



WEB COPY

S.A.No.902 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 09 / 2024

JUDGMENT PRONOUNCED ON : 17 / 12 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.902 OF 2018
AND C.M.P.NO.23750 OF 2018

1.S.K.Kathirvel
[for himself as well as
Ganapathipalayam Naal Road
and Punjai Kalamangalam People]

... Appellant /
Appellant /
Plaintiff

Versus

- 1.Tamilnadu Government
Rep. by District Collector
Erode.
- 2.Additional Divisional Engineer
National Highways Department
Moolapalayam, Erode – 2.
- 3.Assistant Divisional Engineer – 2
Moolapalayam, Erode Taluk,
Erode – 2.
- 4.President
Ganapathipalayam Panchayath
Ganapathipalayam Post,
Erode District.

... Respondents /
Respondents /
Defendants



S.A.No.902 of 2018

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated April 2, 2018 passed in A.S.No.62 of 2017 on the file of First Additional Subordinate Court, Erode, whereby the Judgment and Decree dated October 25, 2017 passed in O.S.No.579 of 2014 on the file of Principal District Munsif Court, Erode was confirmed.

For Appellants	:	Mr.K.Sudhakar
For Respondents 1 to 3	:	Mrs.R.Anitha Special Government Pleader
For Respondent 4	:	Mr.P.Harish Notice served - No appearance

J U D G M E N T

This Second Appeal is directed by the unsuccessful plaintiff, against Judgment and Decree dated April 2, 2018 passed in A.S.No.62 of 2017 on the file of 'First Additional Subordinate Court, Erode' ['First Appellate Court' for short], whereby the Judgment and Decree dated October 25, 2017 passed in O.S.No. 579 of 2014 on the file of 'Principal District Munsif Court, Erode' ['Trial Court' for short] was confirmed.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

PLAINTIFF'S CASE IN BRIEF:

3. Suit Property is a Temple situated in R.Survey No.285 near Ganapathipalayam four way junction. The Suit Property is bounded by the



S.A.No.902 of 2018

Erode-Karur Main Road on the North; the lands of Sethupathi Gounder, Kadirvel and Indrani on the South; Ganapathipalayam – Sivagiri Road on the West; and Kurangupallam Canal on the East. The Erode-Karur Main Road is situated in R.Survey No.607 and it is 15-18 feet away from the Temple.

3.1. The plaintiff, the President of the Temple appointed by the local community, has been overseeing its administration. On December 4, 2014, the 3rd and 4th defendants asked to relocate the Temple as they are planning on expanding the roads. Thereafter, on December 12, 2014, they again threatened the plaintiff to relocate the Temple. The plaintiff along with people in the locality clarified that the Temple is located in a different survey number and that it would not obstruct the expansion of the road in any manner. But they remained unyielding, causing trouble even thereafter. Apprehending that the 3rd and 4th defendants might at any moment cause trouble to relocate the temple, the plaintiff has come up with this Suit for permanent injunction, costs and other reliefs.



S.A.No.902 of 2018

DEFENDANTS' CASE IN BRIEF:

WEB COPY

4. The second defendant filed written statement and the same was adopted by the other defendants. They have averred that Suit Property is situated near the Ganapathipalayam intersection of Erode-Karur State Highway No.84 and Nanjaikalamangalam – Sivagiri Road. They contend that the description of property as provided by the plaintiff is wrong and misleading. The Suit Idol is placed in a high platform situated in R.Survey No.607 on the Highway Boundary. One Venkatachalam son of Muthusamy Gounder had filed W.P.No.6887 of 2013 before this Court and as per the Order passed therein, the defendants proceeded to widen the Highway. The Idol being located in the Highway boundary is hindering the widening of the Highway. As per the guideline issued by this Court in the said Writ Petition, the defendants requested to relocate the Idol. The plaintiff with a view to obstruct and delay the expansion of the Highway, has falsely filed this Suit. Accordingly, they prayed to dismiss the Suit.

TRIAL COURT:

5. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1, one Ramasamy was examined as P.W.2 and Ex-A.1 to



S.A.No.902 of 2018

Ex-A.6 were marked. On the side of the defendants, no witness was examined and no document was marked.

5.1. Upon hearing both sides and considering the oral and documentary evidence, the Trial Court concluded that the plaintiff miserably failed to establish that the Suit Temple is situated only in R.Survey No.285 and not in R.Survey No.607, which belongs to the Highway Department. The Trial Court observed that the plaintiff not pressed the Interlocutory Application filed by him seeking appointment of Advocate Commissioner. Accordingly, the Trial Court dismissed the Original Suit.

FIRST APPELLATE COURT:

6. Aggrieved by the dismissal, the plaintiff approached the First Appellate Court by way of an appeal under Section 96 of the Code of Civil Procedure, 1908. The First Appellate Court upon hearing both sides and analysing the oral and documentary evidence, concurred with the findings of the Trial Court and dismissed the appeal.



S.A.No.902 of 2018

WEB COPY

SECOND APPEAL

7. Aggrieved by the concurrent dismissal, the plaintiff has preferred this Second Appeal and the same was admitted on January 25, 2019 on the following Substantial Questions of Law:

- "(1) *Whether the courts below are right in not shifting the burden of proof on the defendants/respondents, even after the plaintiff had displaced the initial burden cast upon him regarding the location of the temple?*
- (2) *Whether a suit for protecting the interest of the temple cannot be maintained by the devotee of the temple?"*

ARGUMENTS:

8. Mr.K.Sudhakar, learned Counsel for the appellant/plaintiff would argue that the Suit Temple, which is in existence for more than 30 years, is situated in R.Survey No.285, and the same is referenced in the Village Map also. It is not situated in R.Survey No.607 as contended by the defendants. It is in no way hindering the public or the expansion of the road. The defendants have not established their case that the Suit Temple is obstructing the expansion of the Road. The First Appellate Court and the Trial Court failed to appreciate the evidence in a proper perspective and



S.A.No.902 of 2018

erred in dismissing the Suit. Accordingly, he would pray to allow the

Second Appeal, set aside concurrent findings and decree the Suit.

9. Mrs.R.Anitha, Special Government Pleader for the respondent nos. 1 to 3 / defendants nos.1 to 3 would argue that the Suit Temple has been put up by encroaching upon R.Survey No.607, which belongs to the State Highway Department, in a manner hindering the public as well as the expansion of the Erode-Karur State Highway. The intersection of Erode-Karur State Highway No.84 and Nanjaikalamangalam – Sivagiri Road at Ganapathipalayam is a busy road and hence, the Government decided to expand the same. However, with an ulterior motive to delay and obstruct the Government's welfare plan of expansion, the plaintiff has filed this Suit. Moreover, the plaint description of property itself would show that the plaintiff seeks permanent injunction in respect of R.Survey No.607, which belongs to the Highway Department. It is settled position of law that injunction against true owner cannot be granted. Both the Courts concurrently held that the plaintiff failed to establish his case. There is no warrant to interfere with the same. Accordingly, she would pray to dismiss the Second Appeal and sustain the concurrent findings.



S.A.No.902 of 2018

DISCUSSION:

WEB COPY

10. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

11. Case of the plaintiff is that the Suit Temple is situated in R.Survey No.285. On the other hand, case of defendants is that the Suit Temple encroaches upon R.Survey No.607, which belongs to the State Highway Department.

12. The plaintiff has filed Ex-A.1 - Combined Village Map, which has not come from a proper source. It is not a certified copy. As per Ex-A.1, the Suit R.Survey No.285 has a 'Pillaiyar' Temple and on the eastern side thereof is a North-South Road situate in R.Survey No.287. Eastern side of R.Survey No.287 are R.Survey No.606. Further Ex-A.1 shows that, abutting the northern side of R.Survey Nos.285, 287 and 606 is R.Survey No.607, which is Erode to Karur State Highway. As per plaintiff description of property, the Ganapathipalayam - Sivagiri Road is situated on the west side of Suit Temple and the Kurangupallam Canal is on its East.



S.A.No.902 of 2018

13. This Court deems fit to extract the plaint description of property hereunder:

'சொத்து விவரம்

ஈரோடு ரிடி, சப்ரிடி, ஈரோடு மாவட்டம், ஈரோடு வட்டம், புஞ்சை காளமங்கலம் கிராமம், கணபதிபாளையம் 4 ரோட்டில், ஆர்.எஸ்.நெ.285ல் அமைந்துள்ள ஸ்ரீ அரசு வேம்பு உடனமர் ஸ்ரீ சித்தி விநாயகர் ஆலயம் அதற்கு செக்குபந்தி விவரம்

சேனாதிபதி கவுண்டர், கதிர்வேல், இந்திராணி .. வடக்கு ஆகியோர்கள் இடத்திற்கும்

ஈரோடு - கரூர் மெயின் ரோட்டிற்கும் .. தெற்கு

கணபதிபாளையம்-சிவகிரி செல்லும் பாதைக்கும் .. கிழக்கு

தென்வடல் குரங்குப்பள்ளம் கால்வாய்க்கும் .. மேற்கு இதன்மத்தியில் அமைந்துள்ள மேற்படி திருக்கோவில், மேற்படி திருக்கோவிலில் உள்ள விநாயகர் சிலை, 2 நாகர் சிலை, அரசு வேம்பு மரங்கள், மேற்படி திருக்கோவிலினை சுற்றியுள்ள காலியிடம் சகிதம். '

14. From the above plaint description of property, it is discernible that the plaintiff seeks injunction in respect of R.Survey No.607. That means the Suit Property is situated in R.Survey No.607, which belongs to the State Highway Department. In short, the plaintiff contends that the Suit Temple is situated in R.Survey No.285 and does not



S.A.No.902 of 2018

encroach upon R.Survey No.607, but contrary to the same, he has described the Suit Property as situated in R.Survey No.607. Hence, there is ambiguity with respect to the lie and location of the Suit Property.

15. The plaintiff filed Ex-A.3 document which appears to be a self-serving document having no evidentiary value at all. It is inadmissible as evidence in law. Further P.W.1 in his cross-examination has admitted that the Suit Temple lacks a ‘Gopuram’ and roof, which makes plausible the case of the defendants that the Suit Temple is put up merely on a high platform by encroaching upon the Highways Department’s land. The plaintiff has failed to discharge the initial burden casted upon him with regard to the lie and location of the Suit Temple. It is settled law that injunction is a harsh remedy and can be granted only in respect of a specific and clear description of property (*See. Pankajammal Vs. Pichai Nadar, reported in 1978 T.L.N.J. 197*). Otherwise, it will prejudice the interest of third parties as well. Considering the entire facts and circumstances of this case and the materials on record, this Court is of the view that the plaintiff has miserably failed to prove the lie and location of the Suit Property. In fact, evidence on record makes the defendants’ case plausible. The Trial Court as well as the First Appellate Court has



S.A.No.902 of 2018

concurrently held that the plaintiff failed to prove that the Suit Temple is situated in R.Survey No.285 and not in R.Survey No.607. This Court finds no reason to deviate from the same. Substantial Question of Law No.1 is answered accordingly in favour of the defendants. In view of the same, the Substantial Question of Law No.2 does not arise at all.

16. Before parting with this case, this Court would like to highlight that in general, it is the plaintiff who has to prove his/her case. But when it comes to cases involving public interest, where the state is a defendant, the state must make every effort to protect public interest. In this case, the specific case of the defendants is that Suit Property is situated in R.Survey No.607 which belongs to the State Highway Department. The defendants filed a written statement asserting that one Muthusamy filed W.P.No.6887 of 2013 to remove the encroachments upon the Highway land and only as per the guidelines issued by this Court therein, the defendants sought to remove the Suit Temple encroaching upon R.Survey No.607. But the defendants failed to file a copy of the Order passed therein. While so, they also did not enter into the witness box. When the plaintiff's case is ambiguous, the officials representing the State (defendants) ought to have taken an active defence and been



S.A.No.902 of 2018

assertive, rather than being passive. The District Collector representing the State of Tamil Nadu, as well as the other Government officials need to be more diligent and responsible while conducting a case. Merely filing a written statement without the documents referenced therein is definitely not in the best interest of the State as well as the public; it shows lack of effort. In such cases, the Government officials representing the State should be extra vigilant and take more care and caution to secure the interest of the public which is fundamentally the interest of the State as well.

CONCLUSION:

17. Resultantly, the Second Appeal stands dismissed. The Judgment and Decree of the Trial Court as well as the First Appellate Court are hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous petition shall be closed.

17 / 12 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK



S.A.No.902 of 2018

WEB COPY

To

- 1.The First Additional Subordinate Court
Erode.
- 2.The Principal District Munsif Court
Erode.



WEB COPY



S.A.No.902 of 2018

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO. 902 OF 2018

17 / 12 / 2024