



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 719 of 2010

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The Executive Engineer and
Administrative Officer,
Madurai Special Division,
Tamil Nadu Housing Board,
Ellis Nagar,
Madurai - 10.

... Appellant / 3rd Respondent /
3rd Respondent / 3rd Defendant

Vs.

Khurshid Begum (Died) ... Appellant in A.S.No.32 of 2004 /
2nd Plaintiff

1. G.Kutha Baksh (Died) ... 1st Respondent / Review petitioner /
7th Respondent / 7th Defendant

2. State of Tamil Nadu,
Rep. By its Collector,
Madurai District,
Madurai.

3. The Secretary,
Housing Board and
Urban Land Development,
Fort St. George,
Chennai - 600 009.

4. The Special Tahsildar
(Land Acquisition),
Ellis Nagar Scheme,
Shenoy Nagar,
Madurai - 20.

5. The Managing Director,
Pandian Roadways Corporation,
Madurai - 625 016.



6. The District Manager,
Madurai Telecom,
Bibikulam,
Madurai - 625 002.

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... Respondents 2 to 6 /
Respondents 1,2,4 to 6 /
Respondents 1,2, 4 to 6 /
Defendants 1,2, 4 to 6

7. Arthur David

... 7th Respondent / 7th Respondent /
8th Respondent / 1st Plaintiff

8. K.Saleem

9. K.Haleem

10.K.Haseema Banu

11.K.Nayem

12.K.Shaila Banu

... Respondents 8 to 12

(Respondents 8 to 12 were *suo motu* brought on record as LRs. of the deceased 1st respondent vide Order dated 10.02.2022)

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment passed in Review Application No.105 of 2010 in A.S.No.32 of 2004 dated 05.04.2010 on the file of the III Additional Sub Court, Madurai, reversing the Judgment and Decree dated 30.06.2009 in A.S.No.32 of 2004 on the file of the III Additional Sub Court, Madurai, confirming the Judgment and Decree in O.S.No.945 of 2000 dated 15.07.2003 on the file of the Principal District Munsif Court, Madurai Town.

For Appellant	: Mr.Mohammed Athif
For R-8 to R-12	: Mr.G.Prabhu Rajadurai
For R-5	: Mr.N.Murugesan
For R-2 to R-4	: Mr.Muthu Vijayan, Special Government Pleader.
For R-6	: No appearance.

* * *



J U D G M E N T

The present second appeal arises out of an injunction suit.

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2. One Arthur David and Khurshid Begum filed O.S.No.945 of 2000 before the Principal District Munsif Court, Madurai, seeking the relief of permanent injunction in respect of the suit properties. The suit properties comprised three schedules (ie.) schedule ' A ' , schedule ' B ' and schedule ' C '. The scope of the proceedings is confined to suit ' B ' schedule property and suit ' C ' schedule property. The second plaintiff Khurshid Begum is the mother of the seventh defendant Kutha Baksh. The contesting defendants were the Government of Tamil Nadu and the Tamil Nadu Housing Board. By judgment and decree dated 15.07.2003, the trial Court dismissed the suit. Challenging the same, the plaintiff filed A.S.No.32 of 2004 before the III Additional Sub Court, Madurai. The first appeal was dismissed on 30.06.2009. The second plaintiff / appellant Khurshid Begum passed away and following her demise, her son who was shown as the seventh defendant in the suit filed Review Application No.105 of 2010. The review application was allowed by the impugned judgment and decree dated 05.04.2010. Challenging the same, the Tamil Nadu Housing Board has filed this second appeal.

3. I initially entertained a doubt as to whether the appeal would be maintainable. The learned Standing counsel appearing for the Board drew my attention to Order 47, Rule 7 CPC. The said provision is as under:-

Order of rejection not appealable. Objections to order granting application -

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing which such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.



(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

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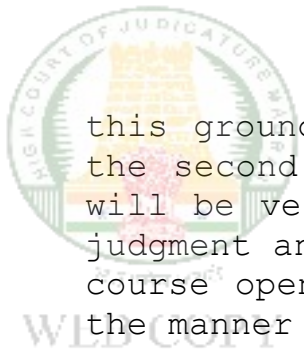
4. It is clear that only if a review application is rejected, it is revisable and not appealable. However, an order granting review application is appealable. Therefore, there is no dispute that the second appeal is maintainable.

5. The learned Standing counsel would point out that the suit properties were the subject matter of land acquisition proceedings. According to him, the land owner originally agreed to abide by the outcome of the acquisition proceedings by accepting compensation. However, the learned counsel on either side raised several contentious issues. The second appeal was admitted on the following substantial question of law:-

" Whether A.S.No.32 of 2004 as well as the review application should have been closed in view of the decree in O.S.No. 451 of 2004? "

6. I am of the view that without going into any of them, this second appeal can be disposed of on a short ground. There is no dispute that Khurshid Begum and her son Kutha Baksh after filing O.S.No.945 of 2000 filed another suit in O.S.No.451 of 2004 before the II Additional Sub Court, Madurai, seeking the relief of declaration and permanent injunction in respect of the suit ' B ' schedule and ' C ' schedule properties. In O.S.No.451 of 2004, the Government of Tamil Nadu and the Tamil Nadu Housing Board were defendants 1 and 5. The said suit came to be decreed on 27.04.2007. There is nothing on record to show that the said judgment and decree has been set aside in the meanwhile. Of course, I am duty bound to record the contention of the learned Standing counsel appearing for the Board that the said judgment and decree is fraudulent and is nullity in law. But I am not inclined to go into the said contention. Suffice it to say, when the contesting respondents herein are already armed with a judgment and decree rendered in O.S.No.451 of 2004 dated 27.04.2007, A.S.No.32 of 2004 need not have been pursued. It was absolutely superfluous. O.S.No.451 of 2004 is rather comprehensive in nature because it was for the relief of declaration also. The first appellate Court ought to have closed A.S.No.32 of 2004 by making reference to the decree in O.S.No.451 of 2004.

7. The first appellate Court clearly erred in allowing A.S.No.32 of 2004 based on the judgment and decree made in O.S.No.451 of 2004. It was clearly superfluous and unnecessary. On



this ground, I set aside the impugned judgment and decree. I allow the second appeal. I make it clear that the contesting respondents will be very much entitled to protection granted to them under the judgment and decree dated 27.04.2007 in O.S.No.451 of 2004. It is of course open to the Board or the Government to question the same in the manner known to law.

8. With this observation, this second appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

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.

1. The III Additional Sub Judge,
Madurai.
2. The Principal District Munsif,
Madurai Town.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.SPL.GP (SR-16714[F] dated 05/04/2022)
+1 CC to M/s.G. PRABHURAJADURAI, Advocate (SR-16505[F] dated 05/04/2022)
+1 CC to M/s.N. MURUGESAN, Advocate (SR-16981[F] dated 06/04/2022)

S.A.(MD)No.719 of 2010
04.04.2022

svs(CO)

TR(07.06.2022) 5P 8C