



S.A.(MD)No.415 of 2006

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 25.09.2024**

**CORAM**

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

**S.A(MD)No.415 of 2006**

1.Tahsildar,  
Sattankulam.

2.Government of Tamil Nadu,  
represented through its  
Thoothukudi District Collector.

... Appellants

.VS.

1.Ponmani  
2.Christopher,  
Village Administrative Officer at Thailapuram,  
Pitannery Village,  
Sattankulam.

... Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 04.07.2005 passed in A.S.No. 109/2004 by the Principal District Court, Thoothukudi confirming the judgment and decree dated 28.11.2003 passed in O.S.No.44/2002 by the District Munsif Court, Sathankulam.



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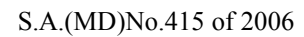
For Appellants : Mr.R.Ragavendran  
Government Advocate

For Respondents : No appearance

### **J U D G M E N T**

The first respondent is the plaintiff, the appellants and the second respondents are the defendants. The plaintiff has filed a suit for declaration, permanent injunction and for compensation of Rs.15,000/-.

2. The case of the plaintiff is that the suit property absolutely belongs to the plaintiff as ancestral property. The plaintiff is residing in the suit property. The suit property was originally bound with thorny fence. Thereafter, the plaintiff removed such fence two months ago and constructed a compound wall. Therefore, the suit property is in possession and enjoyment of the plaintiff. However, the first defendant, without any reasons, on 30.08.2002 demolished a portion of the above said compound wall worth about Rs.5,000/-.



4. The defendants filed a written statement denying the averments of the plaintiff and stated that the suit is not maintainable. The suit does not belong to the plaintiff and the plaintiff is not in possession of the same. The suit survey number 61/2 totally measuring



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1.17.0 hectare, belonged to the Government. The Government had conducted natham survey in the year 1995 and sub-divided such survey number into plots for allotting the same to persons, who were in actual possession and accordingly, it was done. Further, the vacant portion in such survey number measuring 1.04.5 hectare was divided into 51 plots and the same were respectively allotted to various persons including the plaintiff and plot No.29 was allotted. The extent of each plot is 0.01.0 ares. In the suit property, the Plot No.29 alone is in possession of the plaintiff. However, the plaintiff recently attempted to encroach all the plots allotted to various persons and in the plot allotted for pathway by raising compound wall. Therefore, the first defendant, as a Village Administrative Officer, on 30.08.2002 raised an objection for raising the compound wall, but he has not demolished the compound worth Rs.5,000/-. Further, for the plaintiff's notice, dated 23.09.2002 the defendants took steps, but the plaintiff, in the meantime, by encroaching the suit property, constructed the compound wall. As per the letter in D2/29530/1998, dated 09.05.2000 of the Commissioner of Land Revenue, the Village Administrative Officer and other officials can



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remove the recent encroachments of the Government property. Therefore, the defendants on 02.10.2002 legally removed the compound of the plaintiff. The claim of the plaintiff seeking compensation of Rs.10,000/- is not correct. Further, in view of the provisions of Land Encroachment Act, 1905 and the Act 1/96, the trial Court has no jurisdiction to entertain the suit. The plaintiff is not entitled to any relief and prayed for dismissal of the suit.

5. After completing the pleadings and framing of issues, on the side of the plaintiff, the plaintiff was examined as P.W.1 and marked 4 documents as Ex.P1 to Ex.P4. On the side of the defendants, first defendant was examined as D.W.1 and marked 5 documents as Ex.D1 to Ex.D5 and Court documents Ex.C1 and Ex.C5 were marked.

6. On considering the above said oral and documentary evidence, the trial Court partly decreed the suit for declaration of title with regard to plot No.29 measuring 0.01.0 ares and for damages of Rs.15,000/-.



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7. Aggrieved over the said judgment and decree, the defendants preferred an appeal in A.S.No.109 of 2004, on the file of the Principal District Court, Tuticorin. On hearing the arguments, considering the entire materials and re-appreciated the oral and documentary evidence, the appellate Court dismissed the appeal by confirming the judgment and decree of the trial Court.

8. Aggrieved by the said judgments and decrees, the defendants 2 & 3 have filed the present appeal.

9. At the time of admitting the present second appeal, this Court framed the following substantial questions of law for consideration:

"1) Whether the suit attracts the provisions of the Land Encroachment Act and is barred by the provision of the Land Encroachment Act?

2) Whether an encroacher is entitled to get any compensation as awarded by the Courts below when it has



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been observed by both the Courts that the plaintiff has tried to encroach upon the suit property? and

3) Whether both the Courts below are right in awarding compensation when they themselves have found that the plaintiff has not proved the locus standi to file a suit?

10. The learned counsel appearing for the appellants would submit that both the Courts below have failed to see that the suit is barred by Land Encroachment Act. Admittedly, the plaintiff has tried to encroach upon the suit property by constructing a compound wall. The trial Court has found that the plaintiff is not entitled to claim ownership over the entire suit property and he is entitled only to Plot No.29 which was allotted by the defendants. The same view has been accepted by the first appellate Court. But, both the Courts have awarded compensation for removing the illegal encroachment made by way of putting up a compound wall, which is not acceptable either in law or on facts. The defendants are empowered to remove any encroachments made upon 'Poromboke' lands. Admittedly, the suit property is a 'Natham Poromboke' land and the plaintiff has tried to



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encroach upon the suit property. Both the Courts below have failed to see that the defendants were exercising the powers vested with them under the authority of law and hence, they are not liable to pay any compensation that too, when they have removed the encroachment made upon the 'Natham Poromboke' lands allotted to poor people. Even though, the trial Court has found that the plaintiff has not come with clean hands and hence he is not entitled to the relief of declaration, but has awarded compensation for removal of illegal encroachment.

11. He further submitted that both the Courts below have failed to see that the plaintiff has not proved or produced any material to show the amount of damages caused in removing the compound walls. The Courts below awarded the compensation for damages only on the basis of the oral evidence adduced by the plaintiff and hence, is not sustainable. The trial Court has observed that the plaintiff has not proved any locus-standi to file the suit, but has partly decreed the suit. The first appellate Court has also confirmed the judgment of the trial Court without independently going into



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the merits of the case and has not even relied upon the materials available before the Court and prayed for allowing the appeal.

12. No representation for the respondents.

13. It is seen from from the contents of Ex.B1 'A' register and Ex.B5 order about the allotment of plots to the public and the plaintiff/respondent and the evidence of D.W.1, the Village Administrative Officer, the defendants/appellants' case that the suit property originally belonged to the Government as Natham Puramboke and that in the year 1995, the Government by dividing the suit property into various plots allotted plot No.29 to the plaintiff for her occupation. The plaintiff has not produced any records to show that she is in occupation of the suit property for the past several years. However, the plaintiff has produced house tax receipts in Ex.A1 for the period from 1994-95 and 1999-2000, it is clearly proved that the plaintiff has occupied the suit property in the year 1995. Therefore, the contention of the plaintiff that she is in occupation of the suit



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property for the past several years is not accepted. Therefore, the claim of the plaintiff that the suit property which is now in her occupation absolutely belongs to her is not accepted. The appellants denied the contention of the plaintiff that the appellants without notice to the plaintiff on 02.10.2002 demolished a portion of the compound of the plaintiff, but prior to that on 30.08.2002 the first defendant had demolished another portion of the compound of the plaintiff and this fact has not been specifically denied by the plaintiff. Since the suit property is a Natham Poramboke, the plaintiff cannot claim any right over the property. The suit is barred by Land Encroachment Act. Admittedly, the plaintiff has tried to encroach upon the suit property by making a compound wall. The plaintiff is not entitled to claim ownership over the entire suit property and she is only entitled to Plot No.29 which was allotted by the defendants to the plaintiff. The defendants are empowered to remove any encroachments made upon the 'Poromboke' lands and hence, they are not liable to pay any compensation to the plaintiff as they have removed the encroachment made upon the 'Natham Poromboke' lands allotted to poor people. When the Courts below found



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that the plaintiff has not proved the locus-standi to file a suit, they have no right in awarding the compensation. The trial Court has found that the plaintiff is not entitled to claim ownership over the entire suit property and is entitled only to Plot No.29 which was allotted by the defendants. The same view has been accepted by the first appellate Court. Both the Courts have awarded compensation for removing the illegal encroachment made by way of putting up a compound wall, which is not acceptable by this Court either in law or on facts when it has been found that the plaintiff has encroached upon the suit property.

14. With regard to the first substantial question of law, this Court is of the view that as per the Land Encroachment Act, the plaintiff has to proceed in the manner known to law and hence, the suit is barred by the provisions of the Land Encroachment Act as the plaintiff has filed a suit for declaration of title and for injunction and also for damages and the trial Court has granted declaration of title with regard to Plot No.29 measuring 0.01.0 ares. However, as the land in question is a Government Natham land



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and that the plaintiff has encroached the Natham land, which has not been allotted to anybody and more over, the trial Court has granted declaration of title in respect of the land in Plot No.29, which has been allotted to her and hence, the act of the plaintiff in encroaching the Government Natham land, which has been in possession of the Government and not allotted to anybody is not acceptable to this Court and hence, the first question of law is answered in favour of the appellants/defendants and as against the plaintiff.

15. With regard to the second question of law, this Court is of the view that if the rules followed under the Land Encroachment Act and proper notice has been given and proceed further, the plaintiff is not entitled for seeking any compensation. The person who has encroached upon the Government Natham Poramboke is not having any right to seek compensation. Therefore, the second question of law is answered in favour of the appellants.



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16. With regard to the third question of law, this Court is of the view that both the Courts below have found that the plaintiff has encroached upon the Government Natham land and has constructed the compound wall, however, both the Courts have ordered for compensation, which in the considered opinion of this Court is not sustainable in law as the plaintiff has been found to be a encroacher of the Government Natham land. Hence, the awarding of compensation by both the Courts below seems to unjustifiable and it will not stand in the eye of law. Hence, the substantial question of law framed at the time of admission is answered in favour of the appellants/defendants and as against the plaintiff/first respondent.

17. In view of the answer given to the three substantial questions of law in favour of the appellants/defendants, the second appeal deserves to be allowed and accordingly, the second appeal stands allowed. No costs.

Index : Yes / No

Speaking Order : Yes / No  
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To

- 1.The Principal District Court,  
Thoothukudi.
- 2.The District Munsif Court,  
Sathankulam.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**V.BHAVANI SUBBAROYAN, J.**

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