



S.A.No.641 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 20.02.2024	Judgment Pronounced on 23.02.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.641 of 2020
and C.M.P.No.13308 of 2020

K.Balasubramaniam

.. Appellant

Vs.

1.Navamani

2.The Tahsildar,
Annur Taluk Office,
Coimbatore.

3.The District Collector,
Coimbatore District.

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.09.2019 passed in A.S.No.8 of 2019 on the file of the III Additional Subordinate Judge, Coimbatore, setting aside the judgment and decree dated 10.10.2018 made in O.S.No.1067 of 2014 on the file of the IV Additional District Munsif at Coimbatore, by allowing the second appeal.



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For Appellant : Mr.G.R.Deepak
For Respondents
For R1 : Mr.K.Myilsamy
For RR 2 & 3 : Mr.V.Ramesh
Government Advocate

JUDGMENT

This Second Appeal is at the instance of the 3rd defendant in O.S.No.1067 of 2014.

2.The parties are described as per their litigating status before the Trial Court.

3.The plaintiff filed the suit seeking to declare the notice issued by the 1st defendant on 08.05.2014 as null and void and also for a consequential permanent injunction to restrain the defendants 1 and 2 from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The case of the plaintiff was that the notice issued under the Tamil Nadu Land Encroachment Act, 1905 was wholly unsustainable and without any basis whatsoever. The property belonging to the plaintiff was a Natham land and the plaintiff cannot be treated as an encroacher under the Tamil Nadu Land Encroachment Act, 1905. The defendants did not have any jurisdiction to issue the notice. Though no relief is sought against the 3rd defendant, he has been



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arrayed as a party defendant on the premise that the 3rd defendant had filed a Writ Petition seeking action to be taken against the plaintiff's husband as if the land belong to the Government.

4.The statutory authorities namely the Tahsildar, Annur Taluk, Coimbatore, and the District Collector, Coimbatore filed a written statement stating that the suit property was Natham Poramboke lands and not Grama Natham lands as projected by the plaintiff. Moreover, the plaintiff had constructed a godown without obtaining any approval from the Statutory Authorities and therefore, a notice was rightly issued under the Tamil Nadu Land Encroachment Act, 1905.

5.The Trial Court dismissed the suit holding that there was a bar of civil suit under Section 14 of the Tamil Nadu Land Encroachment Act, 1905. On Appeal in A.S.No.8 of 2019, the First Appellate Court found that the suit property was Grama Natham lands and not Natham Poramboke lands as contended by the defendants 1 and 2. The First Appellate Court accepting the contention of the plaintiff's counsel that Section 2 of the Land Encroachment Act excluded Grama Natham lands, being house sites, proceeded to allow the Appeal and holding that the notice issued under Section 7 of the Tamil Nadu



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Land Encroachment Act, was without authority and consequently null and void.

6.Interestingly, the Statutory defendants namely the Tahsildar or the District Collector, have not chosen to prefer any appeal and the Second Appeal is at the instance of the 3rd defendant.

7.The learned counsel for the 1st respondent/plaintiff would raise the issue of maintainability of the Second Appeal itself on the ground that the 3rd defendant was exonerated before the Trial Court and even before the First Appellate Court, the appellant herein, who was the 3rd respondent in the First Appeal was exonerated. According to the learned counsel for the 1st respondent/plaintiff, the appellant not having challenged the order of exoneration, he is not entitled to challenge the judgment and decree of the First Appellate Court, especially when the defendants 1 and 2 being the Statutory authorities themselves, have chosen to accept the verdict of the First Appellate Court. I therefore, requested the learned counsel for the appellant to first satisfy me on the maintainability of the Second Appeal.



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8. Even though the Second appeal was admitted by this Court on 11.01.2021, on the following substantial questions of law:

a) Whether the First Appellate Court is justified in holding that the property in natham poromboke land does not vest with the Government?

b) Whether the suit is maintainable when the revision is pending before the Secretary to Government, Revenue Department, Chennai, the 1st respondent has filed suit challenging the order of the 2nd respondent?

c) Whether the suit is barred under Section 14 of the Land Encroachment Act, 1905)

d) Whether the Government has power to issue eviction under the provision of Land Encroachment Act, 1905 against the natham poromboke land?

In view of the issue of maintainability of the Second Appeal raised by the 1st respondent/plaintiff, I have also framed an additional substantial question of law:

“e) Whether a party defendant who has been exonerated before the Courts would be entitled to challenge the judgment and decree of the Courts, especially when no relief has been sought for against such exonerated party.”



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9.I have heard Mr.G.R.Deepak, learned counsel for the appellant, Mr.K.Myilsamy, learned counsel for the 1st respondent and Mr.V.Ramesh, learned Government Advocate for the respondents 2 and 3 and also perused the entire materials available on record.

10.With regard to the maintainability of the Second Appeal, the learned counsel for the appellant placed reliance on the decision of the Full Bench of this Court in *Abdul Sac alias Varusai Mohammad Sahib Versus Sundara Mudaliar & Another* reported in *CDJ 1930 MHC 071*.

11.Before dealing with the issue of maintainability, the admitted fact which is to be remembered is that the 1st respondent/plaintiff has voluntarily chosen to implead the 3rd defendant in the suit. Though no relief is prayed for against the 3rd defendant, the only reference to the 3rd defendant is in paragraph Nos.4 and 5 of the plaint, where the plaintiff alleges that the 3rd defendant, to settle personal scores, had filed a writ petition before this Court as if the lands belong to the Government and as per the direction of the writ Court, without hearing the plaintiff or her husband, an order came to be passed directing the Tahsildar to issue notice under Section 6 of Tamil Nadu Land Encroachment Act, 1905.



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12. In fact, the 3rd defendant also filed a written statement reiterating that the property was Natham Poromboke lands and belong to the Government and that the plaintiff had no right over the same. Though the 3rd defendant had filed written statement, in view of the fact that the plaintiff choosing to give up the 3rd defendant, the Court exonerated the 3rd defendant and the 3rd defendant had no occasion to participate in the trial of the suit. The suit came to be dismissed and therefore, the 3rd defendant cannot be said to be aggrieved by the judgment and decree of the Trial Court as his written statement was also supporting the written statement filed by the defendants 1 and 2, seeking dismissal of the suit. Even in the First Appeal, the plaintiff has impleaded the 3rd defendant as 3rd respondent, despite the fact that the 3rd defendant was exonerated even pending trial of the suit. In the appeal also, the 3rd respondent, namely the appellant herein has been exonerated and the appeal was decided in his absence. It is aggrieved by the judgment and decree of the First Appellate Court that the present Second Appeal has been preferred.

13. In the decision relied on by the learned counsel for the appellant namely *Adbul Sac's* case referred herein above, the Full Bench of this Court held that the person may be a proper party to the suit but yet, the plaintiff



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either does not wish to take a decree against him or the plaintiff feels that he is unable to prove his claim against such party, he is not a person to whom Order 1 Rule 10(2) applies. The Full Bench referred to a decision of this Court in ***Krishnappa Vs. Periyasamy*** reported in ***[1961] I.L.R. 40 M. 964***, which was a case of misjoinder of cause of action. The plaintiff was called upon to proceed with one cause of action alone and the suit came to be dismissed as against the defendants who had been joined in respect of the other cause of action. However, in ***Abdul Sac's*** case, the Full Bench held that exoneration from the suit may be for various reasons and answering the question whether the parties remain on record, in spite of such exoneration would depend only on the nature and scope of the order having regard to the pleadings and the reasons which led to dismissal or exoneration. The Full Bench also held that in a case of misjoinder, consequent refusal of the Court to adjudicate upon the particular matters in contest, the party whose claim was not adjudicated upon and who was exonerated remains a party to the suit and that would lead to an anomaly that the Court would be bound in execution proceedings to decide the very questions which it refused to determine in the suit.

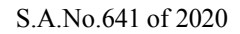
14. Here, admittedly, the plaintiff has not sought for any relief against the 3rd defendant. The 3rd defendant has been given up/exonerated not only before



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the Trial Court but also before the Appellate Court. The appellant cannot be non-suited on the ground he did not challenge the exoneration before the Trial Court since the suit itself came to be dismissed which was what the appellant desired. However, before the First Appellate Court, the findings of the Trial Court were reversed and the suit came to be decreed which was certainly prejudicing the case of the appellant. Only under such circumstance, he has chosen to challenge the judgment and decree of the First Appellant Court.

15. Even though the plaintiff may claim that the 3rd defendant is not a proper or necessary party to the suit proceedings, no relief has been claimed against the appellant, the very fact that the allegations are made against the 3rd defendant and the 3rd defendant was also allowed to file a written statement and only thereafter, the plaintiff for reasons best known to him chose to have the 3rd defendant exonerated and proceeded to try the suit behind his back. Even before the First Appellate Court, the plaintiff had an option not to implead the appellant as respondent in the appeal. However, in spite of having the 3rd defendant exonerated before the Trial Court, the plaintiff has consciously chosen to implead the appellant as one of the respondents in the Appeal. Later, realising that the presence of the 3rd respondent may not suit the plaintiff's convenience, the 3rd defendant was again exonerated before the First



16. It is to be borne in mind that the very same issue has been canvassed by the 3rd defendant by way of writ proceedings. In fact even in the plaint, it is stated that only pursuant to the orders passed by the writ Court, the notice has been issued to the plaintiff. In such circumstances, it cannot be stated that the Second Appeal at the instance of the exonerated 3rd defendant is not maintainable. In fact, this Court has already admitted the Second Appeal on the above mentioned substantial questions of law, thereby entertaining the appeal at the instance of the 3rd defendant. For all these reasons, I hold that the Second Appeal is maintainable.

17. Proceeding to decide the issue on merits, it is brought to my notice that a revision before the Government is pending at the instance of the plaintiff. In fact, pursuant to the filing of the suit, the 1st defendant namely the Tahsildar, has issued a notice to the plaintiff on 06.06.2014 calling upon the plaintiff to vacate, as against which, the plaintiff preferred an appeal to the District Collector which was also dismissed on 05.05.2015 and as against the same, the



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plaintiff has preferred a Revision to the Government which is pending. The plaintiff has also stated that he has already filed written submissions in the Revision and final orders are yet to be passed.

18.The one further circumstance that I notice is the fact that, prior to the filing of the suit, the mandatory Section 80(1) of CPC notice has not been issued by the plaintiff. In any suit filed against the Government/Public Officer, in respect of any act purporting to be done by such Public Officer in his official capacity, the plaintiff has to issue a notice under Section 80(1) of the CPC. When the plaintiff seeks to obtain any urgent or interim relief against the Government or Public Officers, the suit may be instituted with a leave of the Court, without serving the notice required under Section 80(1) of CPC. From the records, I find that no such leave has also been obtained by the plaintiff before institution of the suit. The issuance of notice under Section 80(1) of CPC is mandatory and on this limited ground itself, the suit is liable to fail and be dismissed.

19.In fact, the Hon'ble Supreme Court, in the case of ***State of Kerala V. Sudhir Kumar Sharma, (2013) 10 SCC 178***, has held that the suit filed without compliance of Section 80(1) of the CPC cannot be regularized by even



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by filing an application under Section 80(2) of CPC.

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20. However, unfortunately, the Courts below have not noticed the fundamental lacuna on the part of the plaintiff in not issuing the notice under Section 80(1) of CPC. The Trial Court proceeded to dismiss the suit on the ground that the suit was not maintainable in view of Section 14 of Tamil Nadu Land Encroachment Act, 1905. However, the First Appellate Court has held that the suit is maintainable and also proceeded to grant leave to the plaintiff. From the written statement of the defendants 1 and 2, I am able to see that a specific defence has been taken that the plaintiff has not complied with the mandatory provision of Section 80 of CPC and the suit is liable to be dismissed. Unfortunately, the First Appellate Court have also lost sight of this, while deciding the First Appeal.

21. The other issue which requires adjudication is as to whether the lands are Grama Natham lands or Natham Poromboke lands. The First Appellate Court has failed to notice the important distinction between the two classifications. With regard to Grama Natham lands, they are not Government lands and they can be used for residential purposes. However Natham Poromboke lands belong to the Government and they are entitled to remove encroachments on such Natham Poromboke lands. The First Appellate Court has confused both these classifications and proceeded on the basis that the



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subject lands are Grama Natham lands instead of Natham Poromboke lands.

The notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, also clearly mentions that the lands are only Natham lands and there is no mention that the lands are Grama Natham lands. Unfortunately, the First Appellate Court has erroneously proceeded to construe the lands as Grama Natham lands and held that the suit is maintainable and also granted relief as prayed for by the plaintiff.

22.Considering all the above, the judgment and decree of the First Appellate Court is liable to be set aside. However, in view of the admitted position that the Revision filed by the 1st respondent/plaintiff is pending with the Government, I direct the Government to expedite the disposal of the Revision filed by the 1st respondent/plaintiff, Navamani W/o. Thangavelu, and the defendants namely the Tahsildar, Annur Taluk, Coimbatore and the District Collector, Coimbatore, shall render full assistance to the Government for deciding the Revision, by furnishing all necessary documents and particulars pertaining to the classifications of the lands, usage of the lands by the 1st respondent/plaintiff and the entitlement of the authorities who seek for removal of encroachment. Such a direction would do substantial justice to the parties, including the 3rd defendant who is the appellant herein.



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23.In view of the above, the Second Appeal is partly allowed and the judgment and decree of the First Appellate Court dated 30.09.2019 declaring the notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 as null and void is set aside and the State Government shall take steps to dispose of the Revision filed by the 1st respondent/plaintiff in accordance with law, after providing opportunity to the 1st respondent/plaintiff, if necessary, to the appellant as well as the Tahsildar, Annur Taluk, Coimbatore, and the District Collector, Coimbatore. Such exercise shall be carried out within a period of 12 weeks from the date of receipt of a copy of this judgment. The parties shall maintain status quo, till such time the Government disposes off the Revision at any rate, not later than 12 weeks from the date of receipt of a copy of this judgment. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

23.02.2024

Index : Yes/No

Speaking Order/Non-Speaking Order

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Note : Registry is directed to forward a copy of this judgment to the State Government represented by its Principal Secretary, Revenue and Disaster Management Department, Secretariat, Chennai – 600 009.



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P.B.BALAJI., J.

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To

- 1.The III Additional Subordinate Judge, Coimbatore.
- 2.IV Additional District Munsif, Coimbatore.

Pre-delivery judgment made in

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23.02.2024