



S.A.No.4 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.4 of 2020

and

C.M.P.Nos.112 of 2020

1.Krishnasamy Gounder

2.Murugesan

3.Rajalakshmi

4.V.Boomaladevi

.. Appellants

(1st Appellant died.
Appellant Nos.3 & 4
were brought on record
as the legal
representatives of the
deceased 1st appellant
vide Court order, dated
11.07.2024, by VLNJ)

Vs.

1.The District Collector,
Office of the District Collector,
Tiruppur District,
Tiruppur



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2.The Tahsildar,
Kangayam Taluk,
Kangayam

3.The Assistant Engineer,
TNEB, Muthur Town,
Kangayam Taluk,
Tiruppur District

4.Balumani

.. Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree, dated 19.08.2019, rendered in A.S.No.62 of 2017 on the file of the learned Subordinate Judge at Kangayam in confirming the judgment and decree, dated 16.03.2017, rendered in O.S.No.168 of 2009 on the file of the learned District Munsif at Kangayam.

For Appellants : Mr.S.Subbiah
Senior Counsel

For R1 & R2 : Mr.M.Muthusamy
Government Advocate

For R3 : Ms.Hemalatha

For R4 : Ms.M.Aadhishree
for Mr.N.Manoharan

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the learned Subordinate Judge at Kangayam in A.S.No.62 of



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2017 (originally received as A.S.No.17 of 2017 on the file of the Sub Court at Dharapuram), dated 19.08.2019, in confirming the judgment and decree of the Court of the learned District Munsif at Kangayam in O.S.No.168 of 2009 dated 16.03.2017.

2. The plaintiffs are the appellants before me.

3. For the sake of convenience, the parties will be referred to as per their rank in the suit.

4. O.S.No.168 of 2009 is a suit for declaration that the order passed by the Tahsildar in Na.Ka.No.4517/2007/A1, dated 20.03.2009, is null and void and for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs in 'A' schedule mentioned property and for costs.

5. The case of the plaintiffs is that the 1st plaintiff, namely Krishnasamy Gounder, had purchased the property by way of a sale deed, dated 19.07.1959. They would state ever since the date of purchase, the 1st



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plaintiff had been in possession and enjoyment of the same by indulging in the acts of agriculture, and by digging a well and utilizing the well for the purpose of irrigation. The 1st plaintiff also obtained an electricity connection for the well in S.C.No.227 in the year 1992. Though the owner of the property is the 1st plaintiff, the 2nd plaintiff/1st plaintiff's son was impleaded as a co-plaintiff in the suit.

6. On the west of the property runs the Lower Bhavani Project (LBP) canal which is maintained by the Public Works Department. The LBP canal is said to be situated in S.F.No.674/1B. The canal had been created 30 years ago. During re-survey of the property, the plaintiffs' holding was measured and it came to 2 acres and 40 cents, and a Patta was also issued to that effect. However, the actual extent that had been purchased by the 1st plaintiff was 2 acres and 81 cents.

7. According to them, the 4th defendant had instigated defendant Nos.1 to 3 to initiate the proceeding for eviction against the plaintiffs as according to the 4th defendant, the plaintiffs were in occupation of poromboke lands. Consequently, an order of eviction was issued by the



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Tahsildar which was challenged by the plaintiffs in W.P.No.8000 of 2008.

The said Writ Petition was allowed and the order of the Tahsildar and consequential order of disconnection of electricity were set aside.

8. Pursuant to the order of remand passed by this Court in W.P.No.8000 of 2008, the Tahsildar initiated a fresh proceeding and after hearing on both sides passed an order on 20.03.2009.

9. Challenging the same, a Writ Petition was filed before this Court in W.P.No.6773 of 2009. The said Writ Petition was dismissed granting liberty to the petitioner/1st plaintiff to approach the jurisdictional civil Court to establish his right, title and interest over the suit schedule mentioned property. On the basis of the liberty granted by the Court, the 1st plaintiff presented the suit for the aforesaid reliefs.

10. On entering appearance, the 2nd defendant/Revenue Officer, Kangayam filed a written statement which was adopted by the District Collector, Tiruppur as well as the Executive Engineer, Tamil Nadu Electricity Board, Muthur.



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11. They denied the title of the 1st plaintiff and also took a stand that the suit is not maintainable since prior notice under Section 80 of the Code of Civil Procedure had not been issued to them. It was denied that the extent of the 1st plaintiff holding was reduced during re-survey, and it was pleaded that to an extent of 30 cents, the 1st plaintiff had encroached upon the Government land situated in S.F.No.674/1B and had dug up a well and obtained an electricity connection. They would further plead that as per the direction of the order passed by this Court in W.P.No.8000 of 2008, proper notice had been served on the 1st plaintiff and only after conducting a detailed enquiry, the impugned order came to be passed. Since the encroachment was on a water body, they would plead that emergent steps for eviction became necessary and accordingly, they had taken the steps and passed the impugned order. They would also plead that since the 1st plaintiff had not taken further steps after the order of eviction was passed, the suit is not maintainable.

12. The 4th defendant, at whose instance the entire allegation of encroachment has come about, filed a separate written statement. He would plead that the 'A' schedule mentioned property does not belong to the 1st



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plaintiff in terms of the sale deed, dated 19.07.1959, and the 1st plaintiff had obtained an electricity service connection for the property by suppression of material facts. He would say that the actual holding of the 1st plaintiff is only 2 acres and 40 cents, and it was the 4th defendant's land which is situated abetting the LBP canal. The 1st plaintiff taking advantage of the fact that sewage canal is running on his property, he sunk a well in the poromboke land and had obtained the electricity connection. He would further plead that as per the instructions given by the Public Works Department as well as the Government, no well can be sunk in and around the vicinity of the LBP canal as such sinking of wells would affect the flow of water and would lead to illegal tapping of the water, thereby, depriving supply of water to the tail end ayacutdhars.

13. The 4th defendant, being a lower riparian beneficiary of the LBP canal, pleaded that on account of digging of well in the poromboke land, he was only getting a diminished supply of water and therefore, is entitled to object to the same. He had lodged a complaint on 05.12.2005 with the revenue authorities who conducted a survey and submitted a report to the 2nd defendant. As no action was taken, he filed a writ of mandamus before this



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Court seeking direction to the revenue authorities to initiate action against the 1st plaintiff. It was only thereafter, the revenue authorities awoke from their slumber and had initiated action. He would plead that the suit is vexatious and had been initiated only for the purpose of stalling the eviction proceeding.

14. On the basis of these pleadings, the learned trial Judge framed the following issues :

“ 1. Whether it is correct to state that an order of the 2nd defendant vide Na.Ka.No.4517/2007/A1 dated 02.03.2009 is invalid ?

2. Whether the plaintiffs are entitled to the relief of declaration ?

3. Whether the plaintiffs are entitled for the relief of permanent injunction ?

4. To what other reliefs the plaintiffs are entitled to ? ”

15. On the side of the plaintiffs, the 2nd plaintiff examined himself as P.W.1 and the 1st plaintiff examined himself as P.W.2, and marked Ex.A1 to Ex.A29. On the side of the defendants, the 4th defendant examined himself as D.W.1 and one assistant in the office of the 2nd defendant examined



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himself as D.W.2. Through D.W.2, the entire files relating to eviction were presented before the Court and they were received as Ex.X1 and Ex.X2.

16. After a detailed trial, the learned trial Judge came to the conclusion that in terms of the liberty granted by this Court, the plaintiffs would have to sue only for declaration of title but they had not done so. Consequently, he came to the conclusion that since the plaintiffs had not taken any steps to establish their title though consistently their title had been denied, the suit is not maintainable and hence, dismissed the suit.

17. Aggrieved by the same, a regular appeal was preferred before the learned Subordinate Judge at Dharapuram and it was received as A.S.No.17 of 2017. Thereafter, on the creation of the Subordinate Court at Kangayam, the appeal stood transferred to the file of the learned Subordinate Judge at Kangayam and was renumbered as A.S.No.62 of 2017. After hearing both sides, the learned appellate Judge came to the conclusion that as early as 1950's, the suit schedule mentioned property had been divided into S.F.Nos.674/1C1, 674/1C2 and 674/1C3, and the plaintiffs' predecessor in title was only in enjoyment of S.F.No.674/1C, and excess land in their



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possession had been acquired by the Government for the purpose of creation of the LBP canal.

18. Therefore, the Court came to the conclusion that the claim of the plaintiffs that they owned 2 acres and 81 cents is not true. Consequently, the appeal was dismissed confirming the judgment and decree of the learned District Munsif at Kangayam.

19. Aggrieved by the same, the present Second Appeal has been presented before this Court.

20. On 07.01.2020, the Second Appeal was admitted on the following substantial questions of law :

“ (i) when the Tahsildar issued a notice treating the occupation of the plaintiff as an encroachment and when a declaration was also prayed for to make the said document as a non-est, whether the further declaration of the title of the plaintiff is necessary, as, the claim of the defendant is found to be unsustainable on the declaration of the notice issued by the Tahsildar as non-est ?



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(ii) When the Government itself is a party to the suit, claiming right over the suit property as a Government land, whether the non-production of the documents as required by the plaintiffs, even after demanding by way of the provisions contained under the Right to Information Act, whether the failure to produce the same could be drawn as against the Government ? ”

21. An interim injunction was granted restraining the Government not to interfere with the possession of the plaintiffs pending disposal of this appeal.

22. After notice had been issued to the respondents, Mr.M.Muthusamy, learned Government Pleader has entered appearance for respondent Nos.1 and 2, Ms.Hemalatha, has entered appearance for the 3rd respondent and Ms.Aadhishree, for Mr.N.Manoharan, has entered appearance for the 4th respondent.

23. Heard Mr.S.Subbiah, learned senior counsel for Ms.Elizabeth Ravi, appearing on behalf of the appellants, Mr.M.Muthusamy, learned



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Government Pleader appearing on behalf of respondent Nos.1 and 2, Ms.Hemalatha, appearing on behalf of the 3rd respondent and Ms.Aadhishree, for Mr.N.Manoharan, appearing on behalf of the 4th respondent.

24. Mr.S.Subbiah would contend that the suit having been filed after the liberty granted by this Court in W.P.No.6773 of 2009, dated 19.06.2009, the trial Court fell in error in dismissing the suit stating only a declaration of title have to be sought. He would further invite my attention to the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 in order to argue that being a Canal vesting with the Public Works Department, it is the Public Works Department which has the jurisdiction to initiate the eviction proceeding and that too only under the 2007 Act. The Tahsildar is denuded of any jurisdiction to initiate action under the provisions of the Tamil Nadu Land Encroachment Act, 1905 (Act 3 of 1905).

25. He would further add that the relief of declaration of title is not necessary when the plaintiffs have sought for a declaration that the order



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passed by the Tahsildar is null and void. He would state that it is not the mistake of the appellants that records could not be produced, as they had sought for the same from the Government in terms of Right to Information Act under Ex.A27 and Ex.A28, and still the Courts below had looked against the plaintiffs in this regard.

26. The learned counsel for the respondents would submit that the plaintiffs are encroachers of the Government land. They would state that the suit had not been filed in terms of the order passed by this Court in W.P.No.6773 of 2009, and would state that the Tahsildar had passed the eviction order after a detailed enquiry finding that the suit schedule mentioned property is a poromboke land and hence, no interference is necessary in terms of Section 100 of the Code of Civil Procedure.

27. I have carefully considered the arguments on either side and I have carefully gone through the records available.

28. Insofar as the 1st submission of Mr.S.Subbiah, that the Court below fell in error in dismissing the suit as not maintainable, I have to refer



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to Section 14 of the Tamil Nadu Land Encroachment Act, 1905. This was inserted by an amendment brought in by the Tamil Nadu Legislature under the Tamil Nadu Act 1 of 1996. In terms of this Section, no order passed by any officer or authorities or the State Government itself in terms of the provisions of the Land Encroachment Act can be called in question before any Court. Section 14 of the said Act reads as follows :

“ 14. Bar of Jurisdiction Courts :-
Notwithstanding anything contained in any law, for the time being in force, no order passed or proceeding taken by any officer or authority or the State Government under this Act shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any power conferred by or under this Act. ”

29. In the light of this bar of jurisdiction of the Civil Court, I am afraid that the plaintiffs could not have maintained a suit for a declaration that the order of eviction passed by the Tahsildar is null and void. At this stage, Mr.S.Subbiah would invite my attention to the order passed in W.P.No.6773 of 2009 to state that it was this Court which granted him a liberty to approach the Civil Court, and that order having become final is



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binding on both the plaintiffs as well as the defendants. The gist of the argument being that the Government was heard before the order was passed in the writ petition and therefore, it does not lie on the mouth of the Government to plead that the suit is not maintainable.

30. A careful perusal of the order passed in W.P.No.6773 of 2009, dated 19.06.2009, would show that this Court had permitted the 1st plaintiff to file a suit seeking declaration of his title as against the Government. This is very clear in the following terms as seen from paragraph No.3 of the order :

“ If it is the stand of the petitioner that the lands occupied by him is not a poromboke land, but, his land, the remedy open to the petitioner to go before the appropriate Civil forum to establish his right over the said land which is under dispute.”

31. This observation makes it clear that this Court had permitted the 1st plaintiff to file a suit for declaration of his title in the suit property as against the Government. It certainly did not give him a liberty to challenge the order passed under the provisions of the Tamil Nadu Act 3 of 1905



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before the Civil Court. In law, no Court including this Court can confer a jurisdiction on an authority or a Tribunal or a Court which it does not otherwise possess.

32. When the state legislature has barred the jurisdiction of the Civil Court under Section 14 of the Tamil Nadu Land Encroachment Act, 1905, to interpret the order in W.P.No.6773 of 2009 to mean that this Court had permitted the petitioner to approach the Civil Court to challenge the order of the Tahsildar is unfounded. This puts an end to the 1st argument of Mr.S.Subbiah.

33. Insofar as the 2nd submission of Mr.S.Subbiah that since the LBP canal belongs to the Public Works Department and it is the Public Works Department which has the jurisdiction to initiate the proceeding in terms of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, in particular Section 7 thereof, and not the Tahsildar is concerned, I have to refer to Section 11 of the said Act. The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 was enacted in order to provide measures to prevent and evict encroachments in water bodies which are



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under the control and management of the Public Works Department and for protection of the said tanks. Under the said Act, the Public Works Department in terms of Section 7 has been given a right to initiate eviction proceedings.

34. However, Section 11 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 makes it clear that Tamil Nadu Act VIII of 2007 is in addition to and not in derogation of any other law for the time being in force. The Tamil Nadu Land Encroachment Act has been in force from the year 1905. Section 2 of the said Act makes it abundantly clear that the revenue department can initiate steps for eviction of any person who is in unauthorized occupation with respect to lands covered under Section 2 of the said Act.

35. In terms of Section 2 of the Tamil Nadu Land Encroachment Act, the water bodies, in particular, bed of the sea, harbor, creeks, below the high water marks, rivers, streams, nalas, lakes, tanks and all back waters, canals and water courses are treated as lands in which the Government has a right, and if any encroachments are made over these areas, the revenue authorities



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have jurisdiction to initiate proceedings against the same.

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36. A combined reading of Section 2 of Tamil Nadu Land Encroachment Act (Act 3 of 1905) and Section 11 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Act 8 of 2007) makes it clear that two authorities have the jurisdiction to initiate proceedings for eviction of persons who are in unauthorized occupation of water bodies. One is the Public Works Department in terms of Section 7 of the Protection of Tanks and Eviction of Encroachment Act, 2007 and the other authority, which is empowered, is the Revenue Department in terms of Sections 6 and 7 of the Land Encroachment Act, 1905. Therefore, the argument of Mr.S.Subbiah that the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 bars the jurisdiction of the Tahsildar to initiate action under the Land Encroachment Act does not stand a moment's scrutiny.

37. Insofar as the plea that the plaintiff need not sue for declaration of title for the same has already been concluded by virtue of order passed in W.P.No.6773 of 2009, the Court had specifically stated that the petitioner



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has to sue for a declaration of his title over the suit property. Having got that relief, and not having filed a suit for title, the 1st plaintiff has nobody else to blame other than himself. Apart from this, the extract of the written statement of defendant Nos.1 to 4 above would make it clear that they had consistently taken a stand that the 1st plaintiff is not the owner of the suit property.

38. The position of law has been laid down by the Supreme Court in ***Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs and Others [(2008) 6 CTC 237]***, wherein, the Supreme Court had held in clear and categorical terms that if the title of the plaintiff is denied and a cloud is cast over it, then, the only remedy for the plaintiff is to sue for a declaration of title and for an injunction if he is in possession of the property, or sue for a declaration of title and recovery of possession, in case, he is not in possession of the same. Therefore, the order passed by the Tahsildar under Ex.A29, dated 02.03.2009, makes it abundantly clear that the Tahsildar had asserted the title of the Government over the suit schedule mentioned property and had held that the 1st plaintiff is an encroacher. Therefore, the only remedy available to the 1st plaintiff as directed by this Court in



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W.P.No.6779 of 2009 was to file a suit for title.

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39. I should add here that while Section 14 of the Tamil Nadu Land Encroachment Act bars the jurisdiction of the Civil Court with respect to the suit challenging the proceedings initiated by any authority under the Act, but it certainly does not bar a person who sets up title in himself to present a suit for a declaration of his title a property. It is in that light, I understand the order passed by this Court filed under Ex.A3. The 1st plaintiff having had abundant opportunity to amend the plaint to seek a declaration of title and having failed to do so, I am not inclined to grant the relief today, namely permitting him to file a fresh suit for title, which was the request of Mr.S.Subbiah.

40. The 1st plaintiff was given an opportunity in the year 2009 and he did not avail that opportunity for the past 15 years and therefore, I am not inclined to accept the plea that the 1st plaintiff be permitted to amend the plaint into one for a declaration of title. That would only be giving a premium to the act of the plaintiff in not taking advantage of the order granted by this Court.



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41. In the light of the above discussions, I do not find any merits in the appeal. Consequently, the Second Appeal stands dismissed. Costs through out.

42. In fine, the judgment and decree of the Court of the learned Subordinate Judge at Kangayam in A.S.No.62 of 2017, dated 19.08.2019, in confirming the judgment and decree of the Court of the learned District Munsif, Kangayam in O.S.No.168 of 2009, dated 16.03.2017, stands confirmed.

43. At this stage, I must note that the plaintiffs claiming a right over the property cannot be left without any remedy. While I held that the suit is not maintainable, I also have to take notice of fact that in terms of Section 10 of the Tamil Nadu Land Encroachment Act as against the order of the Tahsildar, an appeal lies to the District Collector with the further revision to the Commissioner of the Land Administration. The appropriate remedy for the plaintiffs would have been to prefer an appeal against the order of the Tahsildar, dated 02.03.2009, before the 1st defendant/District Collector.



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44. As the plaintiffs have been ill advised to approach the Civil Court challenging the order, dated 02.03.2009 and since I am non-suited the plaintiffs on the ground of bar of jurisdiction of the Civil Court under Section 14 of the Tamil Nadu Land Encroachment Act, I deem it appropriate to grant liberty to the plaintiffs to file an appeal before the District Collector, Tiruppur within a period of 30 days from today. To make it abundantly clear that, in case, the appeal is preferred on or before 08.08.2024, the District Collector shall entertain the appeal under Section 10 without reference to the limitation. In case, no such appeal is filed before the aforesaid date, then the benefit granted under this order will not enure to the appellants. The District Collector, prior to passing the order, shall obtain a report from the Tahsildar and also hear the 4th defendant at whose instance the entire proceedings were initiated.

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



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V. LAKSHMINARAYANAN, J.

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To

- 1.The learned Subordinate Judge,
Kangayam
- 2.The learned District Munsif,
Kangayam

S.A.No.4 of 2020
and
C.M.P.No.7026 of 2020

11.07.2024
(2/2)