



C.R.P. No.1092 of 2020
C.M.P.No.5936 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P. No.1092 of 2020

&

CMP No.5936 of 2020

1.A.P.Subramanian
2.Sundara Murugan

... Petitioners

Vs.

1.The Tahsildar,
O/o. The Tahsildar,
Needamangalam Village,
Thiruvarur Village.

2.The District Collector,
O/o.The District Collector,
Thiruvarur District.

3.The Tahsildar,
Yamunammal Chathiram (Admn)
Thanjavur Taluk & District.

4.The District Collector,
O/o.The District Collector,
Thanjavur Taluk & District

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal orders dated 30.07.2018 made in CMA No.3 of 2013 on the file of the Principal District Court, Thiruvarur reversing the fair and decretal orders dated 15.06.2012 made in I.A.No.8 of 2012 in O.S. No. 2 of 2012 on the file of the Sub Court, Mannargudi.

For Petitioners : Mr.S.Parthasarathy

For Respondents : Mr.P.Harish, Government Advocate (CS)

ORDER

The present Civil Revision Petition is filed against the fair and decretal orders dated 30.07.2018 made in CMA No.3 of 2013 on the file of the Principal District Court, Thiruvarur, reversing the fair and decretal orders dated 15.06.2012 made in I.A.No.8 of 2012 in O.S. No. 2 of 2012 on the file of the Sub Court, Mannargudi.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

3.The revision petitioners are the plaintiffs in O.S.No.2 of 2012 on the file of the Sub Court, Mannargudi. They filed the suit for a



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declaration that the notice dated 15.01.2012 issued by the 1st defendant directing them to vacate the suit property in S.No.8/3 measuring 0.02.50 ares, S.No. 8/4 measuring 0.02.50 ares and S. No. 8/5 measuring 0.70.00 ares including the superstructure put up thereon, coconut trees and other trees etc. is null and void. They had also prayed for a permanent injunction restraining the Tahsildar, Needamangalam (D1), District Collector, Thiruvarur (D2), Tahsildar, Yamunammal Chathiram (Admn), Thanjavur (D3) and District Collector, Thanjavur (D4) from interfering with their peaceful possession and enjoyment of the suit property.

4.The case of the plaintiffs in brief is as follows:

The plaintiffs are brothers and their great grandfather A.S.Panjabikesa Udaiyar took possession of the suit property about 150 years ago. According to the plaintiffs, the suit property belonged to Yamunammal Chathiram and that the plaintiffs have been in possession and enjoyment of the same. It is their further contention that in the suit in O.S.No.106 of 1993 which was filed for partition, the suit property was



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allotted to the share of the plaintiffs and therefore, the notice issued by the 1st defendant dated 15.01.2012 directing them to vacate the suit property within seven days from the date of receipt of the notice is null and void.

5.The suit was resisted by the defendants on the following grounds :

- 1) The lease between the plaintiffs and the 3rd defendant was cancelled on 13.04.2007 by the 3rd defendant for which the plaintiffs have sought for compensation from the defendants vide their letter dated 26.04.2008. Therefore, the plaintiffs have not asserted their right over the suit property as lessees.
- 2) On 31.12.2011, a notice under Section 7 of the Tamilnadu Land Encroachment Act, 1905 was issued to the plaintiffs and other 13 encroachers.
- 3) While all the encroachers have vacated the suit property, the plaintiffs have not complied with the notice issued to them under Section 7 of the Act.



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- 4) As per Section 14 of Land Encroachment Act, no orders or proceedings initiated under the Act can be questioned in any Civil Court and the plaintiffs can only file an appeal under Section 10 of the Land Encroachment Act before the District Collector within 30 days from the date of receipt of the notice.
- 5) Since the plaintiffs have not exhausted their remedy under Section 10 of the Act, the suit filed by them is not maintainable.

6.The plaintiffs along with the plaint, filed I.A.No.8 of 2012 under Order XXXIX Rule 1 & 2 CPC for granting an ad-interim injunction pending disposal of the suit. The said application was allowed by the learned Subordinate Judge, Manargudi vide her orders dated 15.01.2012 on the following grounds :

- 1) The plaintiffs were originally lessees of the suit property.
- 2) The lease was brought to an end by the defendants 3 & 4 on 13.04.2007 and therefore, the plaintiffs have to be considered as tenants holding over.



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- 3) In such circumstances, the notice issued under Section 7 of the Land Encroachment Act by the 1st defendant to the plaintiffs treating the plaintiffs as encroachers in the suit property cannot be sustained and hence, they are entitled for a temporary injunction till the disposal of the suit.

7. Aggrieved over the orders dated 15.01.2021 passed by the learned Subordinate Judge, Manargudi, the defendants filed CMA No.3 of 2013 before the Principal District Court, Thiruvarur. The learned Principal District Judge, Thiruvarur, set aside the orders passed by the trial Court on the following grounds:

- 1) The management of Yamunammal Chathiram is now with the District Collector, Thanjavur and even as per the averments of the plaintiffs, the suit property belonged to Yamunammal Chathiram.
- 2) The plaintiffs did not adduce any acceptable evidence to show that they are in possession of the suit property.
- 3) In the partition suit in O.S.No.106 of 1993 the defendants were not



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parties and therefore, the decree passed in the said suit would not bind them.

- 4) The plaintiffs have not shown under what basis they are in possession of the suit property and the other encroachers have vacated the suit property.
- 5) The suit property is ear marked for constructing a building for Town Panchayat.
- 6) The plaintiffs have not, prima facie, established their possession over the suit property.

8. Aggrieved over the same, the present Civil Revision Petition is filed.

9. Heard Mr.S.Parthasarathy, learned counsel appearing for the revision petitioners and Mr.P.Harish, Government Advocate (CS) learned counsel appearing for the respondents.



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10. At the outset, it may be observed that the plaintiffs have filed the suit challenging the notice issued by the 1st defendant under Section 7 of the Land Encroachment Act. At this juncture, it is relevant to extract Section 14 of the Land Encroachment Act

"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."

It is clear from the above Section that there is an express bar of Civil Court's jurisdiction. Moreover, Section 10 of the Act provides for a remedy of appeal before the District Collector within 30 days from the date of issuance of notice. In the instant case, the plaintiffs without approaching the District Collector under Section 10 of the Act have filed the present suit for a declaration and for a consequential relief of permanent injunction.



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11. It is an admitted fact that the original owner of the suit property, namely, Yamunammal Chathiram is presently under the control of District Collector, Thanjavur. It is seen from the records that the lease between the plaintiffs and Yamunammal Chathiram was brought to an end by the 3rd defendant on 13.04.2007. The plaintiffs state that they are in possession of the suit property even after the termination of lease. In order to substantiate the same they have filed several lease receipts issued by Yamunammal Chathiram. The 3rd defendant has specifically denied the issuance of those receipts in the written statement as well as in the counter filed by them. The learned Principal District Judge in her orders dated 15.06.2012 had observed that there is nothing to show that the property tax receipts, house tax receipts and electricity bills relate to the suit property. Moreover, now the suit property absolutely belonged to the Government and the plaintiffs have not adduced sufficient documentary evidence to show that how they are in possession of the suit property on the date of filing of the suit i.e. in the year 2012 especially when the lease was terminated even as early as 13.04.2007. It is also seen from the



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records that the other encroachers of the suit property have vacated the suit property. In the circumstances, I do not see any reason to interfere with the findings recorded by the learned Principal District Judge, Thiruvarur.

12. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the fair and decretal orders dated 30.07.2018 made in CMA No.3 of 2013 on the file of the Principal District Court, Thiruvarur, is upheld.
- iii. The fair and decretal orders dated 15.06.2012 made in I.A.No.8 of 2012 in O.S. No. 2 of 2012 on the file of the Sub Court, Mannargudi, is set aside.



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iv. Since the suit is of the year 2012, the learned Subordinate Judge, Mannargudi, is directed to dispose of the suit as expeditiously as possible.

13.10.2022

Index : Yes/No

Internet : Yes/No

Speaking/non speaking
bga

To

1. The Principal District Court, Thiruvarur

2. The Sub Court, Mannargudi.

3.. The Section Officer, VR Section, High Court, Madras.



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R.HEMALATHA, J.,
bga

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