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S.A.No.181 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.181 of 2010 and
M.P.No.1 of 2010

Karuneegar Sangam,
Rep. by its President,
M.S.Parthibhan,
S/o.Sundaraganesan,
No.18, Velu Nagar,
Tiruvannamalai.

.. Appellant

Vs.

1.The Tahsildar,
Tiruvannamalai – 606 601,
Tiruvannamalai District.

2.The Revenue Divisional Officer,
Tiruvannamalai – 606 601,
Tiruvannamalai District.

3.The Collector,
Tiruvannamalai District,
Tiruvannamalai – 606 601.

4.The Municipal Commissioner,
Municipal Office,
Tiruvannamalai – 606 601.

5.Radhakrishnan



6.Chinnaiyan

7.Vijaya

8.Sampath Lakshmi

9.Uma Maheswari

10.Sampoornam

.. Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 12.11.2008 passed in A.S.No.63 of 2004 on the file of the Additional Sub Court, Tiruvannamalai in confirming the judgment and decree dated 13.02.2004 passed in O.S.No.629 of 1984 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Appellant	:	Mr.P.Mani
For RR 1 to 3	:	Mr.B.Tamilnidhi Additional Government Pleader
For R4	:	Ms.R.Revathy
For RR 5 to 10	:	Mr.T.Dhanasekaran

J U D G M E N T

This Second Appeal is filed against the judgment and decree dated 12.11.2008 passed in A.S.No.63 of 2004 on the file of the Additional Sub Court, Tiruvannamalai in confirming the judgment and decree dated 13.02.2004 passed in O.S.No.629 of 1984 on the file of the Principal District Munsif Court, Tiruvannamalai.



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2.The appeal arises from a suit filed by Karuneegar Sangam, represented by its Secretary for a mere declaration that assignment made by defendants 1 to 4 in favour of the 5th respondent is null and void. It is pertinent to point out that no further relief has been sought for in the plaint.

The relief sought for are set forth hereunder:

“a) declaring that the order of assignment dated 20.03.1978 passed by the 1st defendant vide his office Ke.Mu.21217/77 is void;

b) directing te defendants to pay the plaintiff the costs of the suit;

c) and passing such further or other suitable reliefs that may be deemed fit and proper under the circumstances of the case.”

2(i).The Trial Court dismissed the suit and it was confirmed by the Lower Appellate Court.

3.Heard Mr.P.Mani, learned counsel appearing for the appellant, Mr.B.Tamilnidhi, learned Additional Government Pleader appearing for



respondents 1 to 3, Ms.R.Revathy, learned counsel appearing for 4th respondent and Mr.T.Dhanasekaran, learned counsel appearing for respondents 5 to 10 and perused the materials on record.

4.Mr.P.Mani, the learned counsel appearing for the appellant would urge that the following substantial questions of law arises for consideration.

**SUBSTANTIAL QUESTIONS OF LAW
SUBMITTED BY THE APPELLANT:**

A. Whether in law the impugned order of assignment passed by the 1st defendant Tahsildar in favour of the 5th defendant under Ex.B1 is valid when the property covered under Ex.B1 is a Gramma Natham land and the Government has no authority to assign the same as held by this Honourable Court in Krishnamurthy Gounder Vs. Government of Tamilnadu, rep by The District Collector, Cuddalore, [2002 (3) C.T.C. Page 221]?

B. Whether in law the present suit for declaration that the order of assignment in favour of the 5th defendant is null and void is



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maintainable without seeking the relief of cancellation of the said order of assignment?

C. Whether the Court below erred in law in dismissing the present suit for declaration, as barred by limitation as if the same has not been filed within three years from the date of order assignment when the present suit has been filed within three years after exhausting appeal remedy?

D. Whether the judgment and decree passed by the Courts below are sustainable when they have failed to consider and appreciate the evidence on record in proper perspective and based their conclusions on mere surmises and conjectures?

4(i). I do not think any of these questions arise for consideration.

5. The case of the plaintiff is that it is the owner of the property in T.S.No.604/1 and that it uses T.S.No.604/2 as an access to the aforesaid property. T.S.No.604/2 was assigned to the 5th defendant, it came forward with the suit. During the course of trial, the plaintiff's witness P.W.2, had deposed that access to T.S.No.604/1 is through Ayyankulam Agraharam Street



and not through the property situate in T.S.No.604/1. Further, admittedly the property belongs to the Government. It is the discretion of the Government to assign the land to anybody it wants, as long as the beneficiary comes within the fold of the Government Grants Act, 1895, or under the relevant provisions of the standing orders of the Board of Revenue, which after the abolition of the board of revenue are statutory in flavour. The Government as well as record shows that the Government has not assigned the land for free of cost to the 5th respondent, but assignment was supported by consideration. Therefore, the Trial Court rightly dismissed the suit and the Lower Appellate Court has confirmed the same.

6.I have to point out that the frame of the suit itself is bad. Under Section 34 of The Specific Relief Act, 1963, a suit for mere declaration is not maintainable. The prayer set forth above would show that this is a suit for mere declaration and it comes within the teeth of the proviso to the said Section. The plaintiff, if he really interested in the property should have not only asked for a declaration that an assignment deed is null and void, but should have asked for further relief of recovery of possession, since admittedly the 5th defendant is in possession of the property. That prayer



having been sought for, the suit ought to have been dismissed as not maintainable, as it is hit by the proviso to Section 34. In any event, as I already said it is open to the Government to farm out its land as long as the same is in accordance with the statutory rules for assignment. The Government, in its satisfaction, has decided to assign the property to the 5th defendant and that too, on payment of charges. That having been done, it is not open to a third party like the plaintiff, who has no right, title or interest over the property to seek for a declaration that the assignment is null and void. The Government being the owner, can deal with the property as it pleases and dispose the same in accordance with law. No Civil Court can give a direction, as such disputes, as long as the letter and spirits of the law relating to assignment have been complied, do not fall within its jurisdiction. In the light of the fact that suit is not maintainable and since admittedly the property belongs to Government and it has assigned the property in favour of the 5th defendant, none of the substantial questions of law framed by Mr.P.Mani has arisen for consideration.

7.I am not admitting the Second Appeal and the Second Appeal stands dismissed. The judgment and decree of the Additional Sub Court,



Tiruvannamalai in A.S.No.63 of 2004 dated 12.11.2008 in confirming the judgment and decree of the Principal District Munsif, Tiruvannamalai in O.S.No.629 of 1984 dated 13.02.2004 stands confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

18.04.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

- 1.The Tahsildar,
Tiruvannamalai – 606 601,
Tiruvannamalai District.
- 2.The Revenue Divisional Officer,
Tiruvannamalai – 606 601,
Tiruvannamalai District.
- 3.The Collector,
Tiruvannamalai District,
Tiruvannamalai – 606 601.
- 4.The Municipal Commissioner,
Municipal Office,
Tiruvannamalai – 606 601.
- 5.The Additional Subordinate Judge,
Additional Sub Court,
Tiruvannamalai.



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V.LAKSHMINARAYANAN, J.
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6.The Principal District Munsif,
District Munsif Court,
Tiruvannamalai.

7.The Record Keeper,
VR Section,
High Court of Madras,
Chennai.

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