

(2002) 12 MAD CK 0071

In the Madras High Court

Case No : S.A. No. 1288 of 2002 and C.M.P. No's. 10723 and 16980 of 2002

Tamil Nadu Brick Industries

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Citation : (2003) 1 CTC 345 : (2003) 1 MLJ 265

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : K.V. Subramanian, for K. Sridhar and B. Babu Manohar, for the Appellant;

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—This appeal is directed against the judgment and decree dated 9.4.2001 in A.S.No.37 of 1995 on the file of the

Subordinate Judge, Poonamallee confirming the judgment and decree dated 30.8.1994 in O.S.No.582 of 1983 on the file of the District Munsif,

Poonamallee.

2. The unsuccessful plaintiff, who lost the suit both in the trial Court and in the first appellate Court, is the appellant herein. The suit was filed for

permanent injunction restraining the defendants and their men from removing the fencing put up by the plaintiff around the suit property including the

portion marked as ABCD in the plaint plan. According to the plaintiff, it has purchased the lands measuring 35.55 acres in Nolambur village,

Saidapet taluk and there is a water channel from Nolambur lake and the said channel is running in the middle of the lands purchased by the plaintiff.

According to the plaintiff, the plaintiff and its predecessors-in-title have been

enjoying the channel for the past several decades. According to the plaintiff, the plaintiff has put up fence around its lands including the channel and the plaintiff has been in possession and enjoyment of the channel along with the lands and the Government also issued B-Memos showing that the plaintiff has been enjoying the channel. The suit has been filed on the ground that the defendants have attempted to interfere with the plaintiff's possession and enjoyment of the channel. The plaintiff has also referred to an earlier suit in O.S.No.1118 of 1982 on the file of the District Munsif, Poonamallee and it is stated that there was a compromise and on the basis of the compromise, the suit was dismissed as withdrawn with the liberty to file a fresh suit. According to the plaintiff, the defendants have been taking steps to remove the fencing put up by the plaintiff around the channel portion and therefore the suit has been filed for permanent injunction.

3. The defendants, viz., the Government of Tamil Nadu denied all the allegations. In the written statement, it is stated that the channel is situate in Survey Nos.143/2,146/3, 147/2, 147/3 and 148 and the channel passes through the patta lands belonging to the plaintiff. According to the defendants, the channel is meant for all persons. It is stated by the defendants that the plaintiff has encroached upon the channel poramboke by putting fence around the same and the plaintiff has been removing earth therefrom. It is stated that the fence was removed on 28.7.1982 to allow the usage by others. It is also stated that the plaintiff was served notices for eviction of encroachment and the defendants have got every right to evict the plaintiff from the poramboke land of the defendant.

4. On the above pleadings, necessary issues were framed and the learned District Munsif has found that there are no substantial evidence to show that the suit channel was in possession and enjoyment of the plaintiff. The trial Court noticed the documents, Exs.A-1 to A-5 and found that they do not refer to any survey number. The trial Court also held that the plaintiff has not proved that he was in possession of the channel exclusively and the plaintiff is not entitled to seek injunction against the Government who is the title holder. Though the trial Court has not accepted the plea of the defendants that the suit was barred by res judicata, it has found as fact that the plaintiff has not furnished the survey numbers in the plaint in

which the suit channel is situate, nor the plaintiff has proved by way of any oral and documentary evidence that the plaintiff is in possession and

enjoyment of the suit channel and dismissed the suit for injunction. The above judgment was confirmed by the first appellate Court. It is against the

judgment and decree of the first appellate Court, the present second appeal has been filed.

5. The appeal comes up for admission. I heard Mr.K.V.Subramanian, learned counsel for the appellant. His submission was that the plaintiff has

proved by documents, Exs.A-1 to A-5 that the plaintiff is in possession and enjoyment of the suit channel. Learned counsel also submitted that the

fact that B-Memo. was issued by the State clearly shows that the plaintiff is in possession and enjoyment of the suit channel. According to the

learned counsel for the plaintiff, the fence has been put up only to prevent unruly elements from entering into the lands of the plaintiff. Learned

counsel also submitted that since the plaintiff is in possession of the channel, the plaintiff cannot be dispossessed without recourse of law. In this

connection, learned counsel relied upon the decision of the Supreme Court in M/s. Anamallai Club Vs. Government of Tamil Nadu and others, .

Learned counsel submitted that an amendment petition has been filed seeking amendment of the plaint by adding the following words, "except in

accordance with law" in sub-paragraph-A of paragraph-9 of the plaint.

6. I have carefully considered the submissions of the learned counsel for the appellant. The trial Court found as a matter of fact that the plaintiff has

not established by oral and documentary evidence that the plaintiff is in possession and enjoyment of the suit channel. The trial Court also found

that the plaintiff has not even given the survey numbers in the plaint in which the channel is situate and the documents, Exs.A-1 to A-5 do not show

that they really relate to the channel. It was also found that the documents do not disclose the survey numbers in which the suit channel is situate. It

was also found as a matter of fact that the plaintiff is not in exclusive possession and enjoyment of the channel. Even assuming that the Government

issued B-Memos., since it is proved that the channel is open to public, it is impermissible for the plaintiff to seek injunction against the Government

from removing the fence put up by the plaintiff around the channel. The defendants have not attempted to encroach upon the plaintiff's property,

but the claim made by the plaintiff is that the Government should be prevented from removing the fence put up by the plaintiff around the suit

channel which is a public property. Admittedly, the Government is the owner of the suit channel and it is impermissible for the plaintiff to

appropriate the public channel by fencing around the channel and try to make use of the channel for its private use.

7. The decision relied upon by the learned counsel for the appellant in M/s. Anamallai Club Vs. Government of Tamil Nadu and others, does not

support the case of the appellant as the Supreme Court was not dealing with a suit filed seeking injunction restraining the owner from removing the

fence permanently for ever. Further, the decision has also no application as the plaintiff seeks injunction by encroaching the public channel by

putting up fencing around the channel in which the plaintiff is not found to be in possession. The result of granting of the prayer would be that the

Government which is the owner of the channel would be permanently prevented by a decree of the Court that the Government should not remove

the fence put up by the plaintiff. The ratio of the decision of the Supreme Court in Anamallai Club's case is that if a person was found to be in

possession, he should not be dispossessed except in accordance with law. But the law laid down by the Supreme Court is not to the effect that the

Court should grant injunction against the Government who is the owner from exercising its right by removing the fence illegally put up by the plaintiff

around the public channel permanently. Hence, the decision has no application to the facts of the case.

8. In so far as the amendment petition in C.M.P.No.16980 of 2002 is concerned, it is a highly belated one. The suit is of the year 1983 and the

plaintiff, realising its mistake in seeking permanent injunction against the Government from removing the illegally put-up fence around the channel,

tried to cover up the vital defect in the plaint by seeking the amendment. I hold that the amendment petition is highly belated and not a bona fide

one. Further, even on merits, I am not inclined to allow the petition as the injunction sought for cannot be granted against the owner of the channel

as it would enable the plaintiff to continue the illegal act. Accordingly, C.M.P.No.16980 of 2002 is dismissed.

9. Accordingly, the appeal fails and the same is dismissed, in limine, at the admission stage itself. Consequently, the C.M.Ps. are dismissed.