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AS. No.618 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS. JUSTICE N.MALA

AS. No.618 of 2014
and MP.No.1 of 2014

The Keela Eraal Kammavar Arakkattalai,
Rep. by its President,
Mr.S.Venkatraman,
No.83, Paddy Field Road,
Perambur, Chennai 600 011.

.. Appellant

Versus

1. The State Government of Tamilnadu,
Rep. by District Collector, Thiruvallur.
2. The Director,
Town and Country Planning Department,
Chennai 600 002.
3. The Zonal Officer,
Corporation of Chennai Zone-3,
Madhavaram, Chennai.

.. Respondents

PRAYER: First Appeal filed under Section 96 of CPC r/w Order 41 & 41-A of CPC, against the judgment and decree dated 26.03.2014 made in OS.No.19 of 2008 on the file of the IV Additional District Judge at Ponneri.



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For appellant	: Mr.M.Stalin
For Respondents	: Mr.T.Chandrasekaran
for RR1 & 2	Special Government Pleader
for R3	: Ms.P.Vidhya Shree
	for M/s.P.T.Ramadevi

J U D G M E N T

(Judgment of the Court was delivered by S.S.SUNDAR, J)

The plaintiff in the suit in OS.No.19 of 2008 on the file of the IV Additional District Court, Ponneri is the appellant in the above appeal. The third respondent/Zonal Officer, Corporation of Chennai Zone-3, Madhavaram, Chennai was brought on record as the third defendant in the suit after Madhavaram became part of Corporation of Chennai.

2. The appellant filed the suit in OS.No.19 of 2008 for a declaration that the plaintiff is the absolute owner of the suit schedule property and they are in exclusive possession over the vacant plot comprised in Survey No.1179 in Ponniammanmedu, Madhavaram Village, Ambattur Taluk, Thiruvallur District measuring to an extent of about 21,800 sq.ft.; for a declaration that the order passed by the third defendant vide proceedings dated 30.05.2007 cancelling the planning permission granted to the plaintiff on 07.07.2006 is null and void;



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and also for a consequential injunction restraining defendants 1 to 3 or their men from interfering in any manner with the peaceful possession and enjoyment of the property by the plaintiff except by due process of law.

3. The case of the plaintiff in brief is as follows:

The plaintiff is a Trust, which was formed with an object to establish a School and other Educational Institutions on the property purchased by them in Survey No.1179 in Ponnammanmedu, Madhavaram Village. The suit property was acquired by the Trust by way of a registered sale deed dated 02.08.2004, which is marked as Ex.A9. The suit property was the subject matter of the suit for partition in OS.No.501 of 1920 on the file of the District Munsif Court, Poonamallee. Pursuant to the final decree passed in OS.No.501 of 1920, the property came to the hands of the predecessor in interest of plaintiff's vendor.

4. The appellant earlier filed an application before the Madhavaram, Municipal Commissioner under the District Municipal Act seeking permission to build a School in the said property. The Municipal Commissioner after inspecting the site and perusing the records, particularly, the documents of title relating to the suit property and being convinced about the title, interest and enjoyment of the property by the plaintiff/Trust granted necessary permission



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to put up buildings for running the School. Thereafter, preparatory works were done by the plaintiff.

5. Subsequently, the Chennai Metropolitan Development Authority, in response to the application submitted by the petitioner for permission to put up construction of a School, has given clearance by stating that School is permissible in the said land as per the land use zone. However, the Commissioner of Municipality, who had given permission earlier, objected for construction, demanding an exorbitant sum of Rs.30,00,000/- for himself, stating that the costs of land has gone up. Since the plaintiff is a Trust and they are answerable to so many people, they could not afford such payment. Thereafter, the then Commissioner of Municipality by name Sekhar started giving threats and tried to prevent the construction work. Later, the then Commissioner of Municipality with his men high-handedly demolished a thatched shed, which was put up by the plaintiff, with J.C.P. and there was some law and order problem. The plaintiff lodged a criminal complaint against the then Commissioner of Municipality. Subsequently, the Commissioner of Municipality cancelled the permission granted earlier for construction of School and the petitioner was constrained to file a Writ Petition in WP.No.35385 of 2006 to quash the order of cancellation. The High Court, vide order dated 08.02.2007 set aside the said impugned order and directed the



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Commissioner of Madhavaram Municipality to pass appropriate orders on merits and also directed him to put the plaintiff on notice of the details of such documents and to conduct an enquiry in accordance with law. Thereafter, the third defendant passed an order once again cancelled the planning permission.

6. The Municipality took a stand that the disputed property was included in a lay out plan, which was approved as Thanikachalam Nagar, wherein the suit property was shown as a public park. Except the approved layout, the Municipality has not relied upon any other document to hold that the disputed land became park and that the promoter had title to the suit property.

7. Stating that the suit property does not vest with the local body and it is an exclusive property of the plaintiff and they are in physical possession of the property all along, the suit came to be filed for declaration of title and other consequential reliefs.

8. The suit was contested by the third defendant by filing a written statement stating that the plaintiff by producing false documents, obtained planning permission. It is contended by the third defendant that as per records, the suit property was gifted for the public purpose for establishing a park when



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the layout was prepared in the year 1970. It is stated that the plaintiff purchased the property in the year 2004 without knowing the development of the lay out, wherein it was shown as park. It is further contended by the third defendant that the suit property is now a property of the local body.

9. The sum and substance of the third defendant's claim is that in any approved lay out, if a property is reserved for public purpose, the said property becomes the property of the local body. Stating that the suit property is earmarked for a public purpose (park) in the approved lay out, the third defendant contended that the property became the property of the Municipality.

10. However, it is to be seen that nowhere in the written statement, it was pleaded that the property was held by the promoter of the lay out by referring to any document of title. Despite the plaintiff had produced several documents tracing the title from 1923, the Trial Court rejected the plea of title on the ground that the third defendant had cancelled the building plan approval and that the property is not the property of the plaintiff. It is stated that PW1 had admitted in the cross-examination that the suit property comes within Thanikachalam Nagar lay out. On the basis of the said admission and as the third defendant cancelled the building approval granted earlier under Ex.A13,



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the Trial Court came to the conclusion that the property has been earmarked as park as per the lay out plan and dismissed the suit. Aggrieved by the judgment and decree of Trial Court, dismissing the suit, the above appeal is preferred by the plaintiff. The main issue that arise for consideration is whether the plaintiff has established their title to the suit property. Then the other issue is whether the Municipality can claim ownership or title over the suit property merely because a gift deed has been executed by a third party whose title is not established by producing title deeds.

11. Before the Trial Court, the appellant has produced Exs.A1 to A40 and examined two witnesses. Ex.B1 is an authorisation letter and Ex.B2 is the letter issued by the third defendant to Tahsildar. Except the two self serving documents no other document is marked on the side of the respondents. The Trial Court failed to consider the documents of title produced by the appellant from the year 1923. It is to be seen that there was a suit for partition among the sharers in respect of the suit property and various other properties in OS.No.501 of 1920 and the District Munsif Court, passed a final decree for partition under Exs.A5 and A6. An extent of 50 cents in S.No.1179, namely the suit property was allotted to one Narayanasamy Naicker and his sons. After the death of Narayanasamy Naicker, it is stated that Mayandi and his wife



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Ponnammal died issueless and the wife of Narayansami Naiker, viz., Amma Kannammal also died. Therefore, the entire estate of Mayandi devolved upon his 2 brothers viz., Rangaswami Naicker and Sarangapani Naicker as per the Hindu Succession Act. Rangaswami Naicker and Sarangapani Naicker became the joint owners of the suit property after the death of other heirs and they entered into a partition by a Koorchit. Thereafter, referring to the Koorchit, a Release Deed under Ex.A40, dated 14.04.1981 was executed by Rangaswami Naicker. Thus, Sarangapani Naicker got the suit schedule property as Rangaswami Naicker had released and relinquished all his rights in the suit property under Ex.A40. After the death of Sarangapani Naicker, his sons, viz., Thirunavukkarasu, Sathyamurthy, Kumar, Asokan and Viswanathan became successors in interest as his legal heirs. Subsequently, all the legal heirs of Sarangapani Naicker jointly sold the suit property alone to one Noel Sean Thomas and Sablin Nancy Thomas by a registered sale deed dated 20.08.1993 marked as Ex.A3 and patta was given to the purchasers in 1992 under Ex.A4. Thereafter, the plaintiff purchased the suit property by a registered sale deed dated 02.08.2004 from Noel Sean Thomas and Sablin Nancy Thomas through a power of attorney agent. Patta was also transferred in the name of plaintiff as per Ex.A10. Thus, the plaintiff has established their title and enjoyment over the suit property by virtue of several documents of title deeds. As per the



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documents filed by the appellant before the Trial Court, it is seen that the entire suit property was earlier registered in the name of the plaintiff's predecessor in interest and pursuant to the sale of the property in favour of the appellant, the Revenue Records were mutated in the name of the appellant.

12. The Revenue Records produced before the Court do not show any rival claim in respect of the suit property and the entire property measuring to an extent of 50 cents in S.No.1179 has been shown in the name of Noel Sean Thomas and Sablin Nancy Thomas, before they sold the property in favour of the plaintiff. The said property has now been transferred in the name of the plaintiff after the sale was executed in favour of the plaintiff Trust. From the documents of title and the encumbrance certificate produced by the appellant, this Court is unable to find any rival claim by any other third party. Though the third defendant disputed the title of the plaintiff on the basis of the approved lay out, it is seen that no document of title is produced by the third defendant to substantiate their case. After the purchase by appellant in 2004, the entire property is surrounded by compound wall. The construction put up by plaintiff was assessed to tax by third defendant. Therefore, the enjoyment of plaintiff was recognised by third defendant all along till they cancelled the building plan.



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13. It is stated by the learned counsel for the appellant/plaintiff that the approved layout dated 21.11.1970, which is marked as A16, was served on the plaintiff by the third defendant only during the course of enquiry. In the said lay out, Survey No.1179 is shown as a park surrounded by 30 feet roads on the North and West of the park. Though the Survey No.1179 is shown as a park in the lay out, it is seen that area is formed without reference to any measurement.

14. From the list of documents produced before the Trial Court, this Court is unable to find a scrap of paper to support the case of the third defendant that the land belongs to the promoter of the lay out. However, the plaintiff produced various documents from the year 1923, viz., a copy of the judgment and decree dated 22.03.1923 in OS.No.501 of 1920, encumbrance certificate apart from the Revenue Records claiming title and hence, this Court is unable to find as to how the third defendant claims title to the said property. The claim is simply based on the approved layout, wherein the disputed property was shown as park. In the absence of any title document or the gift deed to sustain the plea, the third defendant has come forward with a plea that the property was gifted for public purpose for approval of layout as Thanikachalam Nagar.



15. The Supreme Court in the case of **Chet Ram Vashist (dead) vs.**

Municipal Corporation of Delhi reported in AIR 1995 SC 430, has held as follows:

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of



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the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

16. From the above judgment, it is clear that if the promoter shows a particular piece of land in a lay out for the public purpose, he holds that property only as a trustee for the benefit of the owners of the plots. However, to apply the said principle, it is to be established that the land belongs to the promoter at the time when the lay out was formed. The third defendant claimed title only through the lay out formed by the promoter, but it is unable to produce any record to show that the promoter had title and the property lawfully came under the control of the third defendant/local body. It is also settled law that the local body does not become the owner of a property, which is reserved for public purpose in a lay out. The position of the local body/third defendant in this case cannot be better than the promoter himself who had no title. Even assuming that the promoter executed a gift deed that does not alter the situation. In the present case, no gift deed is executed by the promoter of the lay out in favour of the local body. Hence, we hold that the appellant/plaintiff has established its title, and enjoyment as lawful owner and order of third defendant cancelling planning permission claiming title cannot stand.



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WEB COPY 17. For all the above reasons, the only conclusion we arrive is that the third defendant has presumed certain right without producing any document. It appears that the third defendant has proceeded only on the basis of a third party's lay out plan and not on the basis of any record showing the title of promoter. However, the plaintiff has produced several documents tracing title from 1923 and established the same by cogent documents. Therefore, we are unable to agree with the findings of the Trial Court that the plaintiff failed to establish their title. The Trial Court was misled by the approved layout plan of the year 1970 to hold that the suit property is earmarked as "Park", which is a public purpose without any document to prove the title of promoter.

18. It is seen that the plaintiff has not impleaded the promoter of the lay out as a party to the proceedings. Though it is an irregularity, this Court is unable to dismiss the suit only on that ground as none of the defendants had raised this as an issue viz., whether the suit is liable to be dismissed for non joinder of necessary party, viz., the promoter of the lay out. In the absence of any document of title or records supporting the claim of the promoter, this Court is unable to doubt the title and enjoyment of the plaintiff over the suit property. It is not the case of the third defendant that at any point of time the



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construction of building by the plaintiff in the suit property was opposed by anyone, who purchased the property in the lay out. There is absolutely no document to state that there is a rival claim of title in respect of the suit property.

19. In view of the above, this Court is of the view that the judgment of the Trial Court is on an erroneous understanding of the principles of law settled by the Supreme Court and this Court. Therefore, the appeal is allowed and the judgment and decree dated 26.03.2014 passed by the Trial Court in OS.No.19 of 2008 is set aside and the suit in OS.No.19 of 2008 on the file of the IV Additional District Court at Ponneri stands decreed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J.,) (N.M.J.,)
10.11.2022

Speaking Order : Yes / No
Index : Yes / No
pvs

To
1. The IV Additional District Judge, Ponneri
2. The Section Officer,
V.R.Section, High Court, Madras



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S.S.SUNDAR, J.
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