

(2011) 10 MAD CK 0101

Madras High Court (Madurai Bench)

Case No: S.A. (MD) No. 864 of 2010 and M.P. (MD) No. 1 of 2010

Murugammal
and.Arasammal

APPELLANT

Vs

Arulmigu Subramaniya
Temple and The State
of Tamil Nadu

RESPONDENT

Date of Decision: Oct. 19, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Constitution of India, 1950 - Article 136
- Land Acquisition Act, 1894 - Section 54

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: A. Arumugam, for the Appellant; K. Sekar for R.1, Mr. Kumar, Additional Govt. Pleader for R.2, for the Respondent

Final Decision: Dismissed

Judgement

1. This second appeal is focussed by the plaintiffs animadverting upon the judgment and decree dated 22.02.2010 made in A.S.No.20 of 2009 on the file of the learned Sub Judge, Valliyoor, confirming the judgment and decree dated 15.11.2008 made in O.S.No.Unregistered of 2008 in C.F.R.No.4628 of 2008 on the file of the learned Principal District Munsif, Valliyoor.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation, avoiding discursive delineation, of the relevant facts absolutely necessary and germane for the disposal of the second appeal, would run thus:

The plaintiffs who are the appellants herein, filed the suit seeking the following reliefs:

(a) To pass a permanent injunction restraining the 1st defendant from collecting rent in respect of 1st Schedule properties and its parts of properties.

(b) To declare that the awards passed on 31.07.2002 and 27.09.2002 is null and void and consequentially pass a permanent injunction restraining the defendants 1 and 2 not to interfere with the possession of the plaintiff and decree for costs." (extracted as such).

4. Whereupon the trial Court before numbering it, rejected the plaint.

5. Being aggrieved by and dissatisfied with the same, the plaintiffs filed the appeal for nothing but to be dismissed.

6. As against which, the present second appeal has been filed.

7. The learned Counsel for the plaintiffs would submit that the plaint ought not to have been rejected even before numbering it and ordering summons to the other side; that the plaint cannot be rejected in part; that it is for the plaintiffs to establish their case and that both the Courts below failed to take note of the relevant provisions of law while passing orders. Accordingly, he suggested the following substantial questions of law:

1) Whether the plaint can be rejected in part while exercising jurisdiction under Order VII, Rule 11 C.P.C?

2) Whether the Courts below are legally wrong in rejecting the plaint under Order VII, Rule 11 C.P.C., holding that the suit is barred by the provisions contained in Land Acquisition Act, 1894, when even according to the defendants only second scheduled properties were the subject matter requisition and the plaint first scheduled properties are no way connected with the alleged land acquisition proceedings?

3) Whether the Courts below are legally wrong in coming to the conclusion that the persons who are not a party to the land acquisition proceedings cannot maintain a suit for declaration injunction in respect of the properties covered under land acquisition proceedings?

4) Whether the Courts below are legally wrong in coming to the conclusion that the presence of the general trustee as a party to land acquisition proceedings will prevent the Kattalai Trustee and the persons claiming under him from claiming the relief of declaration and injunction in a civil suit in subsequent proceedings?" (extracted as such)

8. The learned Counsel for the first defendant would argue that the lower Courts were perfectly right in rejecting the plaint for the reason that as against the land acquisition proceedings, no civil suit would lie and in such a case, no interference in second appeal is required.

9. I would like to fumigate my mind with the following decisions of the Honourable Apex Court:

(i) [Hero Vinoth \(minor\) Vs. Seshammal](#), .

(ii) [Kashmir Singh Vs. Harnam Singh and Another](#), .

(iii) StateBank of India and others v. S.N.Goya reported in 2009 1 L.W. 1.

10. A plain reading of those precedents would reveal and demonstrate that u/s 100 of the Code of Civil Procedure, Second Appeal cannot be entertained, unless substantial question of law is involved.

11. My learned Predecessor while admitting the second appeal, framed the following substantial questions of law:

1. Whether the plaint can be rejected in part while exercising the jurisdiction under Order VII Rule 11 of Civil Procedure Code?

2. Whether the Lower Appellate Court has committed an error in law in giving a finding as to the correctness or otherwise of the allegation made in the plaint and based on such finding rejecting the plaint?

12. Keeping in mind the aforesaid dictum of the Honourable Apex Court, I proceed to analyse and scrutinize the case in the second appeal.

13. I would like to reframe the substantial questions of law as under:

1. Whether both the Courts below were justified in rejecting the entire plaint in view of the fact that the second prayer concerning the land acquisition proceedings was found out to be untenable?

2. Whether there is any perversity or illegality in the judgments of both the Courts below?

14. At this juncture, I would like to recollect the decision of the Honourable Apex Court in [Laxmi Chand and others Vs. Gram Panchayat, Kararia and others](#), . An excerpt from it, would run thus:

2.... It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification u/s 4 and declaration u/s 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made u/s 11 as envisaged thereunder. The dissatisfied claimant is

provided with the remedy of reference u/s 18 and a further appeal u/s 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated u/s 48 requires to be adhered to. If possession is taken, it stands vested u/s 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court.

15. It is, therefore, clear that even if a real owner was not given with notice or compensation, the remedy for him is to file a suit for recovery of his share of the compensation from the person who obtained such compensation from the Government. Therefore, it is crystal clear that the second prayer is apparently and axiomatically untenable and to that much extent, both the Courts below were right in their approach in considering the matter and giving their finding relating to its untenability.

16. Now, the core question arises for consideration is as to whether in respect of the first prayer alone, the suit could be proceeded further. The Courts are always expected to be benevolent towards the litigant in enabling him to get processed his claim before the Court. Time and again, this Court as well as the Honourable Apex Court highlighted that liberty should be given to the plaintiff to get the plaint amended suitably, so that he could process further his apparently tenable reliefs.

17. No doubt, the first relief is virtually for bare injunction without any prayer for declaration.

18. Now, the learned Counsel for the plaintiffs would appropriately and appositely, convincingly and legally, put forth before this Court that the plaintiffs might be given the liberty to add necessary declaratory prayer and also to include consequential reliefs, niggard of and de hors the second relief which it was consistently held as untenable.

19. I could see considerable force in his submission. Hence, in these factual matrix, it is not the question of rejecting the part of the plaint and entertaining the remaining part that arises for consideration. It is a matter where one of the reliefs turned out to be untenable and it could always be deleted and the plaintiffs could modify the plaint so as to bring it within the parameters of law, for which there could be no legal embargo at all.

20. Hence, the substantial questions of law are answered accordingly and the total rejection of the plaint by the Courts below while giving correctly the finding relating to the

second prayer, is set aside. The plaintiffs are given liberty to take return of the plaint from the lower Court and represent it with suitable amendments within a period of one month thereafter, whereupon the trial Court should number the same if it is otherwise in order and process the same purely on merits untrammelled and uninfluenced by any of the observations made by this Court in this second appeal.

21. In the result, the second appeal is partly allowed to the extent indicated above. Consequently, the connected Miscellaneous Petition is closed.

22. No costs.