



Second Appeal No.603 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.603 of 2019
and C.M.P.No.10215 of 2019

T.A.Mohan Kumaran

.... Appellant

-Vs-

1.M.Arasakumar

2.Corporation of Chennai
Rep.by its Commissioner
having office at Rippon Buildings
Corporation of Chennai, Chennai-3.

3.Chennai Metropolitan Development
Authority, Rep.by its Member Secretary
Having Office at Thalamuthu Natarajan
Maaligai, Egmore, Chennai-8.

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 09.08.2010 passed in A.S.No.281 of 2008 by the learned Additional District Judge, Fast Track Court IV, Chennai, by reversing the decree and judgment dated 21.01.2008 passed in O.S.No.6573 of 2005 by the learned VI Assistant City Civil Judge at Chennai.

For Appellant : Mr.N.Nagu Sah
For Respondents : Mr.C.S.Nandakumar - for R1
Mr.E.C.Ramesh - for R2
Ms.Veena Suresh, Standing Counsel-for R3



Second Appeal No.603 of 2019

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J U D G M E N T

The present Second Appeal arises out of the judgment and decree dated 09.08.2010 passed in A.S.No.281 of 2008 by the learned Additional District Judge, Fast Track Court IV, Chennai, reversing the decree and judgment dated 21.01.2008 passed in O.S.No.6573 of 2005 by the learned VI Assistant City Civil Judge at Chennai.

2. For the sake of convenience, the parties will be referred to as per their ranking in the suit.

3. Third party to the proceedings is the appellant before me. The suit had been presented by the first respondent herein seeking for a declaration that the suit 'B' schedule property is a part of the suit 'A' schedule property, which has been constructed in the year 1972 and for a declaration that the notice issued by the first defendant Corporation of Chennai on 14.09.2005 invoking the provisions of Section 256 of the Madras City Municipal Corporation Act (hereinafter referred to as the 'Act') is null and void and for permanent injunction restraining the first defendant from interfering with the peaceful possession and enjoyment of the suit 'B' schedule property by giving notice for demolition or in any other manner



Second Appeal No.603 of 2019

and for costs.

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4. The case of the plaintiff is that he and his father one T.A.P.Mohanraj were benefitted with allotment of the suit property. On the death of the said T.A.P.Mohanraj on 31.05.1971, the plaintiff and his mother succeeded to the property. He would submit that the plaintiff's mother had applied and obtained planning permission for an additional construction on the ground floor of the property and to raise a fresh construction over the same to an extent of three floors. He would plead that on 16.07.1986 since his mother had passed on, the legal representatives of T.A.P.Mohanraj partitioned the property and the suit 'B' schedule property was allotted to the plaintiff.

5. He would further state that there was a common passage, which was blocked by his brothers, for which he gave a complaint and obtained an undertaking before the police that his brothers will not interfere with the common passage. Thereafter, he presented a suit in O.S.No.6933 of 2004 against his brothers and had obtained a decree on 17.06.2005.

6. On account of the fact that he has obtained a decree, the plaintiff's brother's son became inimical towards him and filed a writ petition in W.P.No.34726 of 2004 seeking for direction to the State / respondents therein/



Second Appeal No.603 of 2019

Town Planning authorities to dispose of his representation. The said writ petition was ordered on 30.11.2004. On the basis of the representation that had been given, the second defendant had issued a notice on 23.12.2004 without even causing an inspection of the property. On 02.02.2005, the plaintiff requested the first defendant to furnish a certified copy of the planning permission obtained by his mother and just before this request had been made, a demolition notice was issued by the first defendant through the second defendant stating the building has been constructed without any approval and therefore it is liable to be proceeded against in terms of Section 256(3) of the Act.

7. On service of summons, the defendants entered appearance and filed a detailed written statement. It is the case of the first defendant that the entire construction caused by the plaintiff is an unauthorised one without any valid sanction plan issued by it. He further pleaded that pursuant to the directions of the Court in W.P.No.34726 of 2004, notice was issued invoking the provisions of Section 236 of the Act and this was also served on the plaintiff on 27.12.2004 and the consequent notice under Section 256(1) of the said Act was served on 17.01.2005. This would point out that though the plaintiff had raised a building and that building had an approved plan in Planning Permission No.1183 of 1974, no such records were available with the Corporation of Chennai. They will also point out that despite the specific request of the Town and Country Planning



Second Appeal No.603 of 2019

authorities, the plan was not produced by the plaintiff. They would further plead that, though an attempt was made by the plaintiff stating that the planning permission was issued in Planning Permission No.1183 of 1972, a reply was given by them stating no such plan is available. Their clear and categorical case is that the construction is unauthorised one without any valid sanction plan and therefore they sought for dismissal of the suit.

8. On the basis of these pleadings, the learned VI Assistant City Civil Court framed the following issues:

1. வாதி கட்டியுள்ள கட்டுமானம் அனுமதி பெறாமல் கட்டப்பட்டதா?
2. தாவா "பி" அட்டவணை சொத்து 1972 இல் கட்டப்பட்டதா ?
3. 14.09.2005 அன்று பிரதிவாதியால் கொடுக்கப்பட்ட அறிவிப்பு செல்லத்தக்கதில்லையா ?
4. வாதி வழக்குரையில் கோரியுள்ளவாறு விளம்புகை பரிகாரம் பெறத்தக்கவரா ?
5. வாதி வழக்குரையில் கோரியுள்ளவாறு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெறக்கூடியவரா ?
6. வேறு என்ன பரிகாரம் ?



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9. On the side of the plaintiff, he examined himself as P.W.1 and marked Exs.A1 to A14. On the side of the defendants, Exs.B1 to B7 were marked and one witness was examined on their end.

10. On consideration of the oral and documentary evidence let in by the parties before the Court, the learned trial Judge came to a conclusion that the construction of the plaintiff is unauthorised one and he is not entitled for a decree that he seeks for and consequently dismissed the suit on 21.01.2008.

11. Aggrieved by the same, a regular appeal was preferred before the City Civil Court, which was received by the learned Judge in A.S.No.281 of 2008. In and by way of a judgment dated 09.08.2010, he allowed the appeal and decreed the suit as prayed for on the ground that a perusal of Ex.P16 showed the collection of property tax prior to 01.03.1999, and since property tax had been imposed, the building became regularized and approved, and thereby decreed the suit. He also found that in terms of Section 56 of the Town and Country Planning Act, if property tax is levied for a period of three years, then the defendants cannot turn around and plead that the building is an unauthorised one.



Second Appeal No.603 of 2019

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12. Though the entire case of the plaintiff was on the basis of the allegation made by his brother and his brother's son Mohan Kumar, they were not impleaded as parties to the suit. Therefore, they were not aware of the decree passed by the lower appellate Court.

13. A writ petition was filed by the appellant herein in W.P.No.25627 of 2007 seeking for writ of Mandamus to demolish the construction made by the plaintiff as the appellant termed it to be illegal and unauthorised. Though the writ petition was filed in the year 2007, it came to be disposed of on 05.10.2017. Curiously enough, the defendants herein projected that they are not going to proceed further as against the illegal construction on account of the decree that had been passed by the lower appellate court on 09.08.2010. There was absolutely no explanation from the Town Planning authorities as to why though they suffered a decree, they did not prefer an appeal before this Court.

14. The appellant herein sought for and obtained permission from the High Court seeking leave to prefer a Second Appeal. Thereafter, the present appeal was presented before this Court on 03.10.2018. This Second Appeal was admitted by this Court on 09.07.2019 on the following substantial questions of law:



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Second Appeal No.603 of 2019

1. *Whether the courts below right in law in entertaining the first respondent / plaintiff's suit challenging the demolition notice issued by the second respondent under Section 256(3) of Chennai Municipal Corporation Act while Section 101 of Town and Country Planning Act bars the jurisdiction of Civil Courts in respect of the order passed by the authorities under the Act?*
2. *Whether the lower appellate Court right in law in holding that Ex.A13 notice issued under Section 256(3) of the Act is time barred without noticing the amendment of Section 56 of Town and Country Planning Act deleting the words relied upon by it by virtue of amendment Act No.61/2008 w.e.f. 10.12.2008?*
3. *Whether the lower appellate Court right in law in holding once the property tax was imposed to the existing building the presumption is the construction of the building is approved and regularized?"*

15. The clear and categorical case of the appellant is that the construction that has been put up by the first respondent / plaintiff is an illegal and unauthorised one. Per contra, it is the case of the plaintiff that the construction has been put up in the year 1972 and his mother had obtained planning permission in Planning Permission No.1183 of 1972. I should add here that the said planning permission has not been produced before the trial Court nor had it



Second Appeal No.603 of 2019

been produced before the lower appellate Court.

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16. In Consumer Action Group -vs- State of Tamil Nadu (2007) 1

MLJ 897, a Division Bench of this Court, while giving a slew of directions regarding unauthorized constructions held as follows :

xv) No Civil Court shall entertain any suit or proceedings or application in respect of the action taken by the CMDA or Corporation in respect of the illegal construction and encroachments on roads and pavements. All pending and future petitions filed/to be filed against CMDA and the Corporation relating to the illegal and unauthorised construction of buildings and or encroachment, and the demolition notice shall be placed before the special bench to be nominated by the Chief Justice."

17. The verdict of the Division Bench makes it clear that there is no option of approaching a civil court challenging the action that has been initiated by the defendants as against the unauthorised and illegal construction. Despite the fact that this position of law prevailed and continues to prevail till date, the lower appellate Court had come to the conclusion that the plaintiff is entitled to a decree without noticing that the civil Court has no jurisdiction.

18. Apart from that, a perusal of Section 101 of the Town Planning Act bars the jurisdiction of the civil court from entertaining any suit or further proceeding which deals with the unauthorized construction that is made by a



Second Appeal No.603 of 2019

person. The lower appellate Court has not dealt with this section at all.

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19. The learned first appellate Judge has further held that on account of payment of property tax for a period of three years, the building is deemed to be approved. This position too has been settled against the plaintiff in **CMDA -vs- Radhakrishnan (2006) 1 MLJ 181 (DB) (Para 9)**. Hence the view taken by the learned Judge is contrary to the law laid down by this Court and therefore, requires to be interfered with.

20. I notice one more lacuna. The plaint specifically pleads that the entire litigation has commenced on account of the writ petition filed by the plaintiff's brother's son in W.P.No.34726 of 2004. However, he had not been made a party to the proceedings. In view of the clear and categorical verdicts that have been laid down by this Court and the Supreme Court, and in the light of Section 101 of the Town and Country Planning Act, I am not in a position to sustain the decree granted by the lower appellate Court.

21. At this stage, I should point out that despite the fact the plaintiff had received a notice from this Court and had engaged a counsel, there was no appearance on side of the first respondent on 05.06.2024, 24.07.2024 as well as today (26.07.2024).



Second Appeal No.603 of 2019

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22. Consequently, the questions of law framed by this Court are answered in favour of the appellant and against the first respondent. The judgment and decree dated 09.08.2010 passed in A.S.No.281 of 2008 by the learned Additional District Judge, Fast Track Court IV, Chennai is set aside. The decree and judgment dated 21.01.2008 passed in O.S.No.6573 of 2005 by the learned VI Assistant City Civil Judge at Chennai stands restored. The suit shall stand dismissed. The Second Appeal stands allowed. Costs throughout. Consequently, connected miscellaneous petition is closed.

26.07.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The Additional District Judge,
Fast Track Court IV, Chennai.
- 2.The VI Assistant City Civil Judge
Chennai.



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Second Appeal No.603 of 2019

V.LAKSHMINARAYANAN, J.

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S.A.No.603 of 2019

26.07.2024