



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A.(MD)No.30 of 2010 and

M.P.(MD)No.1 of 2010

WEB COPY

R.Balakrishnan (Died)

... Appellant / Appellant
1st Defendant

2. Saraswathi
3. Mohan Kumar
4. Gomathi Jeyam
5. Vanitha
6. Venkatesan

(Appellants 2 to 6 are brought on record
as LRs. of the deceased sole appellant vide
Order dated 14.03.2016 made in M.P.(MD)No.1
of 2014)

... Appellants / Appellants

Vs.

1. J.Thamizharasi

... Respondent / Respondent /
Plaintiff

2. Mohanakumar

3. The Executive Engineer,
Tamil Nadu Electricity Board,
SIPCOT Complex,
Thirukokarnam Post,
Pudukottai Taluk and District.

4. Government of Tamil Nadu,
Rep. By its District Collector,
District Collector Office,
Pudukottai District.

5. Tahsildar,
Taluk Office,
Government Office Complex,
Pudukottai.

... Respondents 2 to 5 /
Respondents 2 to 5 /
Defendants 2 to 5

Prayer: Second appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 30.06.2008 made in A.S.No.65 of 2007 on the file of the Subordinate Judge, Pudukottai, confirming the Decree and Judgment dated 27.07.2004 made in O.S.No.146 of 1998 on the file of the Additional District Munsif, Pudukottai.



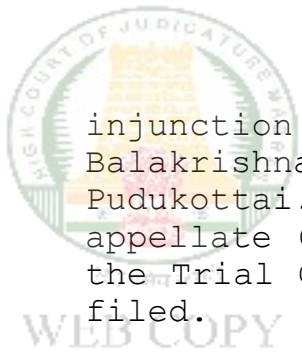
For Appellants : Mr.P.Thiagarajan
For R-4 & R-5 : Mr.N.Muthuvijayan,
Special Government Pleader.
For R-1 : Mr.M.Muruga Prabhu
For R-3 : Mr.Ramanathan,
Standing Counsel for TNEB.

J U D G M E N T

The first defendant in O.S.No.146 of 1998 on the file of the Additional District Munsif, Pudukottai, filed this second appeal.

2. During the pendency of the second appeal, he passed away and his legal representatives have come on record.

3. The first respondent herein, namely, Thamizharasi filed the said suit seeking the relief of declaration and for recovery of possession and for permanent injunction. While defendants 1 and 2 were private parties, defendants 3 and 5 are public authorities. The fourth defendant is the Government. The case of the plaintiff was that the suit property originally belonged to one Adaikan Ambalam. He appointed one Subbaian as his power agent vide document dated 11.04.1979. The power agent sold the property to one Nainar, S/o.Krishnan on 24.07.1979 by a registered sale deed. The said Nainar appointed one Samykannu as his power agent on 12.11.1992. The said power agent sold the property to the plaintiff under a registered sale deed dated 29.04.1994. The plaintiff would claim that she let out the suit property in favour of defendants 1 and 2 sometime in May 1996 for monthly rent. Taking advantage of the fact that the said defendants were allowed to pay the property tax, they had obtained revenue patta in their names. The plaintiff issued legal notice dated 09.03.1998 calling upon them to vacate and hand over possession of the suit property. Since the demand set out in the notice was not complied with, she instituted the said suit for the aforesaid relief. The defendants filed written statements controverting the plaint averments. The Tahsildar, Pudukottai also filed written statement setting out his version. The husband of the plaintiff examined himself as P.W.1 and Samykannu, the power agent of the vendor of the plaintiff was examined as P.W.2. Ex.A.1 to Ex.A.8 were marked. Balakrishnan, first defendant examined himself as D.W.1. Ex.B.1 to Ex.B.8 were marked. Ex.B.1 is the revenue patta, while Ex.B.2 to Ex.B.8 are the house tax receipts standing in the name of the second defendant. After consideration of the evidence on record, the Trial Court partly decreed the suit on 27.07.2004. The relief of declaration was given. However, the relief of permanent



injunction sought against TNEB was negatived. Aggrieved by the same, Balakrishnan filed A.S. No.64 of 2007 before the Sub Court, Pudukottai. Vide judgment and decree dated 30.06.2008, the first appellate Court dismissed the appeal and confirmed the decision of the Trial Court. Challenging the same, the second appeal came to be filed.

4. The second appeal was admitted on the following substantial questions of law:-

" a) Whether the suit is maintainable in view of the nature of relief sought?

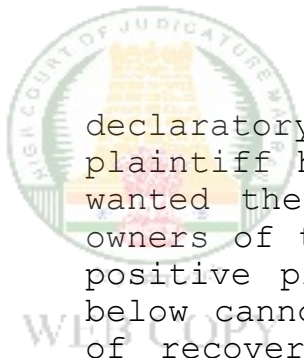
b) Whether the failure of the plaintiff to file any appeal or cross appeal against the non-grant of consequential relief by the Trial Court ought to have been taken note of by the first appellate Court? "

5. Heard the learned counsel appearing for the appellants and the learned Special Government Pleader appearing for respondents 4 and 5 and the learned Standing counsel appearing for the third respondent and the learned counsel appearing for the first respondent.

6. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and allow the second appeal and dismiss the suit in *toto*.

7. Per contra, the learned counsel appearing for the plaintiff / first respondent submitted that no substantial questions of law arises for consideration and he called upon this Court to dismiss the second appeal.

8. The plaintiff had traced her title to one Adaikan Ambalam. On the other hand, the Tahsildar, Pudukottai, in his written statement had stated that the suit property was a part of a larger extent of land which was acquired for distribution among Ceylon refugees. The appellants' counsel would contend that the stand taken by the Tahsildar, Pudukottai, clearly falsifies the plea of the plaintiff. No doubt, there is some force in this contention. But then, the Tahsildar, Pudukottai had stated that the patta was issued in favour of a Ceylon refugee by name Nainar, S/o.Krishnan. The stand of the plaintiff is that Adaikan Ambalam's power agent sold the property to Nainar, S/o.Krishnan in the year 1979 under Ex.A.1 and that the said Nainar sold the suit property to the plaintiff under Ex.A.3 dated 29.04.1994 through his power agent Samykannu. Samykannu was examined as P.W.2. Thus there is unity in the stand taken by the plaintiff and that of the Government. Even if I reject the stand of the plaintiff that the suit property originally belonged to Adaikan Ambalam, still in view of the stand taken by the Government, I have to necessarily sustain the



declaratory relief granted by the Courts below. Of course, the plaintiff had originally sought negative declaration. The plaintiff wanted the Court to declare that defendants 1 and 2 are not the owners of the suit property. But later the plaint was amended and a positive prayer was sought. Therefore, the approach of the Courts below cannot be faulted. It is true that in the decree, the relief of recovery of possession has not been granted. The appellants' counsel would point out that the plaintiff failed to file any cross-appeal. But on going through the judgment and decree, I note that the relief of recovery of possession was in fact granted and that it was erroneously omitted while drafting the decree. This omission can be rectified at any time. Therefore, the second substantial question of law is answered against the appellants.

9. Balakrishnan, the first defendant did not adduce any evidence to show that he has any right over the suit property. In fact his stand in the written statement was that the suit property and the property covered under Ex.A.3 are different from each other. But then, no issue was framed regarding the identity of the property. When the Courts below have concurrently found that the suit property is covered under Ex.A.3 and that the plaintiff had established her claim over the same, in exercise of jurisdiction under Section 100 of C.P.C., there is absolutely no need to interfere with the said finding. Since the plaint was amended during the pendency of the appeal, the first substantial question of law is answered against the plaintiff.

10. This second appeal is dismissed.

11. At this stage, the learned counsel appearing for the appellants would point out that since the suit property was actually meant for the benefit of the Ceylon refugees, they were not authorised to alienate the same and that the power of the Government to proceed against the plaintiff must be left open. Though in principle this submission is well founded, I must note that in the amended plaint, the Government of Tamil Nadu was added as a defendant. The Government of Tamil Nadu did not file any appeal questioning the judgment passed by the Trial Court. When the Civil Court categorically declared the right of the plaintiff and when this second appeal stands dismissed, it would not be fair on my part to leave her position vulnerable. I therefore reject the aforesaid request made by the learned counsel for the appellants as well as the learned Special Government Pleader. No costs.

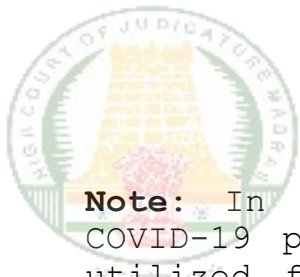
Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Subordinate Judge,
Pudukottai.
2. The Additional District Munsif,
Pudukottai.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.MURUGA PRABHU, Advocate(SR-7175[F] dated 18/02/2022)

+1 CC to M/s.B.RAMANATHAN, Advocate (SR-7316[F] dated 21/02/2022)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-7943[F] dated 22/02/2022)

+1 CC to M/s.SPL GP (SR-7427[F] dated 21/02/2022)

S.A.(MD)No.30 of 2010
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MGJ(04.03.2022) 5P 9C