
(2017) 03 MAD CK 0033
In the Madras High Court
Case No : 86 of 2006

Ranjene Venkatraman

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

[Tamil Nadu Land Encroachment Act, 1905](#), Section 14

Citation : (2017) 03 MAD CK 0033

Hon'ble Judges : C.V.Karthikeyan

Bench : SINGLE BENCH

Advocate : C.V.Karthikeyan

Judgement

1. Appeal Suit filed against the Judgement and Decree of the learned Principal District Judge, Tanjore in O.S.No.66 of 2004, dated 20.10.2005.

2. The plaintiff is the appellant. The plaintiff had filed original suit, originally before the Sub Court at Kumbakonam, in the year 1996 and

subsequently, transferred in view of increase in pecuniary Jurisdiction to the Court of the Principal District Judge at Tanjore and re-numbered as

O.S.No. 66 of 2004. The said suit was filed seeking a Judgement and Decree against the defendants for permanent injunction from interfering with

the plaintiff's possession and for damages for a sum of Rs.5,80,000/- together with interest and costs.

3. The Plaintiff is a Medical Practitioner and along with her husband, who is also a Medical Practitioner had been running a nursing home by name

Ramakrishna Nursing Home at Number 27, 27/A and 28 Mothilal Street, Kumbakonam in T.S. Number 997 and T.S. No. 1021/2. She claimed

that the building had been constructed according to the plan sanctioned by the 6th defendant , the Municipality, Kumbakonam. The Nursing Home

has been running from the year 1999 and consists of a consulting room, labour ward, scanning room, intensive care unit, dispensary and

consultation rooms in the ground floor and 14 rooms with patients bed and operation theater in the first floor and a residential portion in the second

floor. It had been stated that nearly 100 out-patients and 10 in-patients attend the Hospital every day.

4. It had been further stated that the plaintiff purchased the land in T.S.No. 997, by registered sale deed dated 24.06.1987. According to the

document, the measurement of the land in T.S.No. 997 was to a length of 198 feet North to South and 33 feet East to West on both sides.

5. The plaintiff had also entered into a lease deed with respect to the Southern portion of the said land in T.S.No. 1021/2 part, by a lease deed she

had constructed building in the said land also. This land in T.S.No.1021/2 is Triangular in shape. Adjacent to T.S. Number 1021/2 is

T.S.No.1022 which is a water Channel. It is the case of the plaintiff that there were disputes between her and 6th defendant, Municipality. On

17.7.1996, the defendants trespassed in to the southern portion of the plaintiff's Nursing home and started to demolish the existing building. They

used bulldozers. They broke down the pillars. This resulted in huge cracks all over the building on the Southern side. This caused much damage to

the building. It also caused mental agony and hardship not only the plaintiff and her husband, but also to the patients in the hospital and other staff

of the Nursing Home. This also became noticed by the general public, thereby inviting adverse comments. Immediately, the power of attorney of

the plaintiff rushed to the Madras High Court on 18.7.1996 filed W.P. No.10230 of 1996 and obtained an order of interim stay in W.M.P. No.

13510 of 1996. A bridge constructed over the water channel in T.S.No.1022 was also demolished. The plaintiff claimed that her building and

more particularly the demolished portions were within the patta area and did not encroach over the Government land. She further claimed that

owing to the demolition, a scan machine was also completely damaged. She estimated the cost of damages to the building at Rs.3.25 Lakhs; her

compensation for mental agony and loss of reputation at Rs. 75,000/-, and the damage to the scan machine at Rs. 1.75 Lakhs. She filed this suit

claiming compensation of Rs.5.80 lakhs together with interest and costs. She also sought the relief of permanent injunction restraining the

defendants from interfering with her peaceful possession of T.S.No.997 and T.S.No. 1021/2 part.

6. In the written statement filed by the third defendant and adopted by the other defendants all the facts and claims of the plaintiff were disputed.

According to the defendants, the plaintiff had encroached and extended her Nursing Home building over the Government land in T.S. No.1022,

which is an irrigation Canal. It had been stated that the plaintiff was issued with notices and was requested to remove the illegally constructed

portion over the water channel called Ullur Channel, which was in T.S.No.1022 even in 1992 during the Mahamaham festival at Kumbakonam.

The plaintiff undertook to do so. However, she did not voluntarily demolish the illegally constructed portion. Notices as contemplated by The Tamil

Nadu Land Encroachment Act, 1905 were also issued. It was specifically stated that the Public Works Department authorities and other officials

approached the plaintiff and pointed out the encroachment and also the necessity to remove it. The encroachment was 20 feet North to South and

33 feet East to West. It had been stated that after giving reasonable opportunity the officials of the defendants removed the encroachment on their

own costs. The claim of the plaintiff that the defendants demolished the building without any authority has been specifically denied. Moreover, the

claim of the plaintiff seeking damages for loss suffered to the building, mental agony and damages to the scan machine were also specifically

disputed and all liability was denied. It was stated that the water Channel which is Ullur Channel was very much essential for the drainage of

several houses and also for irrigation purposes of the lands situated in Ullur and Pilancheri villages. It had been specifically stated the plaintiff has

deliberately constructed buildings over the said channel, thereby obstructing it.

7. The parties went to trial on the basis of the above pleadings and the Principal District Judge at Tanjore, framed three issues for consideration:-

(i) Whether the plaintiff is entitled for relief of permanent injunction? (ii) What are the damages entitled to the plaintiff? (iii) To what relief the plaintiff is entitled to?

8. After considering the rival contentions and also the oral and documentary evidence adduced before it, the trial Court dismissed the suit with

costs. The plaintiff is in appeal.

9. The main point which arises for determination in this appeal is whether the jurisdiction of the Civil Court is expressly barred as provided under

Section 14 of Tamil Nadu Land Encroachment Act, 1905, as amended. An answer to this point would determine necessity for further discussion

on the procedure adopted by the respondents / defendants and whether the appellant / plaintiff is entitled for any relief.

10. Before the trial Court, an application was made by the appellant herein for appointment of an advocate Commissioner to inspect and submit

report regarding the area over which the demolition was actually done and also to measure the plaintiff's property, and give a rough sketch to

determine whether the plaintiff's construction encroached over T.S.No. 1022. Advocate Commissioner had filed a detailed report and also an

excellent sketch. The Advocate Commissioner found that the building constructed by the plaintiff had actually encroached over T.S.No.1022. The

Advocate Commissioner further found that the portion which was demolished was only the construction over the Ullur Channel in T.S.No.1022. It

was further found that the constructions over T.S.No.997 and T.No.1021/2, were not demolished by the defendants. This report of the Advocate

Commissioner had been produced before the Court and had also been marked as Exs.C2 and C3. The entire plan of Ward No.6, Block No.17

of Kumbakonam Town, wherein the plaintiff's property in T.S.No.997 and 1021 /2, is situated and also showing the Ullur Channel in T.S.No.

1022, was also produced was marked as Ex.C1. Even before proceeding further, an analysis shows that the following facts are not disputed by

the both sides: (i) that the plaintiff was running a Nursing Home called Ramakrishna Nursing Home at Kumbakonam in T.S.No.997 and 1021/2 (ii)

that the defendants demolished the southern portion of the Nursing Home on 17.09.1997 and 18.09.1997.

11. However, the disputed aspect is : (i) whether the portion demolished fell within the patta area of plaintiff or within T.S.No.1022 which is the

the Ullur channel.

12. In this connection, the plaintiff had examined three witnesses. The plaintiff did not graze the witness box and did not subject herself for cross

examination. On the other hand, her husband was examined as PW.1 and another two other persons were examined as PW.2 and PW.3. The

Junior Engineer of the Public Works Department, was examined as DW.1. The Commissioner who was appointed under an application filed by the plaintiff was not examined by the plaintiff. This was very strange since the plaintiff during trial did not even file a petition to summon the Commissioner as a witness. As pointed out, the Commissioner's report and plan is very clear that the plaintiff has actually constructed a portion over the Ullur Channel in T.S.No.1022. This is a fact also determined by the trial Court, and the appellant has not adduced any new evidence to differentiate with the said finding.

13. This Court is concerned with the point of law, whether the Civil Court actually had jurisdiction to try the suit or whether the jurisdiction of the

Court was impliedly or expressly barred under Section 9 of the Code of the Civil Procedure. Section 9 of the Code of Civil Procedure reads as

follows:- 9. Courts to try all civil suits unless barred:- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizances is either expressly or impliedly barred.

14. In the Tamil Nadu Land Encroachment Act, 1905, which is self contained Act, clauses had been provided under Section 10, that against any

decision passed under the Act appeals can be preferred before the named authorities. In this case, the plaintiff had not undertaken any such

recourse. The plaintiff had filed a civil suit. The jurisdiction of the Civil Court is expressly barred under Section 14 of the Tamil Nadu Land

Encroachment Act, 1905. Section 14 of the Said Act as follows:- ""14. Bar of Jurisdiction Courts:- Notwithstanding anything contained in any law,

for the time being in force, no order passed or proceeding taken by any officer of authority or the State Government under this Act, shall be called

in question in any Court, in any suit or application and no injunction shall be granted by any court in respect of any action taken or to be taken by

such officer or authority or the State Government in pursuance of any powers. So conferred by or under this Act.

15. When once the Civil Court jurisdiction is barred and when the Act provides for appellate and revisional remedy, the plaintiff should have taken

up such recourse.

16. In 2016(10) SCC Page 813, (Sasan Power Limited Vs. North American Coal

Corporation (India) Private Limited) the Hon"ble Supreme

Court had stated that there was a duty cast on the Court to take note of specific bar to the jurisdiction of a Civil Court suo moto even if such a

question was not raised by the party. In paragraph No.30 of the said Judgment, it had been specifically stated that "" if a suit is barred by law, this

Court is bound to take note of the bar, whether such a question is raised by the parties or not"".

17. In this case also there is a specific bar to the Civil Court entertaining any issue with respect to acts committed by the officials acting under the

provision of the Act. This is provided in Section 14 of the Tamil Nadu Land Encroachment Act, 1905.

18. In 2003(4) LW 443, this Court in Special Offi Dharamapuri, Distri C opera Suga Mill Vs. T.N. Seka had held that when there was a specific

bar to the Civil Court, the Civil Court has no authority or jurisdiction to enter into a discussion on the issues raised by the parties. It was held that

the suit itself is not maintainable since the Civil Court has no jurisdiction to entertain such a suit.

19. This was the case under the provision of Tamil Nadu Cooperative Societies Act, wherein also similar provision under Section 156 had

provided. Section 156 of the said Act is as follows:- 156. Bar of Jurisdiction of Civil Courts._ Notwithstanding anything contained in any other

law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator,

the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to

be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or

under this Act.

20. In 2005(4)CTC (L.Krishnan Vs. State of Tamil Nadu, represtned by its Secretary, Department of Revenue (Land Development), this Court in

paragraph nos. 4,5 and 6 had observed as follows:- ""4. We also find that the land in question has been classified as "Odai Poromboke" in the

revenue records, Though based on the report of the Tahsildar dated 10.12.2004, this writ petition can be summarily disposed of by directing the

third respondent to take necessary steps for the removal of the encroachments.

We feel it appropriate to pass this order and give certain other directions to the first respondent-State Government to make an overall study of all such encroachments in respect of the lands which have been classified as lands meant for the purpose of storage of water (I.e., ponds, tanks, lakes, etc.). We are of the view that in the present day context, such steps is required to be taken by the State in order to improve the water storage facility prevailing in this State since in many parts of Tamil Nadu propel are suffering from an acute shortage of water. 5. Since time immemorial ponds, tanks and lakes have been used by the people of our country, particularly in rural areas, for collecting rain water for use for various purposes. Such ponds, tanks and lakes have thus been an essential part of the people's natural resources. However in recent years these have been illegally encroached upon in many places by unscrupulous persons who have made their constructions thereon, or diverted them to other use. This has had an adverse effect on the lives of the people. 6. It is also relevant to state that day in and day out, many such petitions are being filed by way of "public interest litigation" alleging encroachments into ponds/tanks/lake/Odai Porambokes, etc. in different parts of this State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already ear marked water storage tanks, ponds and lakes, as disclosed in the revenue records to its original status as part of its rain water harvesting scheme. We also take judicial notice of the action initiated by the State Government by implementing the water harvesting scheme as a time bound programme in order to ensure that the frequent acute water scarcity prevailing in this State is solved as a long time measure. In fact, the classification as Ooranis, Odais and Lakes in the revenue records are all areas identified in the villages where the rain water gets stored enabling the local villagers to use the same for various purposes throughout the year inasmuch as most parts of the State are solely dependent of seasonal rains both for agricultural operations as well as for other water requirements. Therefore, it is imperative that such natural resources providing for water storage facilities are maintained by the State Government by taking all possible steps both taking preventive measures as well as by removal

of unlawful encroachments.

21. In 2010(3) MWN (Civil) 815 (Kaliyamoorthy Vs. Samidurai), wherein this Court dealing with Section 9 of CPC and also Tamil Nadu

Protection of Tanks and Eviction of Encroachment Act, 2007 and paragraph nos.10, 11 and 13 held as follows:- 10.While considering the

arguments of both sides, admittedly, the Suit Properties ? Odai Poramboke the Appellant has been claiming possessory title over one acre. But,

the Respondent has sated that he is in possession of 25 cents. The remaining 75 cents alone is in possession of the Appellant herein. But as per the

Act of Tamil Nadu Protection of Tanks and Eviction of encroachment, 2007, that may also be called as surplus course. As per the decision

reported in L.Krishnan v. State of Tamil Nadu, rep. By its Secretary, Department of Revenue (Land Development), Fort St.George, Chennai-600

009 and others, 2005 (4) CTC 1, a person encroaching Odai Poramboke and lands which have been classified as lands meant for purpose of

storage of water like ponds, lakes, tanks, etc., can be evicted. Such step is required to be taken by State in order to improve water storage facility

since people are suffering from acute shortage of water. Illegal encroachment has adverse effect on lives of people. It is imperative that such a

natural resources providing water storage facilities are maintained for the State by taking of possible steps to removal of unlawful encroachment of

this area to maintain the ecological balance. The maintenance of ecological balance would provide healthy environment and enable people to enjoy

quality of life under Article 21 of the Constitution of India.

11. As per Article 21 of Constitution of India, right to life, right to enjoy quality life in healthy environment, where the ecological balance is

maintainable by preserving ponds, tanks and lakes by removing illegal encroachment. Encroachments made in the Odai Poramboke land which has

been classified as land meant for the purpose of storage of water like ponds, lakes, tanks, etc. can be evicted.

13. In view of the judgment reported above and enactment made in Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, I

am not going into the merits of the case and the judgments rendered by both the Courts below and documents produced on either side, but I

decide this matter only on the basis of the enactment made in Tamil Nadu

Protection of Tanks and Eviction of Encroachment Act, 2007, as well as the decision reported above. Therefore, the Suit itself is not maintainable. Hence, this Appeal is liable to be dismissed.

22. The above Judgments, both by the Supreme Court and this Court, binds me and the Rule of law is that when there is a specific bar, the

jurisdiction of the Civil Court is ousted and consequently, I hold that the entire discussion entered into by the trial Court which is under appeal need

not been gone into. The suit itself is not maintainable as the jurisdiction of the Civil Court is expressly ousted under Section 14 of the Tamil Nadu

Land Encroachment Act, 1905, consequently, this appeal is also not maintainable. This Appeal is dismissed with costs.