

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal Nos.1290 & 1291 of 2014 and
M.P.No.1 of 2014 in S.A.No.1291 of 2014

- 1.Balgheese Bibi
- 2.Fathumuthu Jogra

... Appellants in both the appeals/
Plaintiffs.

Vs.

- 1.The District Collector,
O/o The Collector,
Coimbatore.
- 2.Assistant Divisional Engineer,
Public Works Department,
Mettupalayam, Coimbatore District.
- 3.The President,
Odanthurai Panchayat,
Odanthurai Village,
Mettupalayam,
Coimbatore District. ... Respondents in S.A.No.1290/2014/Defendants.
- 1.Additional Block Development Officer,
Union Office,
Karamadai Union Office,
Mettupalayam, Coimbatore District.
- 2.The President,
Mullai Self Help grup
Kallar pudur,
Mettupalayam,
Coimbatore District. ... Respondents in S.A.No.1290/2014

Prayer in S.A.No.1290 of 2014:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree passed in A.S.No.41 of 2011 on the file of the learned First Additional Subordinate Judge, Coimbatore dated 27.04.2012 as confirmed by the decree and judgement passed in O.S.No.186 of 2002, on the file of the learned District Munsif, Mettupalayam dated 10.02.2010.

Prayer in S.A.No.1291 of 2014:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree passed in A.S.No.42 of 2011 on the file of the learned First Additional Subordinate Judge, Coimbatore dated 27.04.2012 as confirmed by the decree and judgement passed in O.S.No.198 of 2002, on the file of the learned District Munsif, Mettupalayam dt 10.02.2010.

For Appellants : Mr.S.Kadarkarai
in both Second Appeals

COMMON JUDGEMENT

The appellants in both the appeals are one and the same. The respondents are defendants in the suit. The suit property is one and the same and the relief sought for is also same. The appellants herein filed O.S.No.186 of 2002 against the respondents in S.A.No.1290 of 2014 for permanent injunction to restrain them from digging any pit or making any construction on the suit property. The very same plaintiffs/appellants herein filed another suit in O.S.No.198 of 2002 against the respondents in S.A.No.1291 of 2014 for permanent injunction to restrain them from digging any pit or making any construction on the suit property. The trial Court tried both the suits jointly and by way of common judgement dated 10.02.2010, dismissed both the suits. As against the decree in O.S.No.186 of 2002, the appellants herein filed an appeal in A.S.No.41 of 2011 before the learned First Additional Subordinate Judge, Coimbatore and as against the decree in O.S.No.198 of 2002, the appellants herein filed an appeal in A.S.No.42 of 2011 before the learned First Additional Subordinate Judge, Coimbatore. The learned First Additional Subordinate Judge heard both the appeals but, by separate judgements, dismissed both the appeals. As against the dismissal of A.S.No.41 of 2011, the appellants have come up with S.A.No.1290 of 2014 and as against the dismissal of A.S.No.42 of 2011, the appellants have come up with S.A.No.1291 of 2014.

2.These two appeals have come up today for admission. Since, both the appeals are inter connected arising out of the common judgement of the trial Court and though, the First Appellate Court has delivered separate judgements, I deem it appropriate to heard both the second appeals together and to dispose of the same by way of this common judgement.

3.The case of the plaintiffs in both the suits is that they are the absolute owners of the respective suit property. The suit property is comprised in S.No.177 measuring 2.06 acres. On the south of the suit property, a road is situated. According to the plaint allegations, the defendants made attempts to dig pits and to raise

construction in front of the suit property. To injunct them, the plaintiffs have filed both the suits.

4.The case of the defendants, in common, is that, on the South of the suit property, the land comprised in S.No.174 is located, which is a Government poromboke land. The District Collector, Coimbatore by his proceedings in Na.Ka.No.3436/2002/E3 dated 28.05.2002, has issued a Work Order for construction of four shops on the poromboke land for the benefit of "Mullai Self Help Group" which is one of the defendants in O.S.No.198 of 2002. It was also made clear in the written statements that the defendants in both the suits had no intention to make construction on the suit property belonging to the plaintiffs comprised in S.No.177.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, one witness was examined and 6 documents were exhibited. On the side of the defendants, two witnesses were examined and 6 documents were exhibited. An Advocate Commissioner was appointed to note down the physical features of the suit property. The report of the Advocate Commissioner was marked as Ex.C.1 and the Rough sketch prepared by the Commissioner was marked as Ex.C.2.

6.Having considered the above, the trial Court by way of common judgement dismissed both the suits and the same was confirmed by the First Appellate Court by way of separate judgements. That is how the appellants are before this Court with these second appeals.

7.In these second appeals, it is contended that, it is true that the defendants are not making any attempts to make construction on the suit property namely in S.No.177. But, it is the contention of the plaintiffs that they have got every right to use the road comprised in S.No.174 and they have got right to access the said road from the suit property. Now, construction is sought to be made in S.No.174 thereby obstructing the way to suit property namely S.No.177. For this, according to the plaintiffs, the defendants have got no right.

8.It may be true that the plaintiffs have got right to have access to the road but, whether S.No.174 is a road or it is a poromboke land is still a disputed question of fact. At any rate, the relief sought for in both the suits is for permanent injunction to restrain the defendants from making any construction in S.No.177.

9.Since, there is no intention on the part of the defendants to make any construction on S.No.177, which is very clear from the written statements filed by the defendants, the plaintiffs cannot have any relief in these suits. Now, it is brought to my notice that already construction has been completed in S.No.174. If the

plaintiffs feel that they have got any right of access to the road in S.No.174 and the construction which has already been made in the same obstructs the plaintiffs to have access to the said road, it is for them to work out their remedies in the manner known to law, for which, the dismissal of these suits will not be an impediment. In view of all the above position, I do not find any substantial question of law at all involved warranting admission of these second appeals.

10.In the result, the second appeals fail and accordingly, the same are dismissed. The decrees and judgements passed by the Courts below are hereby confirmed. Consequently, connected miscellaneous petition is closed.

jbm

-s/d-
Deputy Registrar(J)
Dt:11/3/2015

True Copy

Sub-Assistant Registrar

To

- 1.The First Additional Subordinate Judge,
Coimbatore.
- 2.The District Munsif,
Mettupalayam.

+ 1 cc to Mr.S.Kadarkarai, Advocate SR 10982

sr(co)
prk13/3

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S.A.Nos.1290 & 1291 of 2014

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