



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 17.02.2022

JUDGMENT PRONOUNDED ON : 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.75 of 2019

and

CMP (MD) .No.2220 of 2019

WEB COPY

R.Joseph

...Appellant/Appellant/Defendant

Vs

Tamil Nadu Housing Board
Tirunelveli Housing Unit
Through its Executive Engineer
and Administrative Officer
Having office at
Executive Engineer and Administration Office
Tamil Nadu Housing Board
Tirunelveli Housing Unit
Anbu Nagar, Kamarajar Road
Tirunelveli 627 011

...Respondent/Respondent/Plaintiff

PRAYER : Second Appeal is filed under Section 100 of C.P.C, to set aside the judgment and decree dated 26.11.2018 passed in A.S.No.63 of 2013 on the file of the Subordinate Court, Thoothukudi confirming the judgment and decree dated 05.01.2011 passed in O.S.No.565 of 2008 on the file of the Principal District Munsif, Thoothukudi.

For Appellant : Mr.T.Lajapathi Roy

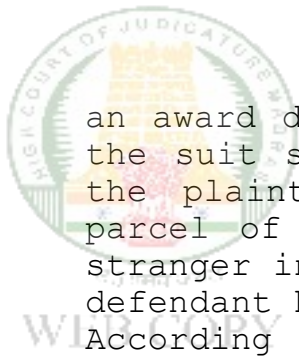
For Respondent : Mr.Mohamed Aathiff
Standing Counsel

JUDGMENT

The defendant is the appellant.

2. The plaintiff filed O.S.No.565 of 2008 before the Principal District Munsif Court, Thoothukudi for mandatory injunction against the defendant to remove the construction made by the defendant in the second schedule property and for removal of encroachment in the second schedule property. The suit was decreed by the trial Court. The defendant filed A.S.No.63 of 2013 before the Subordinate Court, Thoothukudi. The learned Subordinate Judge dismissed the appeal. As against the concurrent finding, the defendant has filed the above second appeal.

3.The Tamil Nadu Housing Board as plaintiff has filed the suit contending that the plaint schedule properties were acquired in



an award dated 29.07.1988. They are in possession and enjoyment of the suit schedule properties from 13.09.1989 onwards. According to the plaintiff, the plaintiff second schedule property is part and parcel of the first schedule property. The defendant is an utter stranger in respect of the first and second schedule properties. The defendant has no right whatsoever over the suit schedule properties. According to the plaintiff, the defendant has encroached the suit schedule properties and has put up basement construction over the second schedule property illegally. Hence, he prayed for mandatory injunction.

4.The defendant filed a written statement contending that the acquisition proceedings have been quashed by the High Court and hence, the plaintiff cannot be heard to say that the entire suit schedule properties belong to the Board and they are in possession and enjoyment of the suit schedule properties. In Paragraph No.6 of the written statement, the defendant has contended that he has nothing to do with the second schedule property and the suit property belongs to one Suresh and 52 others. He further contended that the plaintiff has filed the suit as against the wrong person without identifying the person who has put up construction in the second schedule property.

5.The trial Court after considering the oral and documentary evidence arrived at a finding that the defendant has no connection whatsoever with the second schedule property and the defendant has also not produced any document to show that he owned the property in that area. Though the defendant has contended that the plaintiff second schedule property belonged to one Suresh, he has not produced any document to the said effect. In view of the averments in the written statement filed by the defendant, the trial Court proceeded to grant a decree for mandatory injunction as against the defendant.

6.The First Appellate Court also concurred with the findings of the trial Court and arrived at a finding that the defendant has not produced any document whatsoever to establish his title or possession over the suit survey number. However, the defendant has deposed that he has got objection for removal of the construction in the second schedule property. The First Appellate Court has found that the defendant has not established his title or possession, is not entitled to raise any objection for removal of the encroachment made in the second schedule property.

7.The First Appellate Court has also found that one Suresh has filed a writ petition in W.P.No.17390 of 2013 challenging the acquisition proceedings and the said writ petition has been allowed on 28.10.2013. However, a writ appeal has been filed by the Housing Board in W.A.No.1638 of 2016 in which an order of status quo has been granted and the writ appeal is pending. However, the defendant has nothing to do with the said proceedings. Since the defendant has
https://hcservices.courtsofmadras.gov.in/hcservices/ however, he cannot rely upon the proceedings pending



before the High Court.

8.The First Appellate Court found that when the land is in possession of the Housing Board, the defendant has no right whatsoever to encroach upon the same and put up construction in the second schedule property. Based on the said finding, the First Appellate Court dismissed the appeal.

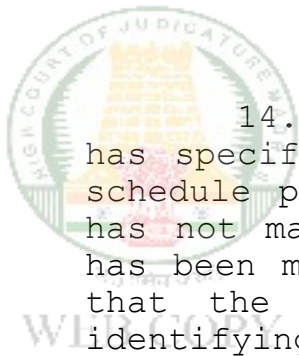
9.At the time of admission, notice of motion was ordered and the Standing Counsel for the Housing Board has entered appearance.

10.The learned counsel for the appellant had contended that the Courts below erroneously granted a relief of mandatory injunction as against the defendant who has no right or title over the suit schedule property. He further contended that the entire acquisition proceedings have been quashed by the Hon'ble High Court and hence, the Housing Board has no right or title to file the present suit for mandatory injunction on the basis of the said acquisition proceedings. The learned counsel for the appellant further contended that when the plaintiff has not established their legal status, they are not entitled to the relief as prayed for.

11.Per contra, the learned Standing Counsel appearing for the Housing Board contended that the acquisition proceedings have not been quashed as contended by the learned counsel for the appellant. He further contended that the Housing Board has taken possession pursuant to the acquisition proceedings. When the properties are in possession of the Housing Board, the defendant has encroached over the same and has put up some construction in the second schedule property. The standing counsel for the respondent further contended that in Paragraph No.6 of the written statement, the defendant has specifically admitted that he has no right or title over the suit schedule property. The defendant has also admitted that the suit has been filed as against the wrong person without identifying the encroachers. He further contended that the appellant cannot take advantage of the writ petition filed by one Suresh. Hence, he prayed for dismissal of the above second appeal.

12.I have considered the submissions made on either side.

13.Tamil Nadu Housing Board as plaintiff has filed the suit for mandatory injunction for removal of the encroachment made by the defendant in the suit schedule property. According to the plaintiff, the suit schedule properties have been acquired and they are in possession of the Housing Board. No contrary document or evidence has been produced on the side of the defendant challenging the acquisition proceedings. This Court can safely come to a conclusion that the properties are in possession and enjoyment of the plaintiff pursuant to the acquisition proceedings.



14.The defendant in paragraph No.6 of the written statement has specifically admitted that he has nothing to do with the suit schedule property. He has gone to the extent of admitting that he has not made encroachment in the second schedule property, but it has been made by some other persons. The defendant further averred that the suit has been filed against a wrong person without identifying the encroachers. The said averment in the written statement will clearly establish that when the defendant has no right or title over the second schedule property, he will not be aggrieved in any manner in case of granting mandatory injunction for removal of the construction in the second schedule property. The learned counsel for the appellant had contended that one Suresh has filed the writ petition and the said writ petition has been allowed by this Court. However, the proceedings are pending in the writ appeal. This contention of the appellant/defendant would show that the defendant is defending the present suit to protect the rights of some other persons. When the defendant, even as per the admission in the written statement, has no title or possession or any claim whatsoever over the suit schedule property, the second appeal filed by the said defendant is not maintainable.

15.In view of the above said discussion, I do not find any question of law much less a substantial question of law that arises for consideration in the present Second Appeal. The Second Appeal stands dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Subordinate Judge, Thoothukudi

2.The Principal District Munsif, Thoothukudi

3.The Section Officer,V.R.Section

Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-8822[F] dated 25/02/2022)

Judgment made in
S.A. (MD) .No.75 of 2019

and
CMP (MD) .No.2220 of 2019

24.02.2022

KS (CO)

TR(08.03.2022) 4P 6C

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