



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1063 of 2011 and
M.P.No.1 of 2011

1.State of Tamil Nadu,
Rep. by District Collector,
Udhagamandalam,
Nilgiris District.

2.The Tahsildar,
Kundha Taluk, Kundha,
Nilgiris District.

... Appellants / Defendants

Vs.

M/s.United Nilgiris Tea Estate Company Ltd.,
Rep by its Senior Manager / Power of Attorney,
Thiru P.Durga Dass Hecte,
S/o.Karunagar Hecte through
Samraj Estate and Post,
Nilgiris District.

... Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 13.07.2007 made in A.S.No.3 of 2007 on the file of Sub Court, Udhagamandalam which was reversed by the judgment and decree made in O.S.No.351 / 2004 dated 27.09.2006 on the file of the District Munsif Court, Udhagamandalam.



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For Appellant : Mr.R.Ramanlal, AAG, assisted by
Mr.V.Ramesh, GA

For Respondents : Mr.C.A.Diwakar

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 13.07.2007 made in A.S.No.3 of 2007 on the file of Sub Court, Udhagamandalam which was reversed by the judgment and decree made in O.S.No.351 / 2004 dated 27.09.2006 on the file of the District Munsif Court, Udhagamandalam.

2. Heard Mr.R.Ramanlal, learned Additional Advocate General for the appellants and Mr.C.A.Diwakar, learned counsel for the respondent and perused the materials available on record.

3. The appellants are the defendants against whom the plaintiff has filed a suit for declaration that the enhanced impugned demand of Rs.22,638/- made by the defendants being the water diversion charge per year in its proceedings dated 11.06.2004 is arbitrary, unjust and illegal and a consequential mandatory injunction. The Trial Court has decreed the suit



and the First Appeal preferred by the defendants was also dismissed by confirming the judgment of the Trial Court.

4. The short facts pleaded in the plaint are as follows:

The plaintiff Company owned a Tea Estate in and around the Nilgiris District cultivating and dealing in tea. It has been holding the license for the diversion and use of water for domestic purpose from the Government sources from Survey Field No.334 and 336 of Balacola Village from the year 1931 onwards till date without any obstructions. The water is used purely for drinking and other domestic purposes and no water is used for any industrial or commercial for the Company. The second defendant has enhanced the charges without complying the principles of natural justice.

4.1. The plaintiff company has been paying the arbitrary enhanced water diversion charges under protest and without prejudice to his right to recover or adjust the excess amount towards the future water diversion charges. The plaintiff had given the required particulars to the second defendant on 07.02.2002 in compliance with the demand of the second defendant's letter in RC.A1/5722/02 dated 26.02.2002. The defendants had



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subsequently gave some more water connections to the nearby Kanneri lease and Kanneri Village from the same Government water source. The plaintiff had sent a letter to the second defendant on 16.03.2002 demanding to have personal inspection and fix the water diversion amount reasonably. The second defendant had threatened the plaintiff with dire consequences, despite, the plaintiff had paid the water diversion charge for the fasli 1410 and 1411 in full under protest and for the fasli 1412 in part, by its letter of demand dated 25.06.2004 under RC-A2 3233/04 dated 11.06.2004 by invoking Revenue Recovery Act without disclosing any particulars on wrong calculation and wrong notion by demanding the balance sum of Rs.14637/- for the fasli 1412 and Rs.22,638/- for the fasli 1413.

4.2. The defendants have abruptly failed to either enquire into the matter in the issue or redress the grievance of the plaintiff till date. The plaintiff had caused a statutory notice dated 14.07.2004 to the defendants under Section 8 of CPC. The defendants having received the said statutory notice on 15.07.2004 without demur. They neither complied with the statutory notice nor replied thereto till date. But the second defendant has acknowledged the earlier payments of the water diversion charge by the



plaintiff and issued an order under Section 8 of the Revenue Recovery Act.

Hence, the suit has been filed for declaration and for consequential reliefs.

5. The written statement filed by the defendants are as under:

The water diversion charges has been charged as per the procedure and condition accepted by the plaintiff. The plaintiff is also using the water for irrigation purpose. After inspection, a diversion permit was issued to the plaintiff vide the proceedings of the Collector of the Nilgiris in D.D.A1/5604/2000 dated 20.11.2000 by fixing the water rate at Rs.0.75 per 1000 gallons and track rent of Rs.200/- per kilometer for 400 meters of pipe line only by following the usual procedure and rules. The Calculation arrived was based on the water used for the labour and the staff quarters in the Estate numbering 400 and use of the water was arrived at 50,000 litres per day and the usage for one year was worked out at 39,60,000 gallons at the rate of 75 paise for 1000 gallons. The water diversion charges was levied after a spot enquiry made the D.R.O. and the water levy was raised by the defendants as per the order RC.A1 8049/00 dated 21.02.2001.



5.1. Since the order has been passed as early as on 21.02.2001, the plaintiff's claim is barred by limitation as per Section 59 of the Tamil Nadu Revenue Recovery Act, 1864. The permit to the plaintiff was issued only on his acceptance of the terms and conditions as laid down in the permit. The demand raised was in accordance with the rules. The plaintiff has no valid proof to show that he is drawing only a particular quantity indicated in gallons. The plaintiff while making his application for issue of water permit has ensured that he will pay the water charges as fixed by the Government. But now objected to the demand after getting the permit.

5.2. The plaintiff has defaulted the payment of Government dues despite issuing a specific demand. Therefore, the provision of the Revenue Recovery Act was invoked to realize the arrears. The Civil Court has got no jurisdiction to entertain the suit since this Court cannot take into consideration any question as to the amount of assessment fixed as held in Section 58 of the Tamil Nadu Revenue Recovery Act, 1864. The plaintiff should have appealed to the Collector and if aggrieved by the order of the Collector, he should have filed an appeal before the Secretary of the State.



The suit is bad for non joinder of necessary parties. The plaintiff is not entitled to the relief as prayed for. Hence, the suit is liable to be dismissed.

6. On the basis of the above pleadings, the learned Trial Court has framed the following issues:

"1. Whether the enhancement of water diversion charges during the year 1998 is arbitrary and against the principles of natural justice?

2. Whether the plaintiff is entitled for the declaration that the enhancement demand by the defendants is arbitrary, unjust, illegal and void?

3. Whether the plaintiff is entitled for the relief of mandatory injunction as he has prayed for?

4. To what other reliefs are the parties entitled?"

7. During the course of the trial, on the side of the plaintiff, one witness was examined as P.W.1 and Exhibits A1 to A20 were marked. On the side of the defendants, D.W.1 was examined and Exhibits B1 to B4 were marked. At the conclusion of the trial and after considering the evidence on record, the Trial Court has decreed the suit as prayed. The First Appeal preferred by the defendants before the First Appellate Court was partly



allowed and the suit was dismissed as against the relief of declaration by confirming the decree and judgment of the Trial Court in all other aspects and the relief of mandatory injunction has been modified by holding that the plaintiff is liable to pay the water charges at the rate of Rs.2970/- per gallons and track rent at Rs.80/- per meter. Now the Second Appeal has been preferred by raising the following substantial questions of law:

"1.Whether the suit is sustainable in law for not approaching the appropriate authority?

2.Whether the suit withstand before the scrutiny of law for the reason that the respondent / plaintiff by passed the appellate authority the Government?

3.Is it lawful for the Court to entertain a suit which was filed after the same was barred by limitation?"

8. Before advertng into the other substantial questions of law, it is to be noted that the plaintiff had filed a suit to declare Ex.A12 proceedings dated 11.06.2004 is arbitrary and illegal. Since the suit has been filed in the very same year, there cannot be any adverse inference about the point of limitation. The plaintiff has sent a statutory notice Ex.A14 in the year 2004 after receiving Ex.A12 demand notice. Thereafter, the plaintiff had filed a



suit. Hence, there is no question of barring of limitation is involved in the suit.

9. The plaintiff has already approached the authorities and they have also sent Ex.A5 communication to the plaintiff stating that they would revise the water charges. In fact, the plaintiff was all along sending request letters to the defendants to have personal inspection and fix water charges. The above communications were marked as Exs.A3, A4, A6 and A7. Hence, the Courts below have rightly dealt those documents and rendered a finding on that score. In fact, the plaintiff has also issued Section 18 notice before filing the suit. So the substantial question of law that the plaintiff has approached the Court without approaching the authorities is not correct and hence, the substantial question of law No.2 is answered as against the appellants.

10. In fact, the First Appellate Court has modified the judgment of the Trial Court so far it relates to the relief of mandatory injunction and had fixed the water charges by enhancing it to Rs.2970/- per gallons and track rent at the rate of Rs.80/- per meter. The categorical finding of the Trial Court and the confirmation of the First Appellate Court is only with regard



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to the assessment made by estimating the quantity of the water diversion at 39,60,000 gallons per year. Even the officials of the defendant local administration has made a spot visit and has filed a report Ex.B4. Ex.B4 has clearly stated that the plaintiff has been using 7,33,078 gallons per year. In such case, the exaggerated figure of 39,60,000 gallons of usage per year was found to be without basis. The proceedings involved in Ex.B4 has been issued only on the presumption that the plaintiff's Estate is diverting water to the tune of 39,60,000/- gallons per year and the defendants' local inspection has disproved the same.

11. The Courts below have rightly chosen to hold that the above proceedings are arbitrary, illegal and void. A report has been filed by the Assistant Executive Engineer of Water Resources of Public Works Department who has been deputed to assess the quantity of water that is being diverted by the plaintiff Estate. As Ex.A12 demand is directly in conflict with the report filed by the Assistant Executive Engineer, the Trial Court without any hesitation has chosen to declare that Ex.A12 demand is arbitrary and illegal. The learned First Appellate Court has also rightly scrutinised the materials and arrived at a finding that such an exaggerated



quantity of usage has been made as a base for the assessment without giving any reasonable opportunity to the plaintiff and thereby, violating the principles of natural justice.

12. Even before the inspection, Ex.B3 which is the proceedings dated 20.11.2000, through which, an order has been passed by fixing the charges at Rs.75/- per gallons. The plaintiff himself has sent a letter by admitting that he has been using 17,00,000 gallons of water per year through Ex.A3 communication. However, the First Appellate Court did not convince with the above fact that the plaintiff has been using 17,00,000 gallons per year. The First Appellate Court had taken into consideration of all the proceedings and convinced to fix the water charges at Rs.2790/- on the basis of Ex.B3 and in fact, the plaintiff did not choose to file any cross appeal by pressing the relief of modification of the relief of mandatory injunction.

13. As the appellants did not show that the plaintiff has diverted the hefty quantity of 39,60,000 gallons per year and there was no basis for making such an assessment, the Courts below are right in granting the relief



of declaration as prayed by the plaintiff and to modify the relief of mandatory injunction at Rs.2970/- and track rent of Rs.80/-.

14. In view of the above stated reasons, this Second Appeal is dismissed. The order of the First Appellate Court dated 13.07.2007 made in A.S.No.3 of 2007 on the file of Sub Court, Udthagamandalam, is confirmed. But this judgment will not be applicable to any generalised specific revision that has been made by the defendant Department, even though the plaintiff has got to file a fresh suit, if at all aggrieved at any future point of time. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order / Non-speaking order

18.11.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

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