



S.A(MD)No.803 of 2005

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.12.2024

CORAM

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

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1.Krishna Thevar
2.Perumal Thevar (died)
3.Ellan (died)
4.Pappa
5.Maharasi
6.Balakrishnan
7.Valliyammal
(AA5 to 7 are brought on record as LR's of the
deceased A2 vide order dated 17.10.2024 in
CMP(MD)Nos.13596, 13597 & 13600/2024)

... Appellants

-VS-

1.Shanmugathai
2.Sankarammal
3.Saraswathi
4.Indira
5.Indirani
6.Perumal
7.Ramalakshmi
(RR5 to 7 are brought on record as LR's of the
deceased A3 vide order dated 17.10.2024 made
in CMP(MD)Nos.13612, 13613 & 13615/2024)

..Respondents



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PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree made in A.S.No.64 of 2004 dated 02.11.2004 on the file of the Sub-Court, Tuticorin reversing the Judgment and Decree made in O.S.No.257 of 1994 dated 24.02.1995 on the file of the Additional District Munsif Court, Tuticorin.

For Appellants	...	Mr.N.Tamilmani
For Respondents	...	Mr.M.R.Sreenivasan for R1 to R4 No appearance for R5 to R7

JUDGMENT

The Second Appeal has been filed against the Judgment and Decree passed in A.S.No.64 of 2004 dated 02.11.2004 on the file of the Sub-Court, Tuticorin, reversing the Judgment and Decree passed in O.S.No.257 of 1994 dated 24.02.1995 on the file of the Additional District Munsif Court, Tuticorin.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.



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3. The appellants are the defendants and the respondents 1 to 4 are the plaintiffs in the suit. The respondents 5 to 7 are the legal heirs of the third appellant/4th defendant.

4. The plaintiffs filed the suit for permanent injunction not to interfere with their enjoyment by the defendants in respect of the plaint schedule properties. The Trial Court dismissed the suit with costs. Aggrieved by this judgment and decree, the plaintiffs preferred an appeal before the Sub Court, Tuticorin. Upon consideration of evidence on record, the First Appellate Court reversed the finding of the Trial Court and decreed the suit as prayed for and granted injunction in favour of the plaintiffs. Aggrieved by this, the defendants preferred the present second appeal.

5. The case of the plaintiffs is that the plaint schedule properties originally owned by Dhalavai Estate. One Thalaimaiyan got the plaint schedule properties as a lessee and enjoyed the same. The said Thalaimaiyan died leaving behind his two legal heirs namely, Sakthivel and Ramasamy. Sakthivel had released his right from the family properties and settled at Virudhunagar. After the life time of



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Thalaimaiyan, his son Ramasamy has been paying the lease amount and enjoying the plaint schedule properties as lessee. Some period the said Ramasamy was not living with the plaintiffs. Hence, the legal heirs of the said Ramasamy i.e., wife and children, who are the plaintiffs, are enjoying the plaint schedule properties by paying rent to the Estate. The defendants without any right are interfering with the peaceful enjoyment of the plaintiffs. Hence, the plaintiffs filed the suit for permanent injunction for peaceful enjoyment.

6. The defendants contested the suit and filed the written statement. In the written statement, the plaint schedule properties having an extent of 3 acre 46 cents in S.No.133, Kaliyavoor Village, Srivaigundam Taluk, Tuticorin District originally were given to Thalaimayan under lease, is denied. He further contended that the plaint schedule properties belonged to Medai Dhalavai Estate of Seevalaperi Chathiram. The suit properties were declared as surplus land on 05.07.1981 and take possession and on 06.03.1990 the Land Ceiling Officers have assigned the land to the defendants 3 and 4. Northern 1 acre 46 cents were assigned to the third defendant and southern 1 acre was assigned to the fourth defendant. From the date of the assignment,



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the defendants 3 and 4 are in possession and enjoyment of the same.

Immediately after the assignment and in the year 1992, the defendants 3 and 4 have cut and removed Seemai Karuvel trees. In view of the assignment, the defendants 3 and 4 got title and possession and they are enjoying the plaint schedule properties. Therefore, the plaintiffs are not in possession and they have no right and title over the plaint schedule properties. Hence, the defendants pleaded to dismiss the suit.

7. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:

1. Whether the suit properties are in possession and enjoyment of the plaintiffs?
2. Whether the plaintiffs are entitled to the relief of permanent injunction?
3. To what other relief, the plaintiff is entitled?

8. Before the Trial Court, on the side of the plaintiffs, two witnesses have been examined as P.W.1 and P.W.2 and 16 documents have been marked as Ex.A1 to Ex.A16. On the side of the defendants, three witnesses have been examined as D.W.1 to D.W.3 and 6 documents



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have been marked as Exs.B1 to B6.

9. On consideration of the oral and documentary evidence adduced by the respective parties and the submission made, the Trial Court found that the plaintiffs are not entitled for permanent injunction as prayed for and dismissed the suit. Aggrieved over the same, the plaintiffs preferred an appeal before the Sub Court, Tuticorin. The First Appellate Court, upon consideration of evidence on record, disbelieved the assignment in favour of the defendants and also accepted the contention of the plaintiffs that on 04.05.1987 as per the Land Commissioner's Order, the acquisition of taking the surplus land has been stopped. Therefore, the Trial Court disbelieved the assignment in favour of the defendants and allowed the appeal by accepting the contention of the plaintiffs and decreed the suit. Aggrieved by this, the defendants filed the present second appeal before this Court.

10. While admitting the second appeal, this Court has formulated the following substantial questions of law:-

“1. In bare injunction suit, whether documents,



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which are subsequent to the suit, can be admitted in evidence?

2. Whether the proceedings under Land Ceiling Act have been completed and given effect to, so far as the suit property is concerned? "

11. The learned counsel appearing for the appellants submitted that the judgment and decree of the First Appellate Court is against the law and on facts. The documents produced by the defendants before the Trial Court have not been considered properly. The First Appellate Court has not considered the assignment made in favour of the defendants and without any valid reason, disbelieved the assignment in favour of the defendants and the amount paid by the defendants for getting the assignment properties by the defendants to the Government. He further submitted that there is no material on record to show that the property has not been taken by the Government as surplus land. The First Appellate Court has not properly considered the evidence on record and come to the wrong conclusion that the assignment is invalid. The learned counsel reiterated the other grounds made in the grounds of appeal and thus, pleaded to allow the second appeal.



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12. The learned counsel for the respondents/plaintiffs supported the judgment and decree of the First Appellate Court. He further submitted that in Honourable Supreme Court in S.L.P.No.28379 of 1994, a compromise has been arrived between the Government and the other parties, in which, the Government arrived a compromise and filed a compromise memo and accepted to keep the proceeding of taking the surplus land and also passed a proceeding of the Land Commissioner dated 04.05.1987 and directed to keep the lands stated in schedule item Nos.23 and 29 of the plaint in O.S.No.25 of 1955 on the file of the Sub Court, Tirunelveli, under Section 13 of the Tamil Nadu Land Reforms (FOL) Act, 58/61. Therefore, this land was not taken by the Government as surplus land and it is continued in the Estate and the plaintiffs are in possession and also enjoying the properties and thus, there is no ground for interference and no merit in the second appeal and thus, pleaded to dismiss the appeal.

13. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.



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14. On perusal of the records, it is noticed that the fact that the plaintiff schedule properties belonged to Medai Dhalavai Estate, Seevalaperi Chathiram is not disputed. According to the plaintiffs, they are the lease holders of the plaintiff schedule properties from the Medai Dhalavai Estate of Seevalaperi Chathiram. Their contention is that this property had not been taken by the Government by declaring as surplus land of Medai Dhalavai Estate of Seevalaperi Chathiram. According to the defendants, the plaintiff schedule property was assigned to the defendants 3 and 4. To prove the same, the defendants filed the documents Exs.B1, B2, B4, B5, assignment orders and payment for the land to the Government respectively.

15. I have considered the argument of the learned counsel for the appellants as to whether these lands have been left from taking possession by declaring it as surplus lands. I have gone through the compromise arrived by the Government in the above mentioned special leave petition in SLP No.28379 of 1994. It is noticed that after compromise, the Government accepted the proposal on the following grounds.



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“9. As regard the averments contained in the compromise proposal, the State has decided to accept it on the following grounds:

(i) that there is no loss to the Government and on the other hand the Government can immediately take over 1127 acres for distribution to the landless poor.

(ii) that in the said compromise proposal, the parties in the Special Leave Petition admitted that the said Trust is a Public Trust entitled to only 5 standard acres and they do not dispute the land given to Ramakrishna Tapovanam and also that there is no loss to the Government in the exchange of lands.

(iii) that it is also noted that the parties proposed to the compromise to avoid unnecessary litigation, expenses, time and energy with a view to maintain peace with the Government

(iv) that it is also pertinent to note that the Trust has been in existence from time immemorial prior to the commencement of the Land Reforms Act”

16. From the above, it is revealed that the Government specifically accepted that the Government can immediately take over 1127 acres for distribution to the landless poor. Therefore, the compromise reached by the Government is not totally abounding the declaration of surplus land acquired by the Government by issuing relevant G.O.(2(D)No.63, Revenue DR.1(2) Department dated 10.02.2003.



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17. Further, on considering the exemption accepted by the Government, the order of the Land Commissioner, dated 04.05.1987, it reveals that the Land Commissioner, by its order, directed to keep the lands covered by schedule 23 and 29 of the plaint in O.S.No.25/1955 on the file of the Sub Court, Tirunelveli, under Section 13 of the Tamil Nadu Land Reforms (FOL) Act, 58/61. On verification of the plaint in O.S.No.25/1955, it is noticed that in the schedule of property, item No.23 is pertaining to Ariyakulam village and item No.29 is pertaining to Kansapuram village of Seevalaperi Chathiram property. Therefore, it exposes that item No.23 and 29 pertaining to Ariyapuram and Kansapuram village property alone kept from declaring the surplus land. There is no material on record to show that the plain schedule properties namely, the land to an extent of 3 acre 46 cents in S.No.133 at Kaliyavoor village in Srivaigundam Taluk, was not taken by the Government.

18. On perusal of Exs.B1 and B4 copy of the assignment order (Form F), it is noticed that by the order dated 06.03.1990, the plaint schedule properties were was assigned to the third and fourth defendants. In pursuance of this assignment, the Government by Order dated



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24.07.1989 directed the defendants 3 and 4 to pay Rs.120/- and in pursuance of this order, the third and fourth defendants paid the said amount. To that effect, chellan and payment receipt have been produced as Ex.B2 and B5. Under these circumstances, the contention of the defendants that the plaint schedule properties have been assigned by the Government after taking as a surplus land and handed over to the defendants and the defendants 3 and 4 paid the amount for the land fixed by the Government is acceptable one. However, the First Appellate Court has not properly appreciated the evidence and without any valid reason ignored the documents and not accepted, which is unsustainable. The Trial Court rightly found that the plaintiffs were not in possession and not having title as lessees and therefore, rejected the claim of the plaintiffs and dismissed the suit. The First Appellate Court has not properly appreciated the assignment order and payment made by the defendants and failed to consider the fact that the defendants have been properly assigned the plaint schedule property by the Government and they are right over the plaint schedule property as assignee and they are in enjoyment. Therefore, in the absence of any evidence to show that the plaintiffs are in enjoyment of the plaint schedule property as a lessee, granting decree by the First Appellate Court is unsustainable and the



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same is liable to be set aside. The substantial questions of law are answered accordingly. Therefore, this Court interferes with the findings of the First Appellate Court. Accordingly, the judgment and decree made in A.S.No.64 of 2004 dated 02.11.2004 on the file of the Sub-Court, Tuticorin are set aside. The judgment and decree made in O.S.No. 257 of 1994 dated 24.02.1995 on the file of the Additional District Munsif Court, Tuticorin are confirmed. The suit in O.S.No.257 of 1994 on the file of the Additional District Munsif Court, Tuticorin is dismissed.

19. In the result, the Second Appeal is allowed. No costs.

04.12.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

1.The Subordinate Judge, Tuticorin.

2.The Additional District Munsif, Tuticorin.

3.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court, Madurai.



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V.SIVAGNANAM, J.

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Judgment made in
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