



S.A(MD)No.442 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.442 of 2017

and

C.M.P(MD)No.9216 of 2017

M/s.Vijaya Srinivasa Cotton Company,

Represented by its Managing Partner,

Mr.Sankararao Kanjarla.

... Appellant

[Amended vide Court Order, dated 30.03.2021]

Vs.

S.Banumathi

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment in A.S.No.111 of 2011 on the file of the Additional Sub Court, Tenkasi dated 18.01.2016 reversing the Judgment and Decree in O.S.No.467 of 2008 n the file of the Additional District Munsif Court, Tenkasi, dated 30.09.2011.

For Appellant : Mr.Raghuvaran Gopalan

For Respondent : No appearance



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JUDGMENT

This Second Appeal is filed against the Decree and Judgment in A.S.No.111 of 2011 on the file of the Additional Sub Court, Tenkasi, dated 18.01.2016 reversing the Judgment and Decree in O.S.No.467 of 2008 on the file of the Additional District Munsif Court, Tenkasi, dated 30.09.2011.

2. The Plaintiff is the Appellant and the 2nd Defendant is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendant.

3. The suit in O.S.No.467 of 2008 has been filed for permanent injunction restraining the defendant from interfering in peaceful possession and enjoyment of the land to an extent of 3 acres 65 cents in S.No.669 described in the suit mentioned property as well as permanent injunction restraining from alienating the said suit property and to declare the sale deed executed by the 1st defendant in favour of the 2nd defendant registered in Document No.3554/2004 in Sub-Registrar Office, Alangulam. The Trial Court after considering the documents and evidence has allowed the suit. Aggrieved over the same, the 2nd



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defendant had preferred an appeal suit in A.S.No.111 of 2011. The Appellate Court has allowed the appeal partly, wherein injunction granted by the Trial Court was confirmed, however declaration was declined. Aggrieved over the same, this Second appeal is filed by the Plaintiff.

4. The Second Appeal is admitted on the following substantial questions of law:

(a) When the Government has received full consideration for the sale of the suit property from the Appellant/Plaintiff's side, is not a complete sale defined in the Transfer of Property Act, 1882?

(b) Whether the lower appellate court is justified in holding that when the Appellant/Plaintiff suit is for declaration of title the lower appellate court is incorrect in relying upon the provisions under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 to deny the relief?

(c) Whether the lower appellate court is committing grave error in rely the sections 77(A), 77(G) of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which are already omitted by the Tamil Nadu Act 26 of 2003?

(d) Whether the bar in section 77 in Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is an impediment to decide the title by the civil court?



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(e) When the Government has not objected the sale deeds on the side of the appellant / plaintiff, whether the lower appellate court is correct in holding that the remedy would be available before that tribunal.

(f) Whether the lower appellate court is correct in deciding that the civil court has no jurisdiction under section 77(G) in Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961?

(g) When there is no bar under section 9 of the Civil Procedure Code 1908 and the dispute is civil in nature, whether the lower appellate court is correct in holding that the court has no jurisdiction?

(h) Whether the Lower Appellate Court is right on the finding of title without properly framing appropriate points for consideration?"

5. The brief facts of the case are that the land to an extent of 3 acres 65 cents in S.No.669 originally belongs to the 1st defendant and the land was declared as excess by the Authorized Officer by proceedings dated 19.01.1975 under the Tamil Nadu Land Reforms Act (Act 58 of 1961), which is marked as Ex.A1 and the land was taken by the state. Then the property was assigned to one K.Mayilvahanan by assignment order dated 06.03.1975. Then through the handing over order dated 19.03.1985 marked as Ex.A2, the said K.Mayilvahanan had received the said land and has become owner of the property. Thereafter the



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said K.Mayilvahanan had sold the property on 08.12.1992 to M/s.Arvind Spinner Private Limited vide Document No.2498 of 1993 marked as Ex.A3. The said Arvind Spinner had sold the land to the plaintiff on 01.03.2004 marked as Ex.A4. Thereafter the original owner / 1st defendant had sold the property to the 2nd defendant vide sale deed dated 15.12.2004. The contention of the plaintiff is that when the property is already vested with the government, then the 1st defendant is no longer owner of the property and hence the sale to the 2nd defendant is null and void. And has raised the above substantial questions of law.

6. Even though there are eight substantial questions of law, they can be broadly brought under the following heads:

i. Whether the judgement degree of the Lower Appellate Court holding that the civil suit for declaratory relief is barred by the provisions of the Act, 58 of 1961 by relying on the provisions which were omitted in Act 26 of 2003 is correct?

ii. Whether judgement and degree of the Lower Appellate Court negating the relief of declaration is correct when the assignment under Exhibit X12 to the original assignee Mayilvahanan has not been questioned by the government at any stage?



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7. The relief of declaration was declined by the Appellate Court since the Civil Court jurisdiction is barred under Sections 77A and 77G of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 [*hereinafter referred as 'the Act 58 of 1961'*]. On perusal of the said Act, it is seen that the Chapter X-A of Act 58 of 1961 is omitted by the Amendment Act No.26 of 2003. Under the said Chapter X-A the sections 77A to 77G are covered. Under section 77-A it is stated that

“77-A. The Tribunals under Article 323B of the Constitution for Land Reform matters:

It is hereby declared that the Authorised Officer referred to in Clause(5) of Section 3 the Tamil Nadu Land Board constituted under section 24, the Tribunal constituted under section 76, the Land Commissioner appointed under section 97 and the Tamil Nadu Land Reforms Special Appellate Tribunal constituted under section 77-C shall be hierarchy of Tribunals for the purpose of Clause(3)(a) of Article 323-B of the Constitution for adjudication or trial of any dispute or compliant with regard to the land reform matters arising under the Act”

“Section 77-G. Bar of jurisdiction of all courts except the Supreme Court:

Notwithstanding anything contained in any other law, the jurisdiction of all Courts except the jurisdiction of Supreme Court is excluded with respect to any matter which is by or under this Act required to be decided or dealt with by the



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Authorised Officer, the Land Board, the Land Commissioner, the Land Tribunal or the Special Appellate Tribunal.”

Hence, after the deletion of the said Chapter X-A vide Act 26 of 2003, the effect of 77-G barring the jurisdiction of Civil Court is no longer there. In such circumstances, the Civil Court has jurisdiction. When the said sections were omitted, then by relying on the old provisions / omitted provisions and without advertng to the amended provisions the Appellate Court has declared that the Civil Court has no jurisdiction and the said finding is erroneous. Therefore, the substantial question of law raised regarding the jurisdiction is held in favour of the plaintiff.

8. The next substantial question of law is that “whether judgement and degree of the Lower Appellate Court negating the relief of declaration is correct when the assignment under Exhibit X12 to the original assignee Mayilvahanan has not been questioned by the government at any stage?” The contention of the plaintiff is that under the provisions of Act 58 of 1961 excess lands were identified by the Authorised Officer and a draft notification is issued



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under Section 10 and any person having objections to inclusion of their lands as excess lands can object at the stage of draft notification. After the scrutiny of objections if any, a final statement excess lands in each district is issued under section 12 or section 14 of the Act. Thereafter, under Section 18 the government shall publish a notification stating that the excess lands are acquired for a public purpose. Under Section 18 (3) of the Act, on and from the date of notification issued under Section 18 (1) of the Act, all land with all appurtenances thereto is deemed to have been acquired for a public purpose and vested with the government.

9. In the present case, under Ex.X5 the lands had been declared as excess and Section 18 notification was published and on such publication the lands are vested with the government. In such circumstances the previous owner / the 1st defendant had lost all claims over the said property. Hence the 2nd defendant who is tracing title through 1st defendant is legally not valid.

10. Further the assignment of the lands to said Mayilvahanan has happened after the vesting and the same is evidenced by other documents in



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Exhibits X series. Consequently, the revenue records have been mutated in the name of the assignee Mayilvahanan. While that being so, the 2nd defendant who traces her title through the 1st defendant, who is the original owner before Section 18 notification is illegal. The Appellate Court has erred in not looking into Section 18 of the Act which would preclude the 2nd defendant from questioning the title of the plaintiff altogether as her title is traced to the 1st defendant / original owner who lost all claim in the year 1975. Hence the subsequent sale deeds by Mayilvahanan in Ex A3 to Arvind Spinners and in Ex A4 by Arvind Spinners to plaintiff are valid. Consequently the sale deed in Ex.A7 by the 1st defendant to the 2nd defendant is illegal and the same is null and void

II. If there is any violation of conditions by the said assignee, then the government is the appropriate authority to cancel the assignment and take over the possession of the property. Further in the present suit, the Government is not a party and the Government as on date has not initiated any proceedings to cancel the assignment Patta granted to the original assignee. As on date when there is no cancelation of assignment patta. In such circumstances, the plaintiff has better title than the 2nd defendant. Therefore, the next substantial question of



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law is also answered in favour of the plaintiff and the document executed by the 1st defendant in favour of the 2nd defendant in document No.3554 of 2004 is illegal. Therefore, the plaintiff is entitled to the relief of declaration.

12. Accordingly, this Second Appeal is allowed and the Judgment and Decree rendered by the Trial Court in O.S.No.467 of 2008 on the file of the Additional District Munsif Court, Tenkasi, dated 30.09.2011 is hereby confirmed and the Judgment and Decree rendered by the Appellate Court in A.S.No.111 of 2011 on the file of the Additional Sub Court, Tenkasi, dated 18.01.2016 is hereby set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
KSA

07.12.2023



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To

1. The Additional Sub Court,
Tenkasi.
2. The Additional District Munsif Court,
Tenkasi.
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.442 of 2017**

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