



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. [MD]No.509 of 2006

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The President,
Pasuvanthanai Panchayat,
Ottapidaram Taluk,
Tuticorin District.

... Appellant/1st Appellant/Defendant
Vs.

1.Devaraj

... 1st Respondent/Respondent/Plaintiff

2.The State of Tamil Nadu,
Through the District Collector,
Tuticorin.

3.Thasildhar,
Ottapidaram taluk,
Tuticorin District.

... 2nd & 3rd Respondents/
2nd & 3rd Appellants/2nd & 3rd Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 15.07.2005 passed in A.S.No.14 of 2005, on the file of the learned Subordinate Judge, Kovilpatti confirming the judgment and decree dated 18.06.2004 passed in O.S.No.75 of 2002, on the file of the learned District Munsif, Kovilpatti.

For Appellant	: Mr.S.Pon Senthil Kumaran
For Respondent No.1	: No appearance
For Respondents 2&3	: Mr.J.Gunaseelan Muthiah Additional Government Pleader

JUDGMENT

Aggrieved over the concurrent findings of the Courts below, granting permanent injunction against the appellant, the present second appeal is filed.

2.The brief facts leading to the filing of this appeal are as follows:

2.1.The suit property originally belonged to one Vellaiyappa Pillai and he gave the same to one Mariappa Pillai on 25.01.1949. Later, one Livingston has purchased the property on 26.09.1994 and finally, the plaintiff has purchased the suit property from the said Livingston. Originally, the survey number was 376/1. Now, the re-survey number is 565/1. The plaintiff is running a prayer hall in the suit property bearing Door No.1/137E. Besides, he also pays taxes and has also given requisition for issuance of patta. When



the matter stood thus, the first respondent, in order to give trouble to the plaintiff's community, issued a notice dated 29.04.2002, stating that the suit property is a Government property and the plaintiff has encroached the same. Hence, the suit has been filed.

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2.2.Denying the entire allegations, it is the contention of the first respondent that the suit is not maintainable without impleading the Government. The suit property is a poramboke land vested with the Government of Tamil Nadu. Hence, the State is a necessary party. The plaintiff has no right or title over the said property. He is only an encroacher. He can be removed under the Tamil Nadu Land Encroachment Act, 1905. Hence, the prayer sought by the plaintiff is null and void and the same is not maintainable.

2.3.Based on the above pleadings, the trial Court has framed the following three issues:

"1.Whether the plaintiff is entitled for declaration as prayed for?

2.Whether the plaintiff is entitled for permanent injunction as prayed for?

3.To what other reliefs the plaintiff is entitled to?"

2.4.On the side of the plaintiff, P.W.1 examined Ex.A1 to A.10 and on the side of the defendants, D.W.1 examined Exs.D1 to D.6.

2.5.Based on the evidences, the trial Court negatived the prayer of declaration sought against the resolution passed by the panchayat, however, granted permanent injunction. The first appellate Court also confirmed the findings of the trial Court. As against which, the present appeal is filed.

3.While admitting the second appeal, the following questions of law were framed:

"1.Whether the Courts below are right in granting relief of injunction prayed by the plaintiff, without seeking declaration of title, especially when his ownership is disputed by the defendant and in the absence of evidence to show that the plaintiff is in legal possession over the extent of land mentioned in the plaint scheduled?

2.Whether the courts below are right in granting relief of injunction after holding that the plaintiff is not entitled for the relief of declaration to declare the resolution passed by the first defendant as null and void?"

4.In addition to the above, the following question of law is

framed today:

<https://hcservices.courts.gov.in/hcservices/>



"Whether the Civil Court has got jurisdiction to decide the issue as to the encroachment?"

5. Heard the learned Counsel appearing for the appellant and the learned Additional Government Pleader appearing for the second and third respondents.

6. Learned Counsel for the appellant vehemently submitted that the entire suit property is a poramboke land vested with the Government. The plaintiff has no right whatsoever and it is only the Government property. The plaintiff is a mere encroacher in the Government property. Therefore, the Civil Court has no jurisdiction to deal with the property.

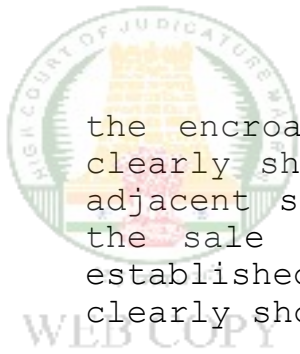
7. The Courts below having found that the property is a Government property, ought not to have granted permanent injunction against the panchayat which has acted as per the direction of the Commissioner of Panchayat to remove the encroachment. Hence, it is his submission that the Courts below have passed a decree which is erroneous and the same is liable to be set aside.

8. Despite the name printed, there no appearance on the side of the first respondent. Mr. J. Gunaseelan Muthiah, learned Additional Government Pleader entered appearance on behalf of respondents 2 and 3.

9. The plaint proceeded as if the suit property is the absolute property of the plaintiff, by virtue of a sale deed. The trial Court found that the property is classified as Government land vested with the Government by virtue of the Inam Abolition Act. The property is classified as the Government land as per the Exhibit B series. The trial Court having found that the plaintiff is not entitled to seek a declaration as per the resolution passed by the Panchayat to vacate encroachment in the suit property, however granted a permanent injunction as against the defendants for disturbing the possession of the plaintiff.

10. This Court also perused the entire materials including the documents. The suit property is originally subject matter of the Inam Abolition Act, which is classified as a Government land. Further, as rightly held by the trial Court, there is no evidence to show that the plaintiff's predecessor was continuously in enjoyment of the property. The documents also clearly show that the property is a Government land and no patta was issued in favour of the plaintiff.

11. Ex.B1 clearly indicates that the property has been classified as Government natham. Ex.B.3 makes it clear that the plaintiff has in fact encroached the property and the Tahsildar has issued proceedings directing the Block Development Officer to remove



the encroachments. The revenue records filed by the respondents clearly shows that the suit property is a vacant land and in the adjacent survey numbers, Government buildings have come up. Though the sale deed Ex.A.1 and A.2 are filed, the plaintiff has not established any title over the same. Whereas, his own documents clearly show that the property was owned by the Jamin.

12. There is no evidence to show that patta has been issued to the plaintiff under the Inam Abolition Act. Now, the property is admittedly with the Government and the plaintiff's house tax receipts Ex.A.4 is filed for the year 1998. Prior to that there was no document available to show that the building came into existence. Similarly, the electricity charges bill also relate to the particular period, as could be seen from the appellant series documents. These facts clearly show that the building came into existence recently and it is sought to be removed as per the letters issued by the Tahsildar to the Block Development Officer. When the land itself is held to be a Government land and no prior permission whatsoever obtained to put up a prayer hall, there cannot be any permanent injunction as against the Government authorities from taking action to remove the encroachments. Therefore, when the authorities take any action to remove any encroachments in the Government land, such action cannot be questioned in a Civil Court. There is a clear bar under Section 14 of the Tamil Nadu Land Encroachment Act, 1905 and the same reads as under:

"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 this Act."

13. Section 14 of the Tamil Nadu Land Encroachment Act, 1905, makes it very clear that the Civil Court jurisdiction has been taken away as far as the action taken under Land Encroachment Act.

14. When directions have been given to the panchayat under Section 31(2) of the Tamil Nadu Panchayat Act, 1994, to remove the encroachment, the action on the part of the panchayat also cannot be questioned. When the title is vested with the Government, the plaintiff proved to be an encroacher, there cannot be any permanent injunction. The Courts below have committed manifest errors in granting relief mainly on the basis of tax receipts of the year 1998. In such view of the matter, the findings of the Courts below are set aside and the suit filed by the plaintiff is dismissed. The



substantial questions of law framed by this Court are answered accordingly.

15. With the above observation, the appeal stands allowed. However, there shall be no order as to costs.

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Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

To

1. The Subordinate Judge,
Kovilpatti.

2. The District Munsif,
Kovilpatti.

3. The District Collector,
Tuticorin District.

4. The Thasildhar,
Ottapidaram taluk,
Tuticorin District.

Copy to

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai (2 copies)

+1 CC to M/s.S.PON SENTHIL KUMARAN, Advocate (SR-11971[F] dated 17/03/2021)

+1 CC to M/s.SPL GP (SR-12259[F] dated 18/03/2021)

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PK(CO)

TR(19.05.2021) 5P 9C