(2010) 06 MAD CK 0273

Madras High Court

Case No: S.A. No. 668 of 2007 and M.P. No. 1 of 2007

State of Tamil Nadu and Others	APPELLANT
Vs	
Nagarajan	RESPONDENT

Date of Decision: June 17, 2010

Acts Referred:

- Land Encroachment Act, 1905 - Section 14, 6, 7

Citation: (2011) 256 MLJ 115

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: R. Revathi, for Addl. Govt. Pleader C.S, for the Appellant; S. Sounthar, for the Respondent

Judgement

M. Jaichandren, J.

This second appeal has been filed against the judgment and decree, dated 24.4.2006, made in A.S. No. 31 of 2006, on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree, dated 19.1.2006, made in O.S. No. 404 of 2004, on the file of the Additional District Munsif Court, Mayiladuthurai.

2. The Defendants in the suit, in O.S. No. 404 of 2004, are the Appellants in the present second appeal. The Plaintiff had filed the suit praying for a decree of permanent injunction restraining the Defendants 2 and 3 therein from, in any way, causing interference in the Plaintiffs possession and enjoyment of the suit property and to pass a decree for mandatory injunction directing the Defendants 2 and 3 to restore back the building, which had been demolished, to its original position, as it stood prior to 31.12.2003, within a period fixed by the Court and for costs.

3. Based on the pleadings of the parties to the suit, the trial Court had framed the following issues for consideration:

1. Whether the Plaintiff is entitled for permanent injunction against the Defendants 2 and 3 as sought for?

2. Whether the Plaintiff is entitled for the relief of mandatory injunction, as sought for?

3. To what other relief is the Plaintiff entitled to?

4. The trial Court, by its judgment and decree, dated 19.1.2006, made in O.S. No. 404 of 2004, had decreed the suit, as prayed for by the Plaintiff and had granted three months time for implementing the decree of mandatory injunction. The case of the Plaintiff before the trial Court was that he is the absolute owner of the suit property, having purchased the same, under a registered sale deed, dated 20.10.1991, marked as Exhibit A-1 and that he is in possession and enjoyment of the suit property, from the date of its purchase. The Plaintiff had further contended that he had put up a pucca RCC terraced building in the suit property. The second and the third Defendants and their officers had trespassed into the suit property and had demolished the building thereon stating that the suit property is a road poramboke.

5. The trial Court had also found that the Plaintiff had contended that the suit property is not a road poramboke, as it had been purchased by the Plaintiff for valuable consideration. It had also been found that the main contention of the Defendants is that the suit property is a road poramboke and that the Plaintiff is an encroacher. Therefore, after the issue of due notice calling upon the Plaintiff to remove the encroachment, the encroachment had been removed as per law. The Defendants had marked Exhibit B. 1, a copy of the ''A'' register and Exhibit B.2, the plan.

6. It had also been stated that the Respondents and their men had entered the suit property and had demolished the concrete building therein, without issuing a proper notice to the Plaintiff, in accordance with the relevant provisions of law. The Defendants should have issued a notice, under Sections 6 and 7 of the Land Encroachment Act, 1905, even if it was their claim that the property in question belonged to the Government. Therefore, the action taken by the Respondents, to enter the suit property and to demolish the building therein, is illegal and void. The Respondents should, therefore, be issued with the direction to restore the building to its earlier position as it was before it had been demolished, on 31.12.2003.

7. It is the case of the Respondents that the suit property is a Government land, as entered in the adangal and in the ''A'' register. The allegation that the Plaintiff is in possession of the property for more than 100 years is not correct. If a person has illegally put up certain constructions in the land belonging to the Government it would not vest any right or title in the property concerned. Since the encroachment was on a land forming part of the highways, the building put up by the Plaintiff therein had to be demolished. At the time of the removal of the encroachment, the Tahsildar, the Surveyor, as well as the Firka Surveyor had measured the property

and had found the extent of encroachment made by the Plaintiff. Before the removal of the encroachment, the surveyor and the Tahsildar had also informed the Plaintiff about the encroachment and had asked her to remove the encroachment, within a period of one month. Since the encroachment had been removed only in accordance with the provisions of law and by following the principles of natural justice, the claims made by the Plaintiff are unsustainable, as they are devoid of merits.

8. Based on the averments made on behalf of the parties concerned and in view of the evidence available on record, the trial Court had decreed the suit, as prayed for by the Plaintiff. The trial Court had found that there was no documentary'' evidence produced on behalf of the Respondents to show that the notice had been served on the Plaintiff calling upon him to vacate the property in question and to remove the encroachment. Further, it had been admitted by D.W.1 that the Plaintiff had been informed, only, orally and that she had refused to comply with the directions issued by the Respondents. The trial Court had come to the conclusion that the claim of the Respondents that, when a notice was attempted to be served on the Plaintiff, he had refused to receive the same cannot be sustained. Since the evidence of D.W.1 was unsustainable in nature, the claim of the Respondents that, notices under Sections 6 and 7 of the Land Encroachment Act, 1905, had been issued to the Plaintiff cannot be accepted. D.W.2 had admitted, during the cross examination, that no notice under Sections 6 and 7 of the Land Encroachment Act, 1905, had been issued to the Plaintiff before he was evicted from the suit property. Further, D.W.2, had admitted that he had no written order from the higher officials. In such circumstances, the trial Court had decreed the suit, as prayed for by the Plaintiff and had granted three months time to the Respondents to restore the building, which had been demolished by them, on 31.12.2003.

9. Aggrieved by the said judgment and decree of the trial Court, dated 19.1.2006, the Defendants had filed the first appeal before the Principal Subordinate Court, in A.S. No. 31 of 2006. The first Appellate Court had framed the following points for consideration:

(1) Whether the Plaintiff is entitled to the relief of permanent injunction as against the second and the third Respondents?

(2) Whether the Plaintiff is entitled to the relief of mandatory injunction, as prayed for by him.

(3) What other reliefs the Plaintiff is entitled to?

10. On appreciating the evidence available on record and in view of the submissions made by the learned Counsels appearing on behalf of the Appellants and the Respondent in the first appeal, the First Appellate Court had confirmed the judgment and decree of the trial Court by its judgment and decree, dated 24.4.2006, made in A.S. No. 31 of 2006.

11. The First Appellate Court had found, from the exhibits marked as Exhibits B-1 and B-2, which is the ''A'' register and the plan, respectively, that the suit property belongs to the Government. However, as no proper notice had been given to the Plaintiff under the relevant provisions of the Land Encroachment Act, 1905, the action of the Defendants in entering the suit property and in demolishing the building therein is contrary to law. In such circumstances, the first Appellate Court had confirmed the judgment and decree of the trial Court, dated 19.1.2006, made in O.S. No. 404 of2004.

12. The Appellants in the first appeal, in A.S. No. 31 of 2006, who are the Defendants in the suit, in O.S. No. 404 of 2004, have filed the present second appeal raising a number of questions, as substantial questions of law. It has been contended that both the Courts below had failed to note that the property in question belonged to the Government and therefore, the Plaintiff/Respondent has no right to encroach upon the said property and to put up the construction therein. The Courts below had failed to note that the land upon which the Respondent had encroached belongs to the highways department and therefore, it is causing inconvenience to the public. The Courts below had also failed to note that sufficient notice had been given to the Respondent to vacate the suit property and to remove the encroachment. As such there is no violation of the principles of natural justice on the provisions of the Land Encroachment Act, 1905. Further, the Courts below had failed to note that, as per Section 14 of the Land Encroachment Act, 1905, the Civil Court has no jurisdiction to entertain the suit.

13. The learned Counsel appearing on behalf of the Respondent has relied on the following decisions in support of his contentions:

1. B.M. Habibullah v. State of Tamil Nadu AIR 1994 Mad 222 : (1994) 1 MLJ 229;

2. V. Arunagiri and Others Vs. The Divisional Engineer and Another,

14. In view of the submissions made by the learned Counsels appearing on behalf of the Appellants, as well as the Respondent and in view of the records available, it is clear that there is no dispute with regard to the fact that the property in question belonged to the Government and that the Respondent is an encroachertherein. The Courts below have come to the conclusion that no notice had been issued to the Respondent, who is the Plaintiff in the suit, in O.S. No. 404 of 2004, as per the provisions of the Land Encroachment Act, 1905. In such circumstances, the trial Court, as well as the first Appellate Court had decreed the suit in favour of the Respondent. However, the decree passed by the Courts below, with regard to the mandatory injunction directing the Appellants to restore the building in the suit property, as it was, prior to 31.12.2003, ought to be modified.

15. Once it is admitted that the suit property belongs to the Government the only substantial issue that has to be decided is whether due notice had been issued by the Appellants to the Respondent, in accordance with the provisions of the Land

Encroachment Act, 1905. Both the Courts below had concurrently found, based on the evidence available on record, that no notice had been issued by the Appellants to the Respondent, as contemplated by law. As such, the judgment and decree of the Courts below, insofar as it relates to the grant of permanent injunction in favour of the Respondent is confirmed. However, the decree for mandatory injunction granted by the Courts below is set aside, as it is found that the restoration of the building by the Appellants to its earlier position, as it was existing before 31.12.2003, cannot be implemented by the Appellants unless sufficient evidence was made available before the Courts below, with regard to the value, the condition of the building and other related aspects. In fact, it would have been open to the Respondent to file a suit for damages by showing the value of the building, said to have been demolished by the Appellants, in the manner known to law. It is also made clear that it would be open to the Appellants to evict the Respondent by following the procedures established by law, including the provisions of the Land Encroachment Act, 1905. Accordingly, the judgment and decree of the Courts below stands modified, as noted above. The second appeal is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.