant would submit that the suit property was in the possession and enjoyment of the plaintiff for several years. No doubt, it is a poramboke land. The plaintiff has put up a residence and also planted trees. That the appellant was in possession of the suit property is amply proved by the fact that she was paying B-Memo charges. He drew my attention to the exhibits marked on the side of the plaintiff before the Court below. He placed reliance on the Judgment of the Honourable Supreme Court in the case of *Rame Gowda (Dead) by Lrs. vs. V.M.Varadappa Naidu (Dead) by Lrs. and Another* reported in 2004(3) LW 143 for the proposition that when a person in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed except by due process of law. To evict the persons found in the encroachment of Government land, the authorities will have to follow the statutory proceedings set out under Tamil Nadu Land Encroachment Act, 1905. In the case on hand, the respondents could not prove that the due process of law was followed. That is why, the trial Court rightly allowed the suit. The I Appellate Court on the other hand summarily interfered with the findings rendered by the trial Court and dismissed the suit filed by the appellant herein. This Second Appeal is filed to set aside the impugned decree by allowing the appeal.

4. *Per contra*, the learned counsel appearing for the respondents submitted that the impugned Judgment and Decree did not warrant any interference.

5. I have carefully considered the arguments and went through the evidence placed on record. There cannot be any quarrel with regard to the proposition that due process of law must be adopted to evict a person in settled possession of a property. It is again well settled that to evict a person found to be in encroachment of Government poramboke, the statutory proceedings set out under Tamil Nadu Land Encroachment Act, 1905 must be followed. But the moot question in the case on hand is whether on the date of filing the suit, the plaintiff was in possession of the suit property. The suit was filed on 02.11.2000. But the respondents appears to have



demolished the building five months prior to the filing of suit. That is why the first appellate Court rightly posed the question when what was filed by the plaintiff was only a simple suit for permanent injunction, the only question should be gone into is whether on the date of filing the suit, the plaintiff was in possession of the suit property.

6. Be that as it may, as rightly pointed out by the Government counsel, Section 14 of the Tamil Nadu Land Encroachment Act, 1905 would come in the way. Section 14 of the Act reads as follows.

"14. Bar of jurisdiction of Courts: Notwithstanding anything contained in any law for the time being in force no order passed or proceeding taken by any officer or authority or the State Government under this Act shall be called in question in any court, in any suit or application and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any power conferred by or under the Act."

7. The learned Government counsel would state that the suit property has been classified as odai poramboke. This Court as well as the Supreme Court in case after case, highlighted the importance of maintaining the water bodies. Therefore, the first appellate Court rightly reversed the decision of the trial Court. If the plaintiff felt aggrieved that she had been selectively targeted by the respondents, the prayer should have been something else. When the plaintiff had already been dispossessed, the question of entertaining the suit does not arise. I answer the substantial questions of law against the appellant.

8. Accordingly, this Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The II Additional Sub Court, Nagercoil
2. The Additional District Munsif Court, Nagercoil
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The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai - 2 Copies

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+1 CC to M/s.SPL.GP (SR-31219[F] dated 05/10/2021)

S.A. (MD)No.1075 of 2006
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RD/JGB(02.11.2021) 4P 10C