



Second Appeal No.63 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.63 of 2019

Inba John Veera Reddy

.... Appellant

-Vs-

1.District Social Welfare Officer
Vellore District.

2.Warden, Adi Dravida Women Welfare
Hostel, Katpadi - 632 009.

3.The Executive Engineer
THADCO, Vellore District.

4.The Special Tahsildar
Adi Dravida Welfare, Gudiyattam.

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 11.04.2018 made in A.S.No.11 of 2016 on the file of the Principal Subordinate Judge, Vellore reversing the judgment and decree dated 14.09.2012 made in O.S.No.540 of 2009 on the file of the District Munsif, Katpadi.

For Appellant : Mr.Y.Kaja Navas

For Respondents : Mr.P.Muthusamy
Government Advocate



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J U D G M E N T

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The present Second Appeal arises out of the judgment and decree of the Court of the Principal Subordinate Judge at Vellore in A.S.No.11 of 2016 dated 11.04.2018 in reversing the judgment and decree of the Court of the learned District Munsif at Katpadi in O.S.No.540 of 2009 dated 14.09.2012.

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

2. The plaintiff, who is the appellant before me had presented a suit for permanent injunction seeking to restrain the defendants, their men, agents and subordinates from interfering with the possession of the suit schedule mentioned property. The case of the plaintiff is that, the suit schedule mentioned property originally belonged to one Ponnusamy Mudaliar. On his death, the property devolved on his sons viz., Munusamy and Venugopal . Since the plaintiff was desirous of purchasing the property, he had approached Munusamy and Venugopal for the same. The brothers agreed to alienate the property and alienated the same by way of two registered sale deeds dated 10.04.1985 and 13.05.1985. The plaintiff would further plead that on and from the date of the sale, he had taken possession of the property and in enjoyment. He would further plead that on 09.10.2000, the defendants started construction of



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compound wall around the Adi Dravida Girls Hostel, which was situated abutting the property and since this construction of compound wall was on his property, he was constrained to approach the Court.

3. Originally, the suit was filed before the District Munsif Court at Vellore and taken on file in O.S.No.1191 of 2000. Thereafter, on account of bifurcation of territorial jurisdiction and creation of Munsif Court at Katpadi, the suit stood transferred to the file of the learned District Munsif at Katpadi and it was re-numbered as O.S.No.540 of 2009.

4. On service of summons, the defendants entered appearance through the Government Pleader. The fourth defendant / Special Tahsildar, Adi Dravida Welfare, Gudiyattam filed a written statement stating that the suit schedule mentioned property was a subject matter of acquisition. He would plead that the suit property lies in S.No.348/5 of Dharapadavedu village and the total extent that was available in the said survey number was 2 acres 32 cents. The Government was desirous of providing house sites for the Adi Dravida people and therefore had initiated proceedings under the Land Acquisition Act. Accordingly, the property was acquired and an award was passed by the Land Acquisition Officer for a sum of Rs.2668/-. The said compensation amount was also received by Ponnusamy on 01.06.1960. The possession of the land was



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taken by the Government on 10.06.1960. Subsequent to the acquisition, the property was converted into Poramboke land in the revenue records. An application was made to the Director of Town and Country Planning for the purpose of conversion of the extent of 2 acres 32 cents into layout and the said layout was also approved by the Director of Town and Country Planning on 12.07.1960.

5. He would further plead that in the layout, certain portions were reserved for construction of park and playground. Since there was a need for providing hostel for girls belonging to Adi Dravida community, the hostel was constructed in the aforesaid area and this conversion was also approved by the Director of Town and Country Planning.

6. The Tahsildar would specifically deny the title of the plaintiff and he would state that the purchase made by the plaintiff was after 25 years of the acquisition proceedings had been completed and that the plaintiff has no right, title or interest over the same. He would state that the building approval that had been obtained by the plaintiff was for Survey No.345/5 and not for the suit schedule mentioned property. They would specifically allege that having obtained the building approval for S.No.345/5, the plaintiff had put up a construction over S.No.348/5. Since the plaintiff had encroached upon the



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Government Poramboke land, notice had been issued calling upon the plaintiff to hand over possession and instead of vacating the same, he had presented the suit. The specific plea was that the area which had been acquired for the Girls Hostel had been left open without construction of a compound wall and the plaintiff, taking advantage of the same had put up a construction. Hence, they sought for dismissal of the suit.

7. On the basis of these pleadings, the learned District Munsif at Katpadi framed the following issues:

1. தமிழ்நாடு நில ஆக்கிரமிப்பு திருத்தப்பட்ட சட்டம் 1/96 பிரிவு 14ன் படி இவ்வழக்கினை தீர்மானிக்க இந்நீதிமன்றத்திற்கு அதிகாரம் இல்லை என்று பிரதிவாதி தரப்பில் கூறப்படுவது சரியா?
2. வாதிக்கு தாவா சொத்தைப் பொறுத்து எதிர்மறையுடைமை பாத்தியம் என்றால் சரியா?
3. வாதி கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு வழங்கத்தக்கதா ?
4. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன ?

8. On the basis of these pleadings and issues, the parties went for trial. On the side of the plaintiff, he examined two witnesses and marked Exs.A1 to A10. On the side of the defendants, one witness was examined and he marked Exs.B1 to B6. On the basis of the oral and documentary evidence let in before



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the Court, the learned District Munsif came to a conclusion that the plaintiff was in occupation of Government land, but held that the plaintiff should be evicted only in accordance with law ie., after taking resort to the provisions of the Land Encroachment Act. On this basis, the learned Judge came to a conclusion that the plaintiff is entitled for a decree of injunction and decreed the suit.

9. Feeling aggrieved by the said judgment and decree, the defendants preferred A.S.No.11 of 2016. The learned Principal Subordinate Judge at Vellore, on the basis of the very same documents which had been filed by the parties, took a view that Ponnusamy had received the compensation and his sons Venugopal and Munusamy had fabricated the documents with an intention to deceive the Government and had sold the property to the plaintiff. The learned appellate Judge also gave a finding that the plaintiff, with an intention to defraud the Government had colluded with the said Venugopal and Munusamy. On the basis of these findings, the learned appellate Judge allowed the appeal and dismissed the suit.

10. Aggrieved by this reversing judgment, the present Second Appeal has been filed before this Court. The Second Appeal was admitted on 22.01.2019 on the following substantial questions of law:



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(1) Whether the lower appellate court is correct in law in having set aside the well considered judgment of the trial Court without having framed points for consideration as mandated under Order 41 Rule 31 of the Code of Civil Procedure?

(2) Whether the appellate Court had discharged its functions in the light of the ratio laid down in the decision reported in 2010(5) CTC 719, 2011(12) SCC 174 and 2011(4) SCC 240?

(3) Whether the judgment of the appellate court is correct in law for failure to give reasons why the appellate Court differs from the findings rendered by the trial Court?

(4) Whether the construction placed in Ex.A3 and 4 and Ex.B1 and B2 by the appellate court are correct in law?

(5) When the lower appellate court lost sight of the fact that open space reserved for park and playground had been illegally converted into a hostel contrary to the Development Control Rules and the judgment reported in 2018(5) CTC 857 is the judgment reserving the trials findings correct in law?

11. Heard Mr.Kaja Navas for the appellant and Mr.M.Muthusamy, learned Government Advocate for the respondents.

12. Since the questions are inextricably connected, the appeal was heard on all the questions of law together. Mr.Kaja Navas would make three primary submissions.



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(i) The cause of action for the suit was the construction of the compound wall by the fourth defendant and since the plaintiff is in possession of the property, he is entitled for an order of injunction.

(ii) The encumbrance certificate did not disclose the acquisition proceedings and without the knowledge of the same, the plaintiff had purchased the property and therefore he should not be penalised.

(iii) The suit property relates to two extents viz., Survey No.348/5 and Survey No.348/B and since the defendants had not proved that the entire extent of the property was acquired by the Government and since has put up a construction over the area, the lower appellate Court, without considering these factors, had erroneously allowed the appeal and dismissed the suit.

He would therefore plead that the Second Appeal be allowed and the suit be decreed and the decree of the trial Court be restored.

13. Learned Government Advocate appearing on behalf of the Government would submit that the suit for bare injunction is not maintainable. He would submit that the property having been acquired by the Government, the title vests with it and the sale deed executed by persons who had no title to



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the property is null and void, and no right, title or interest will vest with the appellant. He would further plead that there cannot be an injunction against the true owner, which the learned trial Judge has failed to appreciate, and it had been rectified by the lower appellate Court and that none of the questions of law arises for consideration in the present case in the light of Exs.B1 to B4 and therefore he would pray for dismissal of the appeal.

14. I have carefully considered the arguments of either side. I have gone through the records and perused the judgments of the Courts below.

15. A careful perusal of Exs.B1 to B4 would show that on 30.04.1960 an award had been passed under Award No.60/61 in R.C.No.1712/1959, whereby an extent of 2 acres 32 cents which stood in the name of Saranga Ponnusamy were acquired by the Government for the purpose of providing house sites for Harijans of Dharapadavedu Village. Prior to the passing of the award, a notification had been issued by the State of Tamil Nadu in the Fort St.George Gazette in Page 23 Para 1 dated 06.01.1960 taking over the lands for the purpose of providing house sites. A perusal of the award would show that the total extent of the land is 2 acres 32 cents and the registered holder was Saranga Ponnusamy. As per the old Land Acquisition Act, on the declaration that is being passed by the Government under Section 6 of the said Act followed by



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the passing of the award, the title vests with the Government.

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16. It is here that I have to consider the arguments of Mr.Kaja Navas that, though Saranga Ponnusamy is shown as the owner of the property, the compensation was received by Saranga Ponnusamy as well as by Kanniammal and Thulukkanam. He would state this would cast a doubt over whether the entire extent belonged to Saranga Ponnusamy or it belonged to two other persons also. This doubt though raised by the plaintiff himself seems very fanciful at the beginning, a careful perusal of the written statement as well as the award will make it clear that the two persons viz., Kanniammal and Thulukkanam were none else than the mortgagees of the property which had been mortgaged in their favour by Saranga Ponnusamy.

17. At the time of acquisition of land, any person interested in the land would be entitled to receive the compensation. The mortgagees being persons interested in the land, had sought for compensation and the compensation was partitioned between three persons. A sum of Rs.775/- was given to Kanniammal and a sum of Rs.200/- was given to Thulukkanam and the remaining amount of Rs.1693/- was received by Saranga Ponnusamy. The consolidated voucher for payment of compensation under the award in Award No.5/60/61 dated 30.04.1960 has been filed as Ex.B2. These two documents would show that the property had been acquired by the Government and the land owner Ponnusamy



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had also received the compensation.

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18. After having paid the compensation to the persons interested in the land, the Special Tahsildar, Adi Dravidar Welfare, Gudiyattam had applied for permission to layout the entire extent of 2 acres 32 cents, which is the larger extent of the suit schedule mentioned property and had obtained approval in L.P.No.201/1960. This approval was granted by the Director of Town and Country Planning, Government of Madras in July 1960. This is clear from Ex.B3.

19. A careful persual of Ex.B3 would show that the acquisition was for the entire extent of 2 acres 32 cents and 24 persons had been identified as beneficiaries. Each of the beneficiaries were granted 5 cents of land under the Scheme formulated by the Government. In the layout, certain portions were kept apart for park and playground for the benefit of the persons who were allotted the property under Ex.B4. The Government having become the owner of the property, had decided to convert this area into a hostel for the purpose of girls belonging to Adi Dravida community. It is clear from Para 6 of the plaint that the hostel is in existence. I am able to see from the evidence and the records that the hostel, though constructed by the Government, did not have a compound wall. Taking advantage of this situation, the sons of Ponnusamy, the erstwhile owner, had alienated the property in favour of the plaintiff.



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20. As title to the property, the plaintiff would rely upon Exs.A1 and A2 viz., two sale deeds dated 21.01.1914 and 25.02.1913 in order to claim of right over the property. He would state that the family of Ponnusamy had been in continuous possession of the property for a period of over 70 years and thereafter had sold the property. I find no difficulty in accepting the title of Ponnusamy from the period 1913 till 30.04.1960 ie., the date of passing of the award. It is only because Ponnusamy had been the owner of this extent of 2 acres 32 cents, he was paid the compensation by the Government as he was the owner. As discussed supra, once the an award is passed and Ponnusamy had also received the compensation, the title vested with the Government. Whatever right, title or interest that Ponnusamy had, stood transferred in favour of the Government. The Government had also taken possession of the same. By virtue of Exs.B3 and B4, it had not only transferred the property in favour of 24 members of the downtrodden Adi Dravida community, but also had constructed Girls Hostel converting the area earmarked for the purpose of playground and park.

21. Once the Government had become the owner of the property, Ponnusamy did not have any right. If Ponnusamy did not have any right after 30.04.1960, by no stretch of imagination can the sons of Ponnusamy viz.,



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Venugopal and Munusamy have any right to convey the said property which had been acquired by the Government in favour of the plaintiff. In other words, the sale deeds by which the plaintiff purchased the property dated 10.04.1985 and 13.05.1985 are not worth the paper on which they have been written upon. They are null and void and would not bind the Government.

22. It is here that the argument of the learned Government Advocate becomes relevant. A perusal of the written statement as well as the documents that have been filed by the defendants had cast a serious cloud over the title of the plaintiff. Yet, he had never chosen to amend the plaint into one seeking for declaration of title. Therefore, I would necessarily have to accept the argument of the learned Government Advocate that the suit itself is not maintainable.

23. Be that as it may. I will have to turn to the second argument of Mr.Kaja Navas that the acquisition of the property was not reflected in the encumbrance certificate as would be seen from Ex.X1 viz., Encumbrance Certificate summoned from the office of the Sub-Registrar. He would plead that his possession should not be interfered with. An encumbrance certificate is issued by the Registration Department with respect to any encumbrance or conveyance of the suit schedule mentioned property. The Registration Act nor do the Rules that have been framed thereunder contemplate the acquisition of



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land by the Government to be reflected in the Encumbrance Certificate. A person who purchases the property, which had been acquired 25 years earlier, should have been careful to verify with the Governmental authorities to find out if they had been a subject matter of acquisition. This is more so because a layout had been developed in the year 1960 and as seen from the exhibits filed by the Government, was adjacent to the existing village. When 24 Adi Dravida persons had taken possession of the property and had constructed houses on the same, the plaintiff should have been careful to verify from them at least as to how they had acquired possession of the property, especially when Venugopal and Ponnusamy claimed to be the owner of the entire extent of 2 acres 32 cents. The position of law is that Encumbrance Certificate does not reflect any acquisition proceedings and therefore this feeble argument of Mr.Navas would necessarily have to be rejected by me.

24. Finding himself on a sticky wicket, the learned counsel for the appellant would draw my attention to Para 21 of the judgment of the trial Court in order to hammer a point that the defendant Government had not proved that the acquisition was for the entire extent and with respect to the construction over his property. It is too well settled position of law that it is the plaintiff who has to prove the positive assertions made by him and it is not for the defendants to disprove the case. As discussed by me above, the Government had denied



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the title of the plaintiff and had produced substantial records to prove the acquisition proceedings, passing of the award, conversion of the entire extent into layouts and also handing over of possession to the beneficiaries. It is the duty of the plaintiff to prove his case and since the plaintiff has not proved that point, I would say that the learned District Munsif had misdirected himself and had rendered a finding in Para 21 that it is the duty of the defendants to disprove the case of the plaintiff.

25. Above all, the settled position of law is, there cannot be an injunction against the true owner at the hands of a person who has no right over the property. The question of granting of injunction till the plaintiff is dispossessed in accordance with law could have been considered if the plaintiff had been in possession of the property even prior to the acquisition. On the conclusion of the acquisition proceedings, the property vested with the Government. It became the owner of the property. The status of the plaintiff, who, taking advantage of the lack of a compound wall, had taken possession is no better than that of a trespasser or encroacher of the property. A trespasser, in my view, is not entitled for an injunction against the Government. All these aspects have been clearly discussed by the learned Principal Subordinate Judge at Vellore and he had come to a categorical conclusion that the plaintiff is not entitled to any relief.



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26. This takes me to the last point that has been framed in the question of law that the lower appellate court has not followed the requirements of Order XLI Rule 31 of the Civil Procedure Code. Order XLI Rule 31 is not a strait jacket formula to be applied across the board. It has been held by the Supreme Court as well as by this Court in several judgments that the entire judgment of the lower appellate Court has to be perused and if there is substantial compliance with the provisions of Order XLI Rule 31, violation of the same would not vitiate the judgment and decree. My reading of the judgment of the lower appellate court shows that the entire aspect of the case had been properly discussed by the learned lower appellate Judge and thereafter he had come to the conclusion that the appeal deserves to be allowed. Hence, this point too is rejected.

27. In fine, the substantial questions of law that have been framed are answered against the appellant and in favour of the respondents. The Second Appeal stands dismissed. Costs throughout.

06.06.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST



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To

- 1.The Principal Subordinate Judge,
Vellore
- 2.The District Munsif,

Katpadi.



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V.LAKSHMINARAYANAN, J.

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