



S.A. No.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

WEB COPY

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 581 of 2011
and M.P.No.1 of 2011**

1. Dhakshinamoorthy (died)
2. Tamilselvi ... Plaintiffs/ Respondents/ Appellants 1 & 2
3. D. Dhanapal
4. J. Dhanalakshmi ... Appellants 3 & 4

*(Appellants 3 & 4 brought on record as
Legal heirs of the deceased 1st appellant
viz. Dhakshinamoorthy vide Court Order
dated 01.02.2017 made in C.M.P.
No.17504 of 2016)*

Vs.

The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Ayyenthirumaligai.

... Defendant/ Appellant / Respondent

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 22.12.2010 made in A.S. No.126 of 2010 on the file of the Principal Subordinate Judge, Salem, reversing the Judgment and Decree made in O.S. No.1285 of 2007 dated 25.02.2010 on the file of the Principal District Munsif, Salem.

For Appellants	:	Mr. T. Muruga Manickam For M/s. Zeenath Begam
For Respondent	:	Mr. C. Kalichelvan



(Learned Standing Counsel)

JUDGMENT

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This appeal has been filed by the plaintiffs challenging the judgment and decree of the lower Appellate Court, wherein the judgment and decree for declaration and injunction passed by the Trial Court in favour of the plaintiffs was set aside.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court. The brief facts leading to filing of this appeal by the appellants/ plaintiffs are as follows:

2.1 The plaintiff No.1 has instituted the suit, seeking for declaration of title, mandatory and permanent injunction for the portion of the properties in T.S.No.33 and part of S.F.No.49/12 of the Block 24 Ward U of Salem Corporation to the extent of 0.272.2 square meters, out of 0.48 cents of land in S.F.No.49/12, which was purchased by him under sale deed dated 12.11.1980. Subsequently, he had built tile roof building for Engineering Works in the name of D.S. Engineering along with electricity capacity of 3 HP/ 4 KVA, after obtaining permission from the department concerned. The plaintiff No.1 has been in



peaceful possession of the suit property till the year 2005. He came to know about the acquisition of nearby lands by the Housing Board and on 27.02.2005, the Special Tahsildar of the Housing Board with the help of his subordinates entered unlawfully into the plaintiff's land, damaged the machineries and his property. Aggrieved over the same, the plaintiff No.1 filed writ petition in W.P.No.5458 of 2006 before this Court seeking direction for payment for the damages caused to him and the same was disposed on 27.02.2006 with a direction to the plaintiffs to work out their remedy in the Civil Court. Subsequently, a notice was issued by the plaintiffs to the defendant on 01.08.2007, claiming compensation for a sum of Rs.5,61,000/- and a survey was also conducted by the defendants without properly issuing notice. The plaintiff served legal notice to the defendant on 04.10.2007 and the same was replied by a notice dated 07.10.2007. The plaintiff further averred that, the defendant continuously trespassing and claiming title over the plaintiff's properties, hence, they have come forward with the suit of declaration and permanent injunction.

2.2 The defendant has filed written statement stating that they have not damaged any property of the plaintiffs and as per the scheme, formulated by the Tamil Nadu Housing Board (TNHB hereinafter), the lands were acquired by the Government as per the G.O.No.888 dated 11.07.1980, published on 30.07.1980



and notified under Section 4(1) to an extent of 42.22 acres situated in S.F.No.1/1/C2 and 49/3. Award also passed on 11.06.1998 in Award No.1/98/99.

The possession of lands situated in S.F.No.49/10, 49/11B, 49/12B and 49/13B were also taken on 03.01.2001, after following necessary procedures. The plaintiff's land was never acquired by the defendant. The plaintiffs had encroached the acquired property of the defendant, which is situated in S.F.Nos.49/12B2, and possession was taken by the defendants with the help of Police officials.

2.3 The Trial Court after considering the pleadings and submissions framed necessary issues and after considering the Inspection report of the subject property filed by the learned Advocate Commissioner, decreed the suit, stating that the plaintiffs are the absolute owners of the suit property, consequently, granted injunction as prayed for.

2.4 Aggrieved over the decree and judgment of the Trial Court, the defendant filed an appeal before the Principal Subordinate Court, Salem. The lower Appellate Court after considering the submissions and evidence placed on record, held that the identity of the property has not been properly established and by taking advantage of newly allotted survey numbers, the plaintiffs were



attempting to claim ownership for the portion of the lands acquired by the Housing Board, consequently set aside the decree and judgment of the Trial Court and dismissed the suit filed by the plaintiffs.

3. Aggrieved over the judgment and decree of the lower Appellate Court, the plaintiffs have filed this appeal.

4. This Court after considering the representation on both sides, while admitting the appeal, framed the following substantial question of law:

a) Whether the judgment of the lower Appellate Court is vitiated in that it has misinterpreted Ex.B.2 - Award and Ex.B.3 - Possession certificate to render a finding, that the suit property was also the subject matter of acquisition?

b) To what relief?

5. The learned counsel appearing for the appellants/ plaintiffs submits that, that the plaintiff's vendor namely Y.K. Samba Moorthy purchased the property to the extent of 0.48 cents of land in S.F.No.49/12, as per Ex.A.1 - Sale deed dated 07.05.1964. Subsequently, the plaintiff purchased 2892 sq. ft. described as plot No.23 of Mehtha Nagar, which is comprised in S.No.49/12, out of total extent of 0.48 acres. The old survey no. 49/12 been changed into several



survey numbers and the property purchased by the plaintiff has been sub divided into S.Nos.49/11-A part and 42/12-A part, further re-numbered as Town Survey

No.33 to the extent of 0.2725 square meters. It is also admitted by the defendant that this land was not acquired, however, they have trespassed and removed the plaintiff's building situated in 49/12-A and also taken possession of the same, stating that the same is an acquired property. He further submitted that the Trial Court, after appreciating the evidence adduced on the side of the plaintiffs, decreed the suit. The lower Appellate Court has interfered in the judgment of the Trial Court on the ground that the land in T.S.No.33, belongs to the Housing Board and the plaintiffs are trying to take over the property of the Housing Board, though, there is no such pleading made by the defendant. Therefore, prays to set aside the judgment and decree of the lower Appellate Court and confirm the judgment and decree of the Trial Court.

6. Per contra, the learned Standing Counsel for the Housing Board submits that on the basis of the revenue records and the award passed by the Housing Board in the year 2005, the lower Appellate Court rightly appreciated the evidence placed on record and held that the disputed property is not in S.F.Nos.49/11-A and 49/12-A, and the plaintiffs have actually encroached some portion of the lands in S.F.Nos.49/12B and S.F.No.49/13B. He further submitted



that the lower Appellate Court has also held that the plaintiffs are trying to take possession of the lands in T.S.No.33/2 by stating that the entire lands in T.S.No.33 belongs to them. He further submitted that the plaintiffs can only claim right over the property in T.S.No.33/1, which is corresponding to the S.F.Nos.49/12-A part and 49/11-A part, hence prays to confirm the judgment and decree of the lower Appellate Court.

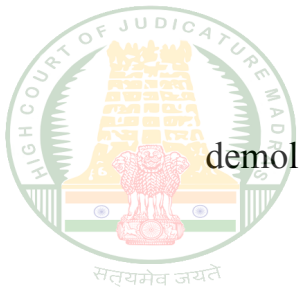
7. I have considered the submissions made on both sides and perused the entire materials available on record.

8. Admittedly, the plaintiffs have purchased the lands to the extent of 0.48 acres as per Ex.A.2 - sale deed and the plaintiffs claim that they had been in peaceful possession and enjoyment of the purchased portion for a long period. In the year 1983, the Housing Board has implemented a scheme to acquire the lands to the extent of 42.22 acres of Bodinaickenpatty village, Salem Taluk. At the time of acquisition, it seems that the S.F.No.49/12 had been sub divided into several survey numbers. Some of the lands were acquired by the Housing Board by due process and award was also been passed on 11.06.1998. This award shows that, newly subdivided numbers 49/11B, 49/12B, 49/13B along with other survey numbers were acquired and compensation also fixed. The extent of land acquired



in S.No.49/11B is 0.12 acres, S.No.49/12B is 0.24 acres, 49/13B is 0.27 acres. In page No.9 of the award (Ex.B.2) also shows that, 0.03 acres of land in S.No.49/12B, 0.11 acres in S.No.49/11B were excluded and decided to further subdivided as S.Nos.49/12B(2), 49/11B(2), respectively. On careful analysis of the Exs.A1 and A.2 - sale deeds, it reveals that the plaintiffs purchased 2892 square feet of land in S.F.No.49/12 i.e., without subdivision of survey number, however, Ex.A.2 reads that the plaintiffs purchased the land by describing their property as plot No.23 of Mehtha Nagar. However, they have not purchased any lands in S.F.Nos.49/11-A and 49/12-A. The plaintiffs have also relied on Ex.A.4- True Copy of the TSLR Registration for T.S.No.33, which shows that T.S.No.33 correlates with S.F.Nos.49/11-A part and 49/12-A part. Further, Ex.B.5 - extract of TSLR Registration shows that S.F.No.33 was again sub-divided into S.F.Nos.33/1 and 33/2.

9. The learned counsel for the plaintiffs relied on the Ex.B.5 - survey sketch and stated that the plaintiffs have originally in possession of 0.272 square meters and to clarify the ground situation, on their request, the lower Court appointed Advocate Commissioner to inspect the subject land and the report of the Advocate Commissioner is marked as Ex.C.1. It shows the physical feature of the land in T.S.No.33 and revealed that a portion of the building alleged to be



demolished by the defendant.

WEB COPY 10. Now, the question to be decided before this Court is to identify exactly the land purchased by the plaintiffs. On careful reading of the title deeds shows that, the plaintiffs have purchased 2892 square feet of the land in S.F.No.49/12. The total extent of the land in S.F.No.49/12 is 0.48 acres, which has been converted into housing plots and the lands purchased is described as plot no.23. The said plot no.23 has following boundaries: (i) 30 feet road on its southern side, (ii) plot no.22 on the west side, (iii) plot no.24 on the east side and (iv) remaining portion of land in S.F.No.49 is on northern side, however, the plaintiffs have not produced the actual layout of the said Mehtha Nagar, to show the location of their exact land, i.e., plot no.23 purchased by the plaintiffs.

11. The Trial Court based on the fact that the lands in S.F.Nos.49/12-A part and 49/11-A part, which has been re-numbered as T.S.No.33, has held that the subject land has not been acquired by the Housing Board, thereby, decreed the suit, as prayed for by the plaintiffs. Whereas, before the lower Appellate Court, the defendant - Housing Board reported that the T.S.No.33 is not having the extent of 0.272 square meters and also the lands in the said T.S.No.33, does not entirely belongs to the plaintiffs. The observation of the Trial Court that S.F.Nos.49/12A



and 49/11A is converted into T.S.No.33, is based on the Column IV of the TSLR Register. But Exs.B.4 and B.5 were not produced before the Trial Court and there is no mention about the land in S.F.Nos.49/12A and 49/11A, there is no correlation of plaintiff's land, which is purchased as plot no.23 in S.F.Nos.49/12. Without producing the actual layout and without correlation of the documents, the Trial Court has decreed the suit.

12. Ex.B.5, marked by the Housing Board shows that the T.S.No.33 has been further sub-divided into S.F.Nos.33/1 and 33/2 and the S.F.Nos.49/11B(1) and 42/12B(1) are in possession of the Housing Board. The field map of S.F.Nos.33/1 and 33/2 was also produced before the lower Appellate Court, wherein it clearly revealed that the land in T.S.No.33 has been sub-divided. The lower Appellate Court in the judgment has recorded its finding that the award No.1/98-99 dated 11.06.1998 shows that the lands in S.F.Nos.49/10B, 49/11B, 49/12B, 49/13B, 49/9B(2)/ 49/10B, 49/11B were all acquired. The Exs.C.1 and C.2 i.e., the Commissioner's Report and plan only show that the plaintiff's property situated in S.F.Nos.49/12-A and 49/11-A. The lower Appellate Court has raised a doubt, whether the plaintiff's vendor was having right to sell the lands to the extent as mentioned in Ex.A.2. The lower Appellate Court, after verifying Ex.A.1, Ex.A.2 and Ex.B.2 - Town Survey Register come to a conclusion that the plaintiffs



have not been able to prove the ownership of the lands in T.S.No.33/2.

WEB COPY 13. As stated in earlier paragraph, the Ex.B.2 - award shows that the lands in S.F.No.49/12B, out of 0.27 acres, award has been passed for 0.24 acres, and 0.03 acres of land were not acquired. Further, the lands in S.F.No.49/12B has been sub-divided into S.F.Nos.49/12B(1) and 49/12B(2). The lands in S.F.No.49/11B is to the extent of 0.12 acres and the compensation has been paid to 16 persons. Similarly, the compensation has been paid to 8 persons, who are the registered owners of the land to the extent of 0.24 acres in S.F.No.49/12B. The award also shows that, after the lands were sub-divided by the Housing Board, the compensation also been paid to the owners of the acquired land. Ex.B.4 - Town Survey Register shows that the TNHB had taken possession of lands from Government, after passing of award. The award makes it clear that the lands in S.F.Nos.49/11-A and 49/12-A were not acquired. Further, as per Ex.A.1 - sale deed, the plaintiffs have purchased land to the extent of 2892 square feet, however, there is no document to show whether, the plaintiffs were in possession of such extent of land, thereby, the plaintiffs have failed to prove their case that they were in possession of the land to the extent of 2892 square feet in S.F.Nos.49/11-A and 49/12-A. Therefore, without any proof of the possession and documents to correlate the land, the plaintiffs are not entitled to claim that



they were in possession of 2872 square feet of land in T.S.No.33.

WEB COPY 14. The defendant have come with the case that the total extent of lands in S.F.Nos.33/1 and 33/2 are of 0.272 square meters, whereas the plaintiffs claim that the entire 0.272 square meters belongs to them, which is against Ex.B.5 - TSLR Register, issued after the acquisition proceedings. The Ex.B.5 also shows that the S.F.Nos.49/11-B part and 49/12B-2 part in T.S.No.33/1 comprises of land to the extent of 0.173 square meters, the lands in S.F.Nos.49/11B(2) part and 49/12B(2) covered in T.S.No.33/2 comprises of land to the extent of 0.99.5 square meters. This has not been properly clarified by the plaintiffs and they had also failed to examine any of the Revenue Officials to clarify, on what basis the lands were sub-divided and how they claim declaration for the total extent of 0.272 square meters of land, which includes the portion of the land acquired by the defendant.

15. Even though, an attempt was made by the plaintiffs, by examining the Special Tahsildar, who has initiated the acquisition proceedings, the facts regarding non-issuance of notice to the plaintiffs (or) issuance of notice with regard to the land acquisition to the plaintiffs were alone elicited from him. This evidence is no way helpful to the case of the plaintiffs, since the burden is on the



plaintiffs to probablise their case that they have purchased the land, which is presently comprised in T.S.No.33 to the extent of 0.272 square meters or the lands

WEB COPY in T.S.No.33/2.

16. The lower Appellate Court has rightly appreciated the evidence placed on record and held that the plaintiffs have attempted to claim the lands, which does not belongs to them. Further, the plaintiffs have purchased plot no.23 as per Ex.A.1 - sale deed, and they could not rely upon the sale deed alone to contend that they were in possession of 2892 square feet and the same belongs to them. Their failure to correlate their land with the entire lands described in T.S.No.33 leads to a conclusion that they failed to probablise their case. Contrarily, by marking Award passed in Exs.B.2 and B.4, the defendants able to probablise their case that, portion of land comprised in T.S.No.33/2 was acquired and possession was also taken by them. Since, the plaintiffs failed to prove their case, the declaration of suit filed by the plaintiffs is liable to be rejected. This Court finds there is no misinterpretation of Exs.B.2 and B.4 as well as the other revenue records, including the TSLR Register, therefore, the lower Appellate Court has rightly set aside the judgment and decree of the Trial Court and this Court finds no interference in the same. Accordingly, the substantial question of law is answered.



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K. RAJASEKAR, J.

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17. Accordingly, this second appeal is dismissed, the judgment and decree of the lower Appellate Court is hereby confirmed. Consequently, connected miscellaneous petition stands closed. No cost.

25.04.2025

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Principal Subordinate Judge, Salem.
2. The Principal District Munsif, Salem.
3. The Section Officer,
VR Section,
High Court, Madras.

S.A. No.581 of 2011