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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.Nos.716 & 808 of 2012 and
M.P.Nos.1 & 1 of 2012

S.A.No.716 of 2012

Rarathinamangalam Panchayat
Rep by its President,
Rarathinamangalam,
Visalur Post, Kandalancherry via
Nagapattinam Taluk and Munsif.

... Appellant / Defendant

Vs.

K.Thiagarayan

... Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.30 of 2011 dated 21.12.2011 on the file of the District Judge, Nagapattinam, modifying the judgment and decree of the learned Subordinate Judge, Nagapattinam made in O.S.No.98 of 2010 dated 30.06.2011 on the file of the Subordinate Judge, Nagapattinam.

For Appellant : Mr.P.Dinesh Kumar

For Respondent : Mr.V.Chandrasekaran



S.A.No.808 of 2012

Muthukrishnan

... Appellant / 8th Defendant

Vs.

1.K.Thiagarayan

... Respondent / Plaintiff

2.The State of Tamil Nadu,
Rep by the District Collector,
Collectorate Complex,
Nagapattinam.

3.The Revenue Divisional Officer,
Revenue Divisional Office,
Nagapattinam.

4.The Tahsildar,
Nagapattinam.

5.The Revenue Inspector,
Kangalancherry,
Nagapattinam Taluk and Munsif.

6.The Village Administrative Officer,
Rarathinamangalam,
Nagapattinam Taluk and Munsif.

7.The Village Administrative Officer,
Vadakarai, Vadakarai Post,
Nagapattinam Taluk.

8.The Village Administrative Officer,
Thekarai,
Vadakarai, Vadakarai Post,
Nagapattinam Taluk.

... Respondents / defendants 1 to 7



Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.35 of 2011 dated 21.12.2011 on the file of the District Judge, Nagapattinam, reversing the judgment and decree of the learned Subordinate Judge, Nagapattinam made in O.S.No.10 of 2009 dated 30.06.2011 on the file of the Subordinate Judge, Nagapattinam.

For Appellant : Mr.P.Dinesh Kumar

For Respondents : Mr.V.Chandrasekaran for R1
Dr.S.Suriya, AGP for RR2 to 5
No appearance for R6 to R8

COMMON JUDGMENT

These Second Appeals have been filed to set aside the judgment and decree made in A.S.Nos.30 & 35 of 2011 dated 21.12.2011 on the file of the District Judge, Nagapattinam, modifying and reversing the judgment and decree made in O.S.No.98 of 2010 and O.S.No.10 of 2009 on the file of the learned Subordinate Judge, Nagapattinam dated 30.06.2011.

2. Heard Mr.P.Dinesh Kumar, learned counsel for the appellants and Mr.V.Chandrasekaran, learned counsel for R1 and Dr.S.Suriya, learned Additional Government Pleader for R2 to R5 and perused the materials available on record.



3. The appellants in both the appeals are the defendants in both the suits against whom the same plaintiff has filed two suits, one for permanent injunction and the other for damages. The trial Court has decreed the suit which is sought for permanent injunction and dismissed the suit which is sought for compensation by passing a common judgment.

4. On the appeals filed by the defendants, the First Appellate Court dismissed the appeal against the relief granting permanent injunction and confirmed the judgment of the Trial Court. So far as the other relief of compensation is concerned, the First Appellate Court has partly allowed the appeal and modified the judgment and decreed it to an extent of awarding compensation to the tune of Rs.10,000/-.

5. The short facts pleaded in the plaint in O.S.No.98 of 2010 are as follows:

The plaintiff has purchased the suit property *vide* two registered sale deeds dated 06.01.2004 and 11.03.2004. The plaintiff took possession of the property and repaired and reconstructed the fences and cultivated banana, coconut, etc and he dug a bore well in the suit property. A fish pond was



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dugged up and fingerlings were let into the pond. The sub-division was also effected in his name. After the plaintiff has purchased the property, the defendant induced some persons to claim the piece of land as 'Mayanam' (Graveyard). But, on enquiry the plaintiff confirmed that it is false. By using his high office, the defendant had initiated some action against the plaintiff on the allegation that he is in occupation of the Graveyard. On 26.10.2007 the Revenue Divisional Officer, Nagapattinam and other Revenue Officials have admittedly indulged in vandalism and made criminal trespass into the property by breaking open the gate and destroyed the crops grown there. Notice was given to the President of Panchayat by the plaintiff's advocate on 29.10.2007 for illegal and unlawful acts of the Revenue Officers.

5.1. The defendant has sent a reply and that itself would show that the defendant panchayat has got no right or possession in the suit property. The property was assessed as a dry land and duly possessed, enjoyed and maintained by the plaintiff. The 'Mayanam' is actually situated in land in R.S.Nos.29/14, 67/1, 69/9, 75/5, 88/6, 100/10 & 118/3. The suit property is neither a communal land nor classified as Poromboke. The plaintiff has taken steps to file a suit for damages for the devastation caused by



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vandalism committed by Revenue Divisional Officer and other officials and an FIR came to registered against the offenders. The defendant is motivated against the plaintiff and he is trying to dispossess the plaintiff from the suit property and he also attempted to prevent the plaintiff from repairing and reconstructing his fences. Hence the plaintiff has filed the suit for permanent injunction.

6. On the very same cause of action, the plaintiff has filed another suit in O.S.No.10 of 2009 for claiming compensation to the tune of Rs.1,10,000/-. In a joint trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A14 were marked. On the side of the defendants seven witnesses were examined as D.W.1 to D.W.7 and Exs.B1 to B11 were marked. The documents Exs.X1 to X9 were marked through witnesses.

7. At the conclusion of the trial and considering the evidence available on record, the trial Court has decreed the suit for injunction and dismissed the suit for compensation. On appeal, the First Appellate Court has reversed and modified the judgment and decree made in O.S.No.98 of



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2010 and O.S.No.10 of 2009. Challenging the same, these Second Appeals are filed and they have been admitted on the following substantial question of law:

“S.A.No.716 of 2012:

Whether in law the suit for injunction simplicitor in the absence of relief of declaration of plaintiff's title to the suit property can be maintained in law, when the plaint averment itself raises cloud over the plaintiff's title to the suit property and when the defendant also denied the plaintiff's title ?”

“S.A.No.808 of 2012:

Whether the plaintiff being the wrong doer, can maintain damages against the defendants those who have taken steps to restore the possession of panchayat in respect of suit properties which are meant for 'GRAVE YARD' being maintained by the village panchayat ?”

8. The learned counsel for the appellants submitted that the property is a Grama Samudhayam land and the patta stands in the name of 34 members and the land was utilized for graveyard. In this regard, Exs.B3, B6, B8, B9 and B11 were produced. The above documents would show the



presence of graveyard in the suit property. Ex.A3 patta was issued in the year 2004 and subsequently the said patta was cancelled in Ex.B1 in the year 2005 and the sub division which was made in the name of the plaintiff was also cancelled. As on today, the plaintiff was not in possession of the suit property and hence the suit for permanent injunction is not maintainable.

8.1. He further submitted that as per Section 132 of the Tamil Nadu Panchayats Act, it is a panchayat communal land. The suit property has been utilized as graveyard even prior to the year 1950 and in that case, it cannot be held by anyone in his individual interest and it is to be held in common by the village. Ex.B6 would show that the property is a Grama Samudhayam land which will satisfy the requirement of Section 132 and it has been overlooked by the Courts below.

9. The learned counsel for the respondent / plaintiff submitted that that FMB has not been supported by any of the title or the revenue records standing in the name of the Panchayat. The Trial Court and the First Appellate Court had rightly appreciated the title and the possession of the



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respondent / plaintiff and granted the relief as prayed. The Lower Appellate Court after having appreciated the troubles undergone by the plaintiff at the hands of the appellant Panchayat and had awarded compensation of Rs.10,000/- which is very reasonable. The title deeds and 'A' register Chitta and Adangal are in the name of the plaintiff and that has been well appreciated by the Courts below.

9.1. He further submitted that the plaintiff has purchased the suit property by virtue of the two sale deeds dated 06.01.2004 and 11.03.2004. Subsequent to his sale deed, the mutation of the revenue records has also been taken effect in the name of the plaintiff and patta has also been issued to him. The title deeds and patta of the plaintiff has been marked as Exs.A1 to A3. Series of petitions have already been given against the plaintiff alleging that he has encroached the mayanam property and that has been enquired by the Tahsildar and he passed an order stating that there is no encroachment in the graveyard by the plaintiff. The series of orders passed by the Tahsildar has also been produced as Exs.A7 to A10.



10. The categorical contention of the appellant is that the plaintiff was an encroacher in the communal land which has been demarcated for mayanam. The sub-division made in the name of the plaintiff has also been cancelled by a cancellation order Ex.B1. Before proceedings to take up the above exercise, no notice appeared to have been given to the plaintiff. Both the Courts below have rightly observed that the unilateral action on the part of the Revenue Divisional Officer to cancel the sub-division on the representation of some persons who have got vested interest is not correct. In fact, the plaintiff has also alleged that the eighth defendant after he was elected as a President of the Panchayat resorted to some hostile activities against the plaintiff and he continued to cause troubles to his peaceful possession over the suit property. In this regard, FIR has also been registered.

11. No doubt, a private person cannot be allowed to encroach the public property and perpetuate personal claim over the same. At the same time, the local body like Panchayat should also not claim stake over the private property which solely belonged to the individual like the plaintiff. Just because some FMB has been produced as Ex.B3 and it shows certain



portion have been allotted for mayanam, the same cannot be accepted without establishing the co-relation with the revenue records, especially, 'A' register. The Courts below have observed that the revenue records do not show any connection to the Panchayat or any public interest involved in the suit property. Even the defendants' witness has stated that the plaintiff has erected fence over the suit property and that would show that the property was in the possession of the plaintiff.

12. The Village Administrative Officer who was examined as D.W.1 before the Court, has also stated by producing the adangal that coconut trees and bamboo trees have been cultivated in the property and that the property is not a mayanam. The plaintiff's witness has deposed consistently that the defendant was present at the time of the calamity and in his presence, the crops raised by the plaintiff were damaged by his persons. When the material before the Court does not establish that the plaintiff is a wrong doer but only the opposite, the substantial question of law raised in S.A.No.808 of 2012 that the plaintiff is a wrong doer and he cannot maintain the suit for damages will not arise.



13. The learned counsel for the appellants submitted that the property has been shown as Grama Samudhayam which belonged to 34 individuals. The Lower Court has rightly observed that even in that case, the objection to the plaintiff's possession and enjoyment to the suit property can be raised by other 33 persons and not the Panchayat. It is further observed that there are other graveyards available in some other Survey Numbers and hence, the fact that the property is utilised as Grama Samudhayam will not earn any point in favour of the appellants. The compensation allowed was based on the damages caused to the crops raised by the plaintiff and it is very minimal and reasonable. Hence, I do not find any reason for making any adverse finding about its reasonableness.

14. The further contention of the learned counsel for the appellants is that there is a cloud caused on the title of the plaintiff and he has filed a suit for declaration and bare injunction and the same was not well appreciated by the Courts below. Had the appellant / 8th defendant produced any *prima facie* materials to show that the Panchayat has some stake over the suit property and on that basis, if the minimum of revenue entries are available, it would be presumed that there is some cloud created or cloud seen on the



title of the plaintiff. The plaintiff has got a clear title and the title has also been accepted by the Revenue Department by making due entries and also by issuance of patta. The sub-division proceedings also effected in the name of the plaintiff and subsequently, it was cancelled without putting him on notice.

15. Even for the sake of arguments, the plaintiff is presumed to be an encroacher, the appellants ought not to have resorted to any illegal means to remove him. But in reality, the plaintiff is not a trespasser. All that had happened appears to be only due to personal motive between the plaintiff and the 8th defendant. The Courts below have rightly appreciated the oral and documentary evidence and arrived at a conclusion that the claim made by the appellants is not right and that the plaintiff has established his title and possession over the suit property. In view of the same, the substantial question of law raised in S.A.No.716 of 2012 is also answered against the appellants.

16. In view of the above stated reasons, both Second Appeals in S.A.Nos.716 & 808 of 2012 are dismissed and the judgment and decree



made in A.S.Nos.30 & 35 of 2011 dated 21.12.2011, on the file of the District Judge, Nagapattinam, is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

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27.11.2024

Speaking order

Index : Yes

Neutral Citation : Yes

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WEB COPY

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2. The Subordinate Judge, Nagapattinam.
3. The District Collector,
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R.N.MANJULA, J.

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