



S.A.No.758 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.758 of 2021

and

C.M.P.No.14731 of 2021

S.C.Mani

... Appellant/Plaintiff

Vs

S.Rajeswari

... Respondent / Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 14.10.2019 made in A.S.No.7 of 2018 on the file of the Principal Subordinate Court, Vellore, reversing the Decree and Judgment dated 24.02.2017 made in O.S.No.10 of 2013 on the file of Additional District Munsif, Vellore.

For Appellant : Mr.T.P.Prabakaran

For Respondents : Mr.P.Sankaranarayanan



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JUDGMENT

The plaintiff in the suit O.S.No.10 of 2013 on the file of the Additional District Munsif, Vellore is the appellant before this Court challenging the reversal of his decree for permanent injunction by the learned Principal Subordinate Judge, Vellore in A.S.No.7 of 2018.

2. The facts, which are necessary for disposal of the above second appeal, are herein below set out and the parties are referred to in the same litigative status as before the trial court.

3. The substantial questions of law on which this second appeal is admitted are set out below.

"(a) Whether in law are not the judgement and decree of the Lower Appellate Court perverse since the judgement has been delivered with reference to the property which is not subject matter of the suit?"



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(b) Having accepted finding of the trial court that the plaintiff is the owner of the property and he is in possession and enjoyment of his property and the defendant is in possession of her own property, is not the Lower Appellate Court wrong in interfering with the decree for permanent injunction granted by the trial court?

(c) Whether in law has not the Lower Appellate Court traversed beyond the issue in the suit which makes the judgement perverse warranting interference?

4. The plaintiff has filed the above referred suit stating that he had purchased the suit property under a registered Sale Deed dated 16.12.2002. The property in question has been described as follows:

SCHEDULE OF PROPERTY

வேலுார் மாவட்டம், வேலுார் சப்டியைச் சேர்ந்த, வேலுார்
டவுன், ரெவென்யூ வார்டு எண்.4, முனிசிபல் வார்டு எண்.25,



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பிளாக் எண்.15, டவுன் சர்வே எண்.941/2, தென்வேலுார் டவுன்,
கொசப்பேட்டை, கொசு தெருவில் கீழாண்டை வாதையில்
தெருவிற்கும், தெருவிலிருந்து போகவர உள்ள 5 அடி அகல
சந்து வழிக்கும் வடக்கு, காலாற்றுக்கு தெற்கு, கோவில்
இடத்திற்கு கிழக்கு, கோவிலுக்கு சம்மந்தப்பட்ட பழைய கதவு
எண்.22/1 புதிய கதவு எண்.76 போட்ட பழைய சிலமான
தட்டோடு வீடானது.

கிழக்கு மேற்கு வடபுறம் 37 அடி, தென்புறம் 33 1/2
அடி, வடக்கு தெற்கு கீழ்புறம் 39 அடி, மேல்புறம் 47 அடி (36
1/2 10 1/2) மேற்படி அளவில் தென்மேற்கு முலையில் கோவில்
இடத்திற்கு சொந்தமான 31 1/2 அடி போக மீதி சதுரடி 1570
இந்தளவுள்ள அடிமனையும் இதில் கட்டியுள்ள பழைய தட்டோடு
வீடு இதில் உள்ள மரக்கதவுகள், வாசக்கால்கள், மின்சார
அமைப்பு மீட்டர், மீட்டர் டெபாசிட், ஓயரிங் சர்வீஸ் கணைக்கீன்
இதர கட்டுக்கோப்பு சாமான்கள் அடிமனை மேல்சாயா உள்பட



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யாவும் மேற்படி சொத்திற்கு பழைய கதவு எண்.22, புதிய கதவு
எண்.76, வரி விதிப்பு எண்.27050, மின் இணைப்பு எண்.327,
இதில் உள்ள முனிசிபல் குழாய் இணைப்பு உள்படி குழாய்
இணைப்பு எண்.3510 ஆகும்.

The plaintiff would submit that he is in possession of the suit property from the date of purchase. The defendant is a Dharmakarthha of Balasundara Vinayagar Temple and she had given a false complaint against the plaintiff before the South Police Station, Vellore on 25.12.2012, stating that the plaintiff had stopped the flow of water from the defendant's house to the drainage. The plaintiff would submit that, at no point of time, the drainage pipe had crossed his schedule mentioned property from the defendant's house. Pursuant to this complaint, the plaintiff had attended the enquiry at the police station and both the parties had agreed to settle the matter.



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5.However, contrary to the said undertaking, the defendant had given yet another complaint against the plaintiff and had openly given out that she would create more trouble by interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

6.The plaintiff would submit that the defendant has no semblance of a right to the suit property and that being the case when the plaintiff had questioned the illegal activities of the defendant, she has threatened him. The plaintiff would submit that he is unable to withstand the pressure of the defendant and therefore, has come forward with the above suit.

7. The defendant has filed a written statement, *inter-alia* denying the allegations contained in the plaint. The defendant would

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submit that it is the plaintiff's family members who had attempted to remove the common cement passage between the suit property and the temple house. There is a drainage channel in the common passage which the the plaintiff's family wanted to demolish. The defendant would submit that the drainage channel takes a turn on the north situate on the western side of the suit property and flows into the main drainage. Since the defendant had objected to the action of the plaintiff and the plaintiff has preferred a false complaint against the defendant in December 2012 the police had advised the plaintiff to desist from disturbing the drainage channel in the suit property. Once again, the plaintiff had attempted to tamper with the drainage channel which constrained the defendant to prefer a police complaint and the plaintiff during the enquiry, assured that the matter would be settled through Court and it is thereafter that the suit has been filed. The defendant would submit that pending the suit, the plaintiff has put up a construction by removing the drainage channel on the western side.

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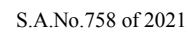
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The defendant would deny the contentions that she is threatening the plaintiff through her men. Therefore, she would pray for the dismissal of the suit.

8. The trial Court, namely, Additional District Munsif, Vellore, Vellore District had framed an issue as to whether the plaintiff was entitled to a decree for permanent injunction. The plaintiff had examined himself as P.W1 and marked Exs.A1 to A16. On the side of the defendant, the defendant had examined herself as D.W1 and one Sankar as D.W2 and one Prabhu as D.W3 and marked Exs.B1 to B9. The Advocate Commissioner was appointed pending the proceedings who had inspected the property and submitted the report along with a rough plan. The Commissioner report has been marked as C1, the rough plan as C2 and the surveyor plan with town surveyor register as C3. Ultimately, the learned Additional District Munsif decreed the suit. However, the learned Judge had observed that though the suit is

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1. *Whether the suit filed by the plaintiff for bare injunction without seeking the relief of*



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declaration of title is maintainable?

2. *Whether the plaintiff has suppressed the material facts in this case?*
3. *Whether the plaintiff is entitled to the relief of permanent injunction?*
4. *Whether there is any perversity or illegality in the judgment and decree passed by the trial Court?*

9. With reference to the maintainability of the suit for bare injunction without seeking the relief of declaration, the learned Judge had held in favour of the plaintiff. In answer to the second point for determination, the learned Judge has relied upon the evidence of P.W1 in his cross examination, which reads as follows:

“பிரதிவாதி அவருடைய வீட்டில் சுமார் 40
வருடமாக இருந்து வருகிறார் என்றும் வழக்கு



சொத்து கழிவுநீர் ஓடை தான் கழிவுநீர் செல்வதற்கு
பயன்படுத்துகிறார் என்று சொன்னாலும் சரிதான்”.

The learned Judge also relied upon the report of the Advocate Commissioner-Ex-C1 and the sketch to come to the conclusion that the drainage pipeline over the common passage enters the suit property and makes an exit on the northern side of the suit property. This drainage channel does not belong exclusively to the plaintiff. The learned Judge had observed that these factors have been suppressed by the plaintiff, who had filed the suit, alleging that the defendant had trespassed into the suit property. The learned Judge ultimately held that to obtain the discretionary relief of an injunction, the plaintiff has to come to the Court with clean hands and therefore, the plaintiff was not entitled to the said relief. Aggrieved by the same, the appellant is before this Court. This Court had admitted this second appeal on the substantial questions of law set out supra.



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10. Heard the learned counsels on either side and perused the materials available on record.

11. The plaintiff claims title to the suit property under Ex.A1 and suit schedule property is the very same description. The property subject matter of Ex.A1 is New Door No.76, Old Door No.22/1, Kosa Street, Kosapet, Vellore. This property is bounded on the

South by a 5 feet wide lane

North by the channel

West by temple land

East by New Door No.76, Old Door No.22/1 belonged to
the temple together with a tiled house

The property measures east-west on the northern side 37 feet, 33 ½ feet on the southern side, north-south on the eastern side 39 feet and western side 47 feet, excluding 31 ½ feet owned by the temple on the

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south- west corner, totally measuring an extent of 1570 sq.ft.

Therefore, the description of the property clearly excludes $36 \frac{1}{2} / 10 \frac{1}{2}$ extent of land on the south-west corner. A perusal of Ex.C2- Commissioner's plan shows a space between the plaintiff's property and another house on the west, and the diagram shows the existence of drainage which proceeds through this space, enters the plaintiff's property at the space marked as toilet, proceeds northwards, takes a turn to the west, and then enters the main municipal drainage channel. Therefore, the drainage channel to a very small extent is situate in the suit property. P.W1 admitted to this fact in his cross-examination and the same has been extracted by the lower appellate Court. It is also seen that this drainage channel has now been demolished and a toilet has been put up by the plaintiff. The portion measuring $36 \frac{1}{2} / 10 \frac{1}{2}$ has not been sold to the plaintiff and taking into account the fact that this drainage line has been in existence for over 40 years and the plaintiff having demolished the same pending the suit, the lower

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appellate Court has rightly set aside the judgment and decree of the trial Court, particularly when the trial Court has not understood the description of the suit property.

12. Considering the fact that the Commissioner's report indicates that the drainage channel enters the suit property and then takes a turn to the west and proceeds to the municipal drainage channel, the lower appellate Court has rightly held that the plaintiff's property where the drainage pipeline has been demolished is very much a part of the suit property. The lower appellate Court has also taken note of the admission of P.W1 that, for the last 40 years, the defendant has been enjoying this drainage pipe which runs through the suit property to drain out his drainage into the main municipal channel. Therefore, the substantial questions of law Nos.(1) and (2) have to be necessarily be held against the plaintiff. The lower appellate Court has clearly considered the issue, which is the subject matter of the dispute



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between the parties and arrived at its decision. The lower appellate Court has not traversed beyond the suit and therefore, the question of law No.(3) is also answered against the appellant/plaintiff. In fine, the second appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Principal Subordinate Court, Vellore.
2. The Additional District Munsif, Vellore.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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