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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 15/09/2021

DATED :: 24-01-2022

CORAM

THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

S.A.No.794 of 2019

1.Nachimuthu Nagar Kudiyiruppor Nala Sangam,
Koorainadu, Mayiladuthurai,
rep.by its President Karthikeyan.

2.Nachimuthu Nagar Kudiyiruppor Nala Sangam,
Koorainadu, Mayiladuthurai,
rep.by its Secretary Rabi Ahamed.

... Appellants/Plaintiffs

-vs-

1.Pradhan Babu
2.Surendirababu
3.Subramanian
4.Pazhanivel
5.Renganayaki
6.Chandira
7.Selvaganapathy
8.Savithri
9.Hemamalini
10.Muthukumar

... Respondents /Defendants

Second Appeal under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.04.2019, passed in A.S.No.71 of 2017 on the file of Principal Sub-Court, Mayiladuthurai, reversing the judgment and decree, dated 13.09.2017, passed in O.S.No.265 of 2013 on the file of Principal District Munsif Court, Mayiladuthurai.

For appellants : Mr.N.A.Nissar Ahamed
For respondents : Mr.C.Munusamy



JUDGMENT

The above Second Appeal is filed, challenging the judgment and decree, dated 25.04.1029, passed in A.S.No.71 of 2017 on the file of the Principal Sub-Court, Mayiladuthurai, reversing the judgment and decree, dated 13.09.2017, passed in O.S.No.265 of 2013 on the file of Principal District Munsif Court, Mayiladuthurai. The suit has been filed by the plaintiffs for bare injunction, restraining the defendants from encroaching and making any construction in the suit common property, and for costs.

2. Appellants are plaintiffs and respondents are defendants in the suit before the trial Court. The case of the plaintiffs was that the plaintiff-Society was registered with the District Registrar, Mayiladuthurai and as per the Society's Rules, the President and the Secretary of the Society could file a suit. The suit was one for permanent injunction against the first defendant that he should not encroach and construct any building in the suit property or interfere with the suit public property. Based on the averments in the written statement, defendants 2 to 10 were impleaded. According to the plaintiffs, the plaintiff society was registered with District Registrar, Mayiladuthurai, and the President and the Secretary have a right to file the suit. Admittedly, one Nachimuthu Mudaliar formed a layout in T.S.No.1001, 1002, 1003/1 S2 and 1004. The lay out was approved by the Deputy Director of Town Planning, Trichy and also Mayiladuthurai Municipality. The suit property of 11,200 Sq.ft. was demarcated for 'public purpose'. According to the plaintiffs, the first defendant, who has not purchased any property or who is not a member of the plaintiff society, started claiming right over the property, which was allotted for 'public purpose' for the benefit of the residents of Nachimuthu Nagar.

3. The case of first defendant was that the suit was vexatious, fabulous and untenable in law and on facts. The plaintiffs have no manner of any right or interest or possession over the suit property at any point of time and have no locus standi to institute the suit. This defendant has no right over the suit property and he has been impleaded unnecessarily and an ex-parte order was obtained against him. It is true that one Nachimuthu Mudaliar formed a layout in T.S.Nos.1001, 1002, 1003/1 and 2 and 1004. It is also true that the layout was approved by the Deputy Director of Town Planning, Trichy, and also Mayiladuthurai Municipality. The suit property, measuring 11,200 Sq ft., was demarcated for "public purpose". The allegation is that it was demarcated for the benefit of the residents of Nachimuthu Nagar is false. The title of the



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property earmarked for "public purpose" continues with the owner. The word "public purpose" means that the property can be utilized for dispensary, bus stand, post office, police station, school, Kalyana mandabam, cinema theatre etc. or for any other similar nature. Any department or private entrepreneurs can purchase the property earmarked for "public purpose" from the owner and put the property to such use. If six years had elapsed and no one came forward to purchase the property for such purpose, then, automatically, demarcation for "public purpose" lapses and the owner is free to put it to any other use. The owner should obtain necessary permission from the concerned authorities. The layout was approved originally in 1978 and later revised and approved in 1981. No one came forward to purchase the suit property for any of the aforesaid purposes. In the meantime, Nachimuthu Mudaliar died "intestate" on 29.04.2004. The title of the suit property devolved upon the heirs and they are in possession and enjoyment of the property. They have dealt with the property as their own and have been regularly paying the tax therefor to the municipality. All the heirs of Nachimuthu Mudaliar conveyed 11,200 Sq. ft. for valid consideration in favour of one Mrs.Chandra, Mr.Selvaganapathy, Mrs.Savithri, Mrs.Hema Malini and Mr.Muthukumar on 20.04.2009 under a registered sale deed. The father Mr.Palanivelu and mother Mrs.Ranganayagi of this defendant obtained 6,145 Sq. ft. out of 11,200 Sq. ft. on the southern side by means of a duly registered exchange deed from the aforesaid persons on 27.03.2013. The brother of this defendant Mr.Surendar Babu and father in law of this defendant Mr.Subramaniam purchased the remaining 5,055 Sq.ft on the northern side under a registered sale deed on 27.03.2013. They are the owners of the property and they are in possession of the same. They also paid the vacant land tax due to Municipality. The suit is bad for non-joinder of the above necessary parties to the suit. On 13.10.2013, the father of this defendant removed the old bamboo fence and put up a boomed wire fence with stone posts. At the instigation and wrong information of the plaintiffs, police and Municipality officials rushed to the spot. Upon perusing the documents, they went away, by saying that it was a mistake. The father of this defendant completed the work of fencing and the suit property has all along been in possession and enjoyment of the relatives of this defendant and their predecessors are in title. The plaintiff has produced the 1978 layout plan and not the revised layout plan of 1981. The encumbrance certificate is obtained by impersonation and fraud, suppressing the many entries in the encumbrance certificate. The plaintiffs have no manner of any right whatsoever over the suit property at any point of time and were never in possession and enjoyment of the same. The



plaintiffs have not come forward with clean hands and are not entitled to the relief of injunction, as prayed for.

4. The case of tenth defendant in his written statement is that the layout was approved originally in 1978 and later revised and approved in 1981. The plaintiffs society was registered with fabricated documents only for the purpose of the suit for unlawful gain. There is no such society. Plaintiffs have no right to file the suit. Defendants 6 to 10 purchased the suit property from the legal heirs of Late Nachimuthu Mudaliar on 20.04.2009 through a registered sale deed. Defendants 6 to 10 gave 6145 sq.feet to D4 and D5 on 23.3.2013 by way of registered exchange deed. An extent of 5055 sq.feet was sold to D2 and D3 on 27.3.2013 through a registered sale deed. D2 to D5 are the absolute owner of the suit property. Ex.B.35 is the approval lay out pertaining to Nachimuthu Nagar. In that, a place was allotted for 'public purpose'. According to the defendants, when a property allotted for 'public purpose' was not utilized for the purpose it was allotted within 3 years, the person, who formed the 'Nagar', got every right to sell away the property. But, the owner should obtain necessary permission from the concerned authority. Therefore, the suit was liable to be dismissed.

5. The trial Court discussed the above points in detail and held that the defendants have not produced any document of necessary permission by the owner from the Joint Director. The trial Court also held that suit filed by the plaintiffs viz., President and Secretary is maintainable. The trial Court has further held that there is no need for the plaintiffs to seek for declaration, as alleged by the defendants. The trial Court has also, at para 17 of the judgment, observed that the said Nachimuthu Mudaliar formed the Natchimuthu Nagar during 1978 and got the revised approval in the year 1981. He died in the year 2004 and if he had any intention to change the characteristic of the suit property, which was allotted for 'public purpose', he would have taken steps therefor. But, he did not do so. The trial Court, while discussing about the sale deed Ex.B13, dated 20.04.2009, executed by the legal heirs of Natchimuthu Mudaliar, observed that the defendants have not proved the partition deed, dated 31.7.1980, mentioned in Ex.B13, though they have chosen to file Ex.B1 to B35 in order to prove to whom the suit property was allotted. According to the trial Judge, since the layout was revised and approved in 1981, it was not possible to allot the suit property in the partition in the year 1980. No explanation was also given by the defendants therefor. The trial Court disbelieved Ex.B13, sale deed, and held that the subsequent documents, based on Ex.B13, cannot be considered as legal



documents. As against the allowing of the suit, an appeal was filed by the defendants before the lower appellate Court and the same was allowed, holding that the character of suit property had changed, as no building was constructed thereon, and that the suit was bad for non-joinder of Mayiladuthurai Municipality. The lower appellate Court also held that the suit is bad in the absence of prayer for declaration when appellant claimed only their right to preserve suit property as a public place for user of general public. Hence, this Second Appeal.

6. This Second Appeal was admitted on the following substantial questions of law :

(1) Whether the judgment of the lower appellate Court is liable to be set aside in its holding that the character of suit property was changed as no building was constructed thereon by relying on wrong provision of law namely Sect.2 (33) of Tamil Nadu Town and Country Planning Act, which defines 'public building' but not 'public place' or 'public purpose' ?

(2) Whether the judgment of the lower appellate Court is unsustainable in law in its stating that the suit is bad for non-joinder of Mayiladuthurai Municipality, when no such plea was raised in the written statement ?

(3) Whether the property allotted for public purpose under approved plan can be used as a private property so as to affect the rights of the general public without obtaining necessary amendment or order for conversion in the approved plan from competent authorities ?

(4) Whether the finding of lower appellate Court that the suit is bad in the absence of prayer for declaration when appellant claimed only their right to preserve suit property as a public place for user of general public and whether declaration prayer is necessary when appellants do not claim any title over the suit property ?

7. I have heard the learned counsel for the parties and also gone through the records.

8. The suit was one for permanent injunction against the defendants not to encroach and construct any building in the suit property or interfere with the suit public property. Admittedly, one Nachimuthu Mudaliar formed the layout in question and it was approved by the Deputy Director of Town



Planning, Trichy, and also Mayiladuthurai Municipality. It is also not in dispute that the suit property of 11,200 sq. ft. was demarcated for 'public purpose'. According to the respondents/defendants, if six years had elapsed and the property is not utilised for the purpose for which it was allotted, the owner is free to put it to any other use. The layout was originally approved in 1978 and later revised and approved in 1981. Since Nachimuthu Mudaliar, the original owner, died intestate on 29.04.2004, all his heirs conveyed the suit property for valid consideration in favour of third parties, namely, the father and the mother and the brother and the father-in-law of the first respondent/defendant, under registered deeds.

9. The specific case of the respondents/defendants is that when a property allotted for 'public purpose' is not utilised for the purpose it was allotted within three years, the person, who formed the layout, got every right to sell away the property. In this connection, it is to be stated that the defendants, in the written statement, themselves admitted that the owner should obtain necessary permission from the authorities concerned for conversion/retake of the property. The trial Court discussed the above point in detail and held that the defendants have not produced any document of necessary permission by the owner from the Joint Director. The trial Court also held that suit filed by the plaintiffs viz., President and Secretary is maintainable.

10. In the considered opinion of this Court, when the respondents/defendants have not obtained necessary permission, as admitted by them in the written statement, from the authorities concerned for conversion/retake/sale of the suit property, all other contentions as to non-seeking of declaration of title in prayer and non-joinder of necessary parties in the suit do not fall for consideration, as they are unnecessary. In fact, Nachimuthu Mudaliar, owner of the property, formed Natchimuthu Nagar during the year 1978 and got the revised approval in the year 1981. He died in the year 2004. If he had any intention to change the character of the suit property, which was allotted for 'public purpose', he would have taken steps therefor during his lifetime. But, he did not do so. The trial Court, while discussing the sale deed Ex.B13, dated 20.04.2009, executed by the legal heirs of Natchimuthu Mudaliar, has rightly observed that the respondents/defendants have not proved the partition deed, dated 31.7.1980, mentioned in Ex.B13, though they have chosen to file Exs.B1 to B35 in order to prove to whom the suit property was allotted. Since the layout was



revised and approved in the year 1981, it was not feasible to allot the suit property in the partition in the year 1980, which was much earlier to the approval, for which, no explanation was also given by the respondents. The trial Court disbelieved Ex.B13, sale deed, holding that the subsequent documents, based on Ex.B13, cannot be considered as legal documents, which, in the view of this Court, cannot be faulted with. However, the lower appellate Court erred in reversing the well reasoned judgment of the trial Court, holding that the character of suit property has changed, as no building has been constructed thereon, and that the suit was bad for non-joinder of necessary parties and in the absence of prayer for declaration.

11. Second Appeal is, accordingly, allowed, setting aside the judgment and decree, dated 25.04.2019, passed in A.S.No.71 of 2017 on the file of Principal Sub-Court, Mayiladuthurai, and confirming the judgment and decree, dated 13.09.2017, passed in O.S.No.265 of 2013 on the file of Principal District Munsif Court, Mayiladuthurai. No costs. Consequently, the connected C.M.P.No.15988 of 2019 is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

dixit

To

1.Principal Subordinate Judge,
Mayiladuthurai.

2.Principal District Munsif,
Mayiladuthurai.

3.The Section Officer,
V.R.Section, High Court,
Madras -104.

+1cc to Mr.C.Munusamy, Advocate SR.No.4144

+1cc to Mr.N.A.Nissar Ahmed, Advocate SR.No.4397

S.A.No.794 of 2019

SV(CO)
GN(25/02/2022)