



S.A(MD)No.119 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 119 of 2018

and

C.M.P(MD)Nos.3108 of 2018 & 9312 of 2019

J.Shanthi Jeysingh

... Appellant

Vs.

- 1.V.Thangadurai
- 2.Karuppasamy
- 3.Kaliyappan [Died]
- 4.K.Shanmuga Vel
- 5.Mookaiyan
- Gurusamy (Died)
- 6.Marichamy
- 7.Chinnapalaniyammal @ Palaniammal
- 8.Sumathy
- Veerammal (Died)
- Rajammal (Died)
- 9.K.Subbulu



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10.Alliyammal

11.Seeniyammal

12.Dr.V.Rajendran

13.Rajangam

... Respondents

[Respondents 6, 10, 11 & 15 already dead and exonerated in the first appeal]

[R-3 died to that effect a memo dated 18.03.2019 is recorded]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 16.08.2017 made in A.S.No.26 of 2016 on the file of Subordinate Court, Theni, confirming the judgment and decree dated 27.04.2016 made in O.S.No.184 of 2013 on the file of the District Munsif Court, Theni.

For Appellant : Mr.R.Suriyanarayanan

For Respondents 1 & 13 : Mr.S.Raja Sekar

For Respondents 2, 5 to 11 : Mr.T.Thirumurugan

For Respondents 4 & 12 : Mr.N.Tamil Mani

JUDGMENT

This Second Appeal is filed against the Judgment and Decree, dated 16.08.2017 in A.S.No.26 of 2016 on the file of Subordinate Court, Theni, confirming the Judgment and Decree, dated 27.04.2016 in O.S.No.184 of 2013 on the file of the District Munsif Court, Theni.



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2. The Plaintiff is the Appellant and the Defendants are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. Heard Mr.R.Suriyanarayanan, the Learned Counsel appearing for the Appellant, Mr.S.Raja Sekar, the Learned counsel appearing for the respondents 1 & 13, Mr.T.Thirumurugan, the Learned Counsel appearing for the Respondents 2, 5 to 11, Mr.N.Tamil Mani, the Learned Counsel appearing for the Respondents 4 & 12 and perused the material documents available on record.

4. The suit in O.S.No.184 of 2013 was filed for bare injunction against the defendants. The contention of the plaintiff is that one J.Veeran Maathari is the owner of the land to the extent of 3 acres 96 cents. Subsequently, a portion of the land was sold to one Perumal Chettiar in the year 1940 and then the land was sold to several private individuals through sale deeds, finally 36 cents of land was allotted through partition deed to the plaintiff's husband. The plaintiff's husband has settled 36 cents of the property in the name of the plaintiff



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through a settlement deed through which the plaintiff is claiming right over the property.

5. The defendants are claiming to be the Legal Heirs of the Veeran Madhari. The defendants 1 & 2 are Power of Attorney holder. The defendants 12 & 13 are subsequent purchaser from the defendants 3 to 11 through the defendants 1 & 2. The 2nd defendant is Power of Attorney holder as well as the legal heir of Veera Madhari.

6. The contention of the defendants is that the said Veera Madhari belongs to Scheduled Caste Community and hence the land in S.No.160/1 being a Panchami Land was allotted to Veera Madhari. Since the land is dispute is classified as Panchami Land, the land cannot be sold to people belonging to other community people. Therefore, the sale deed executed in favour of Perumal Chettiar and the subsequent sale deeds are to be treated as '*null and void*'. The defendants submitted that since the sale deed is '*null and void*' they need not seek separate declaration.



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7. Admittedly the land in question is Panchami land. Both the Courts have accepted the contention that the land is a Panchami land, but had held that the Government is not a party and hence the injunction cannot be granted to the plaintiff. This Court is of the considered opinion that both the courts have erred in declining injunction. Since the Panchami land is allotted to the scheduled caste community people with the condition it cannot be sold to other community people and if there is violation of such condition, then the government can cancel the allotment and treat the sale as illegal. Hence the plea of the defendants that they need not prefer any petition before any authority to declare the sale as null and void cannot be accepted. It is at the incidence of the government that the sale need not be declared as null and void. The defendants who are descendants of Veera Madhari, ought to prefer application before the authority for any relief. In the present case the defendants had not preferred any police complaint, had not preferred any petition under SC / ST Act to cancel the sale and reallocate the same to them. In such circumstances, the land will be reverted to government and the government can again allot the said land to the any other scheduled caste people. If the land is reverted to the government, then the said Veera Madhari's legal heirs



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cannot claim any right over the alleged allotted Panchami land. Hence the plaintiff is entitled injunction against the legal heirs of the said Veera Madhari. But injunction cannot be granted against the Government, since the government has power and authority to cancel the allotment and reallocate the same to any other scheduled caste people. Therefore, the plaintiff is entitled to injunction against the defendants, but is not entitled to injunction against the Government.

8. In the present case, the said Veera Madhari who was the original assignee has sold the land to some other community which is violation of conditions of assignment. Therefore, the plaintiff is entitled to injunction against the defendants, but is not entitled to injunction against the Government. In such circumstances, the judgment and decree of both the courts are liable to be set aside and accordingly set aside and the suit filed by the plaintiff is allowed. However, the Government is at liberty to take action against the said Panchami land as per law.



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9. With these observations and directions, this Second Appeal is allowed. No Costs. CMP(MD)No.3108 of 2018 is allowed and CMP(MD)9312 of 2019 is closed.

Index : Yes / No
Internet : Yes
KSA

11.12.2023

To

1. The Subordinate Judge,
Theni.
2. The District Munsif,
Theni.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

KSA

**Judgment made in
S.A(MD)No. 119 of 2018**

11.12.2023