



S.A(MD)No.42 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

S.A(MD)No.42 of 2012

and

M.P(MD)Nos.1 & 2 of 2012

Leonammal Corera

... Appellant

Vs.

1.Shantha Cruz

2.Neena Cardosa (Died)

3.J.C.Pilippathal (Died)

4.Panimayaraj

5.The Commissioner,
Thoothukudi Municipality,
Thoothukudi.

6.Dennila

7.Agnol Cardoza

8.Binu Cardoza

... Respondents

(R-6 is brought on record as LR of deceased third respondent vide Court order, dated 27.02.2018 made in C.M.P(MD)Nos.1790 to 1792 of 2017 in S.A(MD)No.42 of 2012)



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(R-7 and R-8 are brought on record as LR's of deceased second respondent vide Court order, dated 27.02.2018 made in C.M.P(MD)Nos.1407 to 1409 of 2018 in S.A(MD)No.42 of 2012)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 28.10.2011 passed in A.S.No.103 of 2008 by the Sub Court, Thoothukudi reversing the judgment and decree, dated 16.09.2008 and passed in O.S.No.188 of 2004 by the Additional District Munsif, Thoothukudi.

For Appellant	: Mr.F.X.Eugene
For R-1 & R-4	: M/s.Ananth C.Rajesh
R-2 & R-3	: Died
For R-5	: Mr.S.Shaji Bino
For R-6	: No appearance
For R-7	: Mr.M.Sivakumar
For R-8	: Mr.A.W.D.Tilak

JUDGMENT

Despite suffering a judgment in respect of the very same property against them, the appellant, who is the plaintiff before the Additional District Munsif, Thoothukudi is once again before this Court.



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2. The facts are set out herein below with the parties in referred to in the same litigated status as before the Trial Court.

3. The plaintiff had filed the suit in O.S.No.188 of 2004 on the file of the Additional District Munsif, Thoothukudi for a declaration that the notice, dated 22.10.2003 issued by the first defendant bearing No.G1/Na.Ma.3/332/2003 was null and void, declare that the plaintiff was the owner of the II schedule land and consequentially, grant permanent injunction restraining the defendant, his men, agents or servants from removing the compound wall constructed by the plaintiff in the II schedule property.

4. The case of the plaintiff was that on 02.02.1980 the plaintiff had purchased the I schedule property from one Gilbert Rodrigo through power agent, Mammans Fernando. The plaintiff will submit that the I schedule property measures an extent of 6 1/2 cents and 48 square feet and was situated on the eastern side of plot No.40. This property measured 86 feet each North-South both on the Eastern as well as Western sides and East-West 33 feet each both on the Northern as well as the Southern sides. The plot formed a part of an approved layout. On



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27.05.1986, the plaintiff had applied for sub division and the plot was sub divided as plot No.40-A and the town survey number was also sub divided as T.S.No.1139/1A Part. On 29.08.1998, the plaintiff had obtained an approval for putting up the building on the said property and the building was also put up and assessed to tax in as Door No.403/C. The plaintiff had thereafter put up compound wall within her property that had been purchased.

5. While so, on 22.10.2003, she was served with a notice, that is impugned in this suit, that she had encroached into an extent of 29/29 square meters of the Municipal Land. The plaintiff would submit that she had left an extent of 9 feet 3 inches on the road side. She would submit that the first defendant was estopped from issuing the notice as the plot had been approved by the Joint Director of Town and Country Planning and she had also applied and obtained the building approval from the first defendant. She had also put forward a contention that the roads were not handed over to the first defendant Municipality and therefore, she had come forward with the suit in question. Pending the suit, the defendants 2 to 5 had been impleaded. However, the plaint does not set out the interest of these defendants in the suit or the relief that was



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claimed against them.

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6. The first defendant had filed a written statement denying the contentions made in the plaint and would set out to trace her title to the property and the formation of the layout. The first defendant would submit that originally, the lands belonged to the Thoothukudi Vadathisai Hindu Nadar Dharma Karapatti Paribalana Sangam [Hereinafter called as "Sangam"]. They had formed a layout of house sites and had sold it to various persons. Plot No.46 was sold by them to one D.Arunachala Nadar, under a registered sale deed, dated 27.02.1951 and plot No.47 was sold to one Gnana Soundari Ammal under two sale deeds. The first defendant would further submit that there was a 20 feet East West road ear marked North of plot No.46 and the land purchased by Gnana Soundari Ammal. Meanwhile, the entire property belonging to the Sangam got approval in T.P/DTP/27/1955, which was once again revised in T.P/DTP/78/1958. While the plots were approved under the revised layout, some places were ear marked for roads. However, these road did not tally with the roads set out in the unapproved layout and which had already been formed. As a result, this created confusion and Gnana Soundari Ammal had filed a suit in O.S.No.355 of 1982 on the file of the



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District Munsif Court, Thoothukudi against the first defendant herein, the plaintiff herein and 8 others to declare that the unapproved layout road belongs to the owners of the houses on either side and for an injunction restraining the defendant from putting up any construction in the said road and for a mandatory injunction to remove the construction put up thereon. This suit was contested by the plaintiff herein stating that the approved layout, plan would prevail over the unapproved layout plan and that Gnana Soundari Ammal cannot questioned the approved revised lay out No.TP/DTP/78/1958. After an elaborate trial, the suit was decreed by the learned District Munsif by the judgment and decree, dated 30.07.1986. Against this judgment and decree only the first defendant had filed an appeal and the plaintiff had not challenged the same and thereby, the judgment and decree in O.S.No.355 of 1982 attain finality with reference to the plaintiff herein and was binding on her. The first defendant would further submit that the encroachment into the 20 feet road have been made only very recently and immediately on coming to know about the same, the defendant had taken legal action by issuing the notice. The building license was not issued with reference to this 20 feet road. The defendant had pleaded *res judicata* and sought for the dismissal of the suit in question.



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7. The defendants 2 to 5 had filed a detailed written statement in which they would contend that the suit filed by the plaintiff on the basis of the revised approved plan No. TP/DTP/78/1958 was not maintainable inasmuch as this revised plan was the subject matter of the said O.S.No. 355 of 1982 and by the decree, dated 30.07.1986 the plan has been declared as invalid. The plaintiff had not challenged the said decree and it was only the first defendant, who had challenged it unsuccessfully before the Sub Court, Thoothukudi against which there was no further appeal. These defendants would submit that a suit in O.S.No.99 of 1994 had been filed by one Brighten Bernard against the plaintiff herein and others for an injunction restraining them from interfering with his possession and enjoyment of his property. The 20 feet road finds mention in the suit. Ultimately the suit had been decreed in favour of the said Brighten Bernard. Therefore, the defendants would submit that the plaintiff is not entitled to the decree claimed by them. It is their further contention that after the dismissal of the appeal, the encroachments made on the 20 feet road by all the defendants which included the plaintiff herein had all been removed.



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8. The Principal District Munsif Court, Thoothukudi had framed the following issues:

- "1. வாதி கோரியுள்ள விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
2. வழக்கிடை 2வது இலக்கச் சொத்து வாதிக்கு தனித்துப் பாத்தியப்பட்டதா?
3. வாதி கோரியுள்ள உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
4. இவ்வழக்கு முன்தீர்ப்புத் தடையால் பாதிக்கப்பட்டுள்ளதென்பது சரியா?
5. வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரங்கள் என்ன?"

9. The plaintiff had examined herself as P.W.1 and marked Exhibits A.1 to A.6. The defendants had examined one Arumugam as D.W.1 and Shantha Cruz, the second defendant as D.W.2 and marked Exhibits B.1 to B.10. The Commissioner's report had been marked as Exhibit X.1.

10. Challenging the same, the defendants 2 to 5 had filed A.S.No. 103 of 2008 before the Sub Court, Thoothukudi. The learned Subordinate Judge on considering the evidence afresh, held that the suit was barred by *res judicata* and the plaintiff, who had not challenged the judgment and decree in the earlier suit in O.S.No.35 of 1982 could not



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maintain this suit in question. It is challenging this reversing judgment and decree that the appellant is before this Court and the appeal has been admitted on the following substantial questions of law:

"1. Whether the Lower Appellate Court is correct in law in not holding that the decree passed in O.S.No.355 of 1982 by the District Munsif Court, Thoothukudi is without jurisdiction, inexecutable and nonest in law?

2. Whether the Lower Appellate Court erred in law in reversing the decree declaring the notice issued by the first defendant municipality as null and void, when the municipality had chosen not to file any appeal?"

11. Heard the learned Counsels on either side.

12. From the perusal of the Commissioner's report that has been filed before this Court, the sketch and photos annexed to the report clearly shows that there is a 20 feet road in existence and that the encroachment by the plaintiff has been made on the 20 feet road. The Commissioner has stated that when the properties were measured as per Exhibit A.1, there was an encroachment on the East-West road. He would further submit that under Exhibit B.12, the Southern boundary has been described as a 20 feet road and the North South measurement as per Exhibit B.12 is 66. However, the South North measurement in Exhibit



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A.1 is 86-B, which clearly goes to show that the 20 feet road has been annexed into the plaintiff's property under Exhibit A.1. Be that as it may, the original approval which was granted in 1955 under T.P.No.27/55 was revised under T.P.No.78/58 which was challenged by Gnana Soundari Ammal in the earlier suit in O.S.No.355 of 1982. The suit was decreed and that plan was declared as invalid. The appeal filed by the first defendant herein also ended in a dismissal. The plaintiff herein had not contested the said suit and therefore, the decree in O.S.No.355 of 1982 had attained finality, insofar as the plaintiff was concerned. Suppressing the same, the present suit has been filed challenging the notice stating that the compound wall has been putting up as per the plan which has been declared as invalid. It is also seen that pursuant to the earlier decree, encroachments were removed and the compound wall which is a subject matter of the present suit has been put up, thereafter, which is also in violation of the earlier decree. The substantial question of law No.1 is answered against the plaintiff.

13. As regards, the substantial question of law No.2, defendants 2 to 5, who also have an interest in the 20 feet road have challenge the same and the failure on the part of the first defendant to not challenge the



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judgment and decree will not give any right to the plaintiff, more particularly, when in the earlier suit she had suffered a decree which she has not challenged. Therefore, the substantial question of law No.2 is also answered against the plaintiff.

14. In the result, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

27.09.2024

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

- 1.The Sub Court,
Thoothukudi.
- 2.The Additional District Munsif,
Thoothukudi.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P.T.ASHA, J.

BTR

Judgment made in
S.A(MD)No.42 of 2012

Dated:
27.09.2024