



AS. No.501 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 501 of 2020
and CMP Nos. 6807, 6808 and 6809 of 2020

The Corporation of Chennai,
Rep by its Commissioner,
Ripon Building,
Chennai – 600 003.

...Appellant

Vs.

K.S.Mytheen (Deceased)
2.Mujiba Mydeen
3.Benazir K.S.M,
4.SulaikalBeevi K.S.M Major
5.SadamHussain K.S.M

R4 declared as major and her friend natural guardian R2 viz. Mujibamydeen from the guardianship discharged vide court order dated 15.09.2021 made in CMP No. 14023 of 2021 in A.S No. 501 of 2020

R2 to R5 brought into records as legal representatives of the deceased first respondent vide Court order dated 09.07.2021 passed in CMP No. 8616 of 2021 in A.S No. 501 of 2020.

...1st Respondent/Plaintiff

PRAYER : This first appeal is filed under Section 96 R/w Order XLI Rule 1 of CPC, to set aside the judgment and decree passed by the Hon'ble V Additional City Civil Court, Chennai in O.S No. 10808 of 2010 dated



AS. No.501 of 2020

21.12.2018.

WEB COPY

For Appellants : Mr.S.Silambanan, Additional Advocate
General, Assisted by M/s.K.Aswini Devi
For Respondents : M/s. AL.Gandhimathi, Senior counsel.
for M/s.SA.Kanmani

JUDGMENT

This appeal has been filed to set aside the judgment and decree passed by the V Additional City Civil Court, Chennai in O.S No. 10808 of 2010 dated 21.12.2018.

2. The respondent herein filed the suit before the V Additional Judge, City Civil Court, Chennai, for the relief of permanent injunction and also to declare him as a absolute owner of the suit property and also to hand over the vacant possession of the suit schedule property situated in chennai District, Koyambedu village bearing S.No. 33/2, T.S No.57 in Block No. 52 admeasuring 7 grounds 1319 square feet (40 cents). The respondent/plaintiff claimed the said property based on the settlement deed dated 28.07.2003 executed by his father who purchased it from Rajeswari through sale deed dated 07.11.1978. The contention of the respondent/plaintiff is that as a



AS. No.501 of 2020

absolute owner he enjoyed the suit property but the defendant/appellant herein Corporation attempted to cause interference by putting up construction. Hence, he initiated the suit for the above said relief. The defendant/appellant corporation contended that the suit property was acquired by the corporation in the year 1973 along with other property for the public purpose and after acquisition the same was used for the public purpose in order to grab the property the plaintiff falsely claimed the right over the suit property. Hence, the defendants/appellant corporation prayed to dismiss the suit.

3. After considering the oral and documentary evidence the trial Court held that the appellant corporation has not chosen to produce any single document to support their claim but the plaintiff proved that the suit property was originally belongs to the Vijayaragavalu Naidu as per Ex.A1/sale deed and after his demise his only legal heir Rajeswari owned the suit property from her the plaintiff's father purchased the suit property in the year 1978 through sale deed/Ex.A3 and thereafter he executed the settlement deed in favour of the plaintiff in the year 2003. Based on the above documents, the plaintiff proved their title but the defendant/appellant corporation neither proved the acquisition of the property nor established



AS. No.501 of 2020

that they are enjoyment of the property by adducing contra evidence.

Accordingly, the Trial Court decreed the suit.

4. Challenging the judgment of the Trial court appellant filed this appeal. The appellant contended that the Trial judge erroneously granted the relief of declaration in respect of the suit property which is absolutely belongs to the Government which was acquired through land acquisition proceedings in the year 1968. Hence, he prayed to allow this appeal.

5. But the learned counsel for the respondent/plaintiff submitted that the defendant corporation has not adduced any document to show that the suit property was acquired for the public purposes but the plaintiff proved his title and also his vendor title by adducing the oral and documentary evidence, hence, the Trial Court rightly decreed the suit which needs no interference. He prays to dismiss this petition.

6. The respondent died during the appeal proceedings and his legal heirs were impleaded for the sake of convenience legal heirs were referred as respondent.

7. Considering the submissions on either side and also on perusal of records, it reveals that the plaintiff/respondent filed the suit of permanent



AS. No.501 of 2020

and for recovery of possession in respect of suit property more particularly in S.F No. 33/2, T.S No. 57 measuring in block No. 52 with 40 cents and situated in Koyambedu village. To prove his claim the plaintiff relied the sale deed contend that suit property was originally belongs to Vijaraghavalu Naidu and on his demise his only daughter Rajeswari inherited the same and thereafter she sold the same to the father of the plaintiff/respondent namely Kader Hussain through registered sale deed dated 11.07.1978 and thereafter his father settled the said property to him through registered settlement deed dated 28.07.2003 hence he claimed absolute right over the suit property an extent of 40 cents in TS No. 57 Old S.F. No. 33/2. The only defence taken by the defendants is that the land in survey No. 28/1, 32/2 situated in Koyambedu village with an extent of 4.05 acres was acquired for the purpose of the public use through land acquisition proceedings which initiated much earlier in the year 1965 by the Corporation through award No. T No. 1/73 and the compensation also paid to the erstwhile owner thereby the corporation claiming ownership of the property.

8. Admittedly, before the Trial Court as rightly pointed out the respondent counsel the appellant corporation has not produced any



AS. No.501 of 2020

document before the Trial Court in respect of acquisition proceedings. When the matter was taken up before this Court the learned counsel for the appellant corporation submitted that the counsel who conducted the case before the trial court was not followed the suit proceedings with an ulterior motive nor get any instruction from the corporation to proceed the case thereby officials were not able to follow the suit proceedings by giving proper instructions to the pleader. Thereby the suit was decreed in favour of plaintiff. Challenging the same, defendant corporation preferred this appeal. Now, the officials produced the public documents to show that the suit property was acquired for the public purpose and compensation also paid to the land holders including alleged erstwhile vendor of the plaintiff's father deceased Vijayaragavalue Naidu. To prove the said fact they produced the award No. 1/73 dated 26.11.1973 as the document . On the other side, as rightly pointed out by the respondent's/plaintiff's counsel again appellant corporation not filed application to receive the said additional documents as evidence on their side to get over the same. The learned counsel for the appellant corporation relied the following judgment reported in 2015 2 L.W.531

38..... After having gone through the legal history commencing



AS. No.501 of 2020

from 1931 Privy Council to 2015 judgment of the Hon'ble Supreme Court, I hold that under Sub Rule 1(b) of Order 41 Rule 27 the appellate Court has got suo motu power to receive the additional evidence, either oral or documentary, provided any one or more of the contingencies enumerated in the said rules

9. Hence, As per order 41 Rule 27 CPC, this Court is empowered to receive the additional document even in the absence of the petition to receive the document in the interest of the justice by considering the nature of the claim. Considering the said submission and also ratio laid down in the said judgment this court has the power to receive the additional document under Order 41 Rule 27 of CPC:

Order 41 Rule 27 of CPC is read as follows:

27. Production of additional evidence in Appellate Court.

(1) (b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate court may allow such evidence or document to be produced, or witness to be examined.

10. As per the above judgment, this court is empowered to receive the additional document in order to adjudicate the issues fairly and to avoid miscarriage of justice. Accordingly, CMP No. 6809 of 2020 filed by the appellant is allowed and documents are received as additional evidence.

11. The facts of the case in hand is that though the defendant Corporation claimed as owner of the suit property by way of land acquisition proceedings, had not adduced the document to prove the same before the



AS. No.501 of 2020

Trial Court. But at the time of the arguments, the appellant counsel produced the all public documents pertaining to the land acquisition proceedings in Award No. 1/73. Even on perusal of the said records it reveals that the said award was passed pertaining to the suit property in T.S No. 33/12. It is not simple suit for declaration, the claim of the plaintiff is that he is owner of the property for that he relied the sale deed in order to prove his title. However, as per the objection of the appellant/Corporation that the said property was already acquired even prior to the purchase made by the father of the plaintiff. Therefore, to decide the title of the property the documents which produced on the side of the appellant corporation is necessary to pronounce the judgment. As discussed above, the said award copy can be received as additional evidence. Moreover, the said award No. 1/73 is more than 30 years old it can be received as additional document it does not require any further proof hence the authority relied by appellants is supporting their case. Accordingly, award copy in the Tamil Nadu Government gazette filed on the side of the appellant in Award No. 1/1973 is received as document on the side of the appellant marked as Ex.C1 and cancellation of patta dated 23.03.2008 is marked as Ex.C2.

12. Now the point to be decided is whether the plaintiff/respondent is



AS. No.501 of 2020

having valid title over the suit property or the defendants/appellant ?

WEB COPY

13. According to the appellant corporation, already they acquired vast extent of land including suit property in Koyambedu Village, Saidepet Taluk for the purpose of the Kodambakkam Drainage scheme of the Corporation of Madras after due enquiry as well as, as per Section 4(1) of land Acquisition Act notification was issued to that effect award dated 15.06.1996 along with Tamil Government Gazette Notification dated 16.10.1971 is produced. The relevant portion of the said award is extracted below:

"whereas an extent of land measuring 152-50 acres and situated in the village of 100 koyambedu in the Taluk of Saidapet in the registration Sub District Saidapet, in the District of Chengalpet and registered in the name of, or acquired by the persons specified below, has been declared by Government at page 347 to 351 of the Fort St. George Gazette, Part II, section I dated 9-3-1966 and an orrata to pages 730 of the Fort St. George Gazette part II section I dated 11-5-1966 to be needed for the Kodambakkam Drainage Scheme of the Corporation of Madras, the undersigned, after full enquiry into the case and on due consideration of the various circumstances



AS. No.501 of 2020

connected with the acquisition as here before set forth, makes

WEB COPY *the following award under his hand."*

14. In Tamil Nadu Gazette notification dated 16.10.1971, it is mentioned as S.No. 33-2 (part) registered holder Vijaranga Naidu 0.19 acre as well as, as per the other notification dated 19.11.1982, it is mentioned as Government, dry S.No. 33-2B registered holder and interested person corporation of Madras with four boundaries 0.07 acre.

15. Furthermore, the amount of compensation for the said award comes around Rs.1207.50 in cash was deposited. By relying above public documents the learned counsel for the appellant corporation submitted that in the year 1966, the acquisition proceedings were initiated at that time one Vijayaraghavalu Naidu was a owner of the property in S.No. 33-2 after acquisition proceedings compensation amount was also deposited and proceedings were completed in the year 1973 and as per the death certificate the said Vijayaraghavalu Naidu was died on 29.01.1984 leaving behind her daughter Rajeswari as legal heir. Therefore, during the acquisition proceedings as well as completion of acquisition proceedings original vendor Vijayaraghavalu was alive and he has not raised any objection to the said acquisition proceedings.



AS. No.501 of 2020

16. The contention of the plaintiff is that the suit property belongs to Vijayaraghavalu Naidu by way of purchase through sale deed dated 29.03.1961, as per the sale deed in S.No. 33 an extent of 40 cents with four boundaries was sold to Vijayaraghavalu Naidu and thereafter he died leaving behind her daughter Rajeswari, from that Rajeswari plaintiff's father purchased the said property through sale deed dated 07.11.1978, through the said sale deed he purchased 40 cents in S.No. 33-2, Patta No. 304. Thereafter, plaintiff's father Kadar Hussain died leaving behind the plaintiff as legal heirs. During the life time of his father he executed the settlement deed in his favour on 23.07.1973, as per the settlement deed he possessed and enjoyed the suit property(now T.S No. 57) and the patta also transferred in his name of the father. Now, the defendant corporation unlawfully interfere with the possession of the suit property. Hence, initially the plaintiff/respondent herein filed suit for permanent injunction and thereafter amended into declaration and recovery of possession.

17. The defendant corporation also contested the appeal by filing the written statement as well as additional statement denying the plaintiff's claim stating that property was acquired through land acquisition proceedings but during the trial on the side of the plaintiff Ex.A1 to Ex.A15 was marked and



AS. No.501 of 2020

plaintiff was examined as P.W.1 but the defendant corporation neither adduced any evidence nor produced the documents. Based on the available documents the Trial Court held that as per the title as well as sale deed the plaintiff established his father purchase from the erstwhile legal heir of the Vijaraghavalu Naidu. Thereafter, he is in enjoyment of the property and also there is no contra evidence adduced on the side of the defendant. Accordingly, based on the sale deed and other documents relied by the plaintiff, the Trial Court decreed the suit. Challenging the same, the defendant filed this appeal.

18. Admittedly, before the Trial Court officials of the appellant corporation not submitted their objections though they filed the written statement. Now, they challenged the Trial Court findings stating that the Trial Court erroneously granting the relief of declaration and recovery of possession merely based on the sale deed relied by the plaintiff without taking note of the writ petitions filed by the petitioner and his father was dismissed in spite that, suppressing the above facts the plaintiff approached the Court. In fact, he is a land grabber and causing all sort of interference to the corporation. Now, the property was converted into park for the public purpose same also known to the plaintiff but it was not appreciated by the



AS. No.501 of 2020

Trial court which is erroneous and liable to be set aside. The learned

Counsel for the defendant corporation submitted that daughter of the original vendor Vijayaraghavalu Naidu's Rajeswari have no right over the suit property on the date of execution of sale deed who was very well aware of the award proceedings dated 15.06.1966 hence said deed would not confer any title neither to the plaintiff's father's vendor nor to the plaintiff but the plaintiff fraudulently obtained the decree which is liable to be set aside.

19. As per the award/ Ex.C1, which clearly reveals that land measuring 152-20 acres situated at Koyambedu village has been acquired by the Government for the construction of Kodambakkam Drainage scheme of corporation of Madras in the year 1966 and as per the town survey, land register, the said land was stands in the name of the corporation of Chennai including suit schedule property and the compensation award amount for the land acquired from the erstwhile owner of the Vijayaraghavalu Naidu also been deposited and all the award proceedings has been completed in the year of 1973. Therefore, the alleged sale deed Ex.A3 of 1978 which stands in the name of the Kadar Hussain father of the plaintiff executed by Rajeswari daughter of erstwhile owner of the Vijayaraghavalu Naidu is invalid document for the reason that alleged vendor Rajeswari has no right to



AS. No.501 of 2020

convey the property since it was already acquired by the corporation of Chennai through land acquisition proceedings, the notifications also effected as well as publication made in the Government Gazette to that effect public notification produced on the side of the appellant which proves that in the year 1966 -1971 the land acquisition proceedings were completed. As per the Gazette Notification the property belongs to the Vijaraghavalu Naidu also noted in the said notification. Therefore, during the life time of the Vijaraghavalu Naidu, he has not challenged the said acquisition proceedings. According to the appellant, he was died in the year 1984 but according to the plaintiff he was died on 1978 but the said document relied by the plaintiff also under dispute. Whatever may be the date of the death of the Vijaraghavalu Naidu but the acquisition proceedings were completed much earlier before his death. Therefore, on the date of the alleged sale in the year 1978 said Rajeswari has no right over the property. Thereafter, the plaintiff obtained patta but the same was cancelled through DRO proceedings wherein, he directed to take action against the erred officials for ignoring the acquisition proceedings. Even on perusal of the cancellation of patta order/Ex.C2 it is mentioned that as per permanent land register T.S 57 old S.No. 33/2 is classified as Sarkar Poramboke registered in the name of the



AS. No.501 of 2020

Chennai Corporation. Further, they also made observations that Kadar Hussain have already vacated. Besides, in WP No. 12496/1968 through which said Kadar Hussain claimed right over the property seeking further direction from the Court but it was dismissed not accepted his claim. The learned Government Pleader further pointed out that the said Kadar Hussain filed further writ petition claiming title over the property on the same ground was also been dismissed by this Court. Therefore, after notification from the year 1966 onwards acquisition proceedings started and it was completed in the year 1974 and the also the notification was published in the Government Gazette, so it is presumed that all the public known about the acquisition proceedings. Furthermore, the suit property along with other property was acquired by the corporation hence neither the plaintiff nor his father's vendor have title over the property. Accordingly, the findings rendered by the Trial Court is set aside. Thus suit is dismissed as no merits with costs Rs.10,000/- payable to Chief Justice fund as he vexatiously filed the suit after dismissal of writ petition and other litigations.



AS. No.501 of 2020

WEB COPY 20. In the result, this appeal is allowed. Consequently, connected miscellaneous petition is closed.

24.06.2024

pbl

T.V.THAMILSELVI,J.

Pbl



AS. No.501 of 2020

To
1. The V Additional City Civil Court, Chennai

AS. No.501 of 2020
and CMP Nos. 6807, 6808 and 6809 of 2020

24.06.2024