



S.A.No.798 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.798 of 2013

and

M.P.No.1 of 2013

Dhanalakshmi

.. Appellant

Vs.

1.State of Tamil Nadu,
By its District Collector,
Namakkal

2.The Assistant Divisional Manager,
Highways Department, Mohanur Road,
Namakkal Taluk and Town

.. Respondents

Prayer : Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the learned Subordinate Judge at Namakkal, dated 31.01.2013 made in A.S.No.53 of 2012 reversing that of the learned Additional District Munsif, Namakkal, dated 30.09.2011 made in O.S.No.212 of 2008.



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For Appellant : Mr.R.V.Agilan
for Mr.C.Jagadish

For Respondents : Mr.V.Ramesh
Government Advocate (CS)

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the learned Subordinate Judge at Namakkal in A.S.No.53 of 2012, dated 31.01.2013 in reversing the judgment and decree of the learned Additional District Munsif, Namakkal in O.S.No.212 of 2008, dated 30.09.2011.

2. O.S.No.212 of 2008 was filed by the present appellant seeking for a permanent injunction restraining the defendants i.e., the State of Tamil Nadu and the Assistant Divisional Engineer, Highways Department not to interfere or disturb the peaceful possession of the plaintiff till final orders are passed in the eviction proceedings that were initiated, to which the plaintiff had sent a reply on 27.03.2008.

3. For the sake of convenience, the parties shall be referred to as their ranks in the suit.

4. The suit schedule mentioned property is admittedly a Government



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land. The plaintiff and her husband encroached upon the property in and around the year 1965. The plaintiff had constructed her residence and put up a tea shop and had been running the same. According to her, she had been in continuous possession and enjoyment of the property for over 43 years by paying tax and other charges. The defendants had issued a notice invoking the powers vested in them under the Tamil Nadu Highways Act, 2001. This was challenged before this Court in W.P.No.36470 of 2007, which came to be allowed on 21.02.2008 and a liberty was granted to the 2nd defendant to initiate fresh proceedings in accordance with law.

5. Accordingly, a show cause notice was issued on 24.03.2008 for eviction of the plaintiff. The plaintiff responded to the same on 27.03.2008. According to her, since no enquiry was conducted, she presented the suit for permanent injunction.

6. The stand of the defendants in their written statement is that, the properties are highways land and the present suit had only been filed in order to prevent the highways from taking action against her. They also pleaded that there cannot be an injunction against the true owner and sought



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for dismissal of the suit.

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7. On the basis of these pleadings, the Trial Court framed the following issues :

“ 1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ?

2. To what other relief the plaintiff is entitled to ? ”

8. The plaintiff entered the witness box as P.W.1 and marked Ex.A1 to Ex.A22. The 2nd defendant examined himself as D.W.1. The report of the Advocate Commissioner and plan which had been filed pending the suit were marked as Ex.C1 and Ex.C2.

9. The learned Trial Judge came to a conclusion that once a show cause notice is issued under Section 28(1)(ii) of the Tamil Nadu Highways Act, the defendants were duty bound to consider the explanation and till the explanation is considered, the plaintiff is entitled for order of injunction.

10. On appeal, the learned Appellate Judge took note of the fact that final orders had been passed on 17.07.2012 directing the plaintiff to be



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evicted from the suit property and consequently, held that the plaintiff is not entitled to continue in possession on final orders being passed and thereby, dismissed the suit.

11. Aggrieved by the same, the present Second Appeal has been presented before this Court. On 03.09.2013, this Court did not admit the Second Appeal but had ordered notice regarding admission. The notice was served and the learned Government Pleader entered appearance on behalf of the respondents.

12. Heard Mr.R.V.Agilan representing Mr.C.Jagadish, learned counsel appearing for the appellant and Mr.V.Ramesh, learned Government Advocate (Civil Side) for the respondents.

13. Mr.R.V.Agilan would vehemently contend that the plaintiff having been in possession of the property over 43 years prior to the presentation of the plaint, she is entitled to the order of injunction. The procedure contemplated by the law ought to be followed and this was the direction of this Court in W.P.No.36470 of 2007, which is evidenced under



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Ex.A17. According to him, as the plaintiff is in settled possession in the property, her possession cannot be disturbed except in accordance with law.

14. Per contra, Mr.V.Ramesh would contend that the Government is the absolute owner of the property and the land under the occupation of the plaintiff is necessary for the purpose of expansion of the Highways. Several steps have been taken to evict the petitioner and finally, proceedings were initiated under Section 28(1)(ii) of Tamil Nadu Highways Act, 2001, which resulted in the presentation of the present suit. He would state that since final orders had been passed, no interference is necessary at the hands of this Court.

15. I have carefully considered the arguments on either side and perused the records.

16. From Ex.A17, it is clear that this Court had only set aside the final order that had been passed by the 2nd defendant. It directed him to conduct a fresh enquiry in accordance with the Highways Act of 2001. It is admitted case of the plaintiff that in terms of the Highways Act, an eviction notice



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was issued for which she had also given a reply. The suit had been initiated only as an interlocutory measure not to dispossess her pending final orders.

There cannot be an injunction against the true owner. A person, who is in settled possession, is liable to be dispossessed in a manner known to law. The manner, insofar as this case is concerned, is setforth in the Tamil Nadu Highways Act, 2001.

17. The plaint itself discloses that the notice had been issued by the defendants and the plaintiff had also received the same and sent a reply. Final orders under Section 28(2) were also passed on 17.07.2012. Therefore, the procedure as established by law has been scrupulously adhered to by the defendants. Therefore, there is no cause of action for the suit.

18. In the light of the above, I do not find any questions of law much less any substantial questions of law to be considered in the present appeal. I am not inclined to admit the Second Appeal.

19. Accordingly, this Second Appeal is dismissed. No costs.



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Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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To

- 1.The learned Subordinate Judge,
Namakkal.
- 2.The learned Additional District Munsif,
Namakkal.

V. LAKSHMINARAYANAN, J.

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