

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.485 of 2009

and

M.P.No.1 of 2009

Sundararaj

... Defendant / Appellant / Appellant

Vs.

1. Komarasamy

2. Thangammal

3. V.K.Vasudevan

4. A.Balasubramanian

... Plaintiffs/Respondents/Respondents

Prayer:- Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.09.2008 made in A.S.No.95 of 2008 on the file of the Principal District Judge, Erode District, Erode, confirming the judgment and decree dated 21.12.2006 made in O.S.No.50 of 2006 on the file of the District Munsif cum Judicial Magistrate of Perundurai, Erode District.

For Appellant : Mr.A.V.Arun

For Respondents : Mr.I.C.Vasudevan

J U D G M E N T

The plaintiffs had filed the suit for permanent injunction, restraining the defendant from putting up a Poultry Unit or running a Poultry Farm in suit 'B' schedule property thereby preventing the defendant from causing nuisance to the plaintiffs in enjoying the 'A' schedule property.

2. The suit 'A' schedule property belonged to R. Kuppanan, Ammasi Gounder and Komarasamy, who are brothers having purchased the property on 13.06.1970. They have constructed separate houses and living there. The defendant is subsequent purchaser of the adjacent western side property, which is described as B schedule property. The defendant had started construction with an intention to start a Poultry Farm in the 'B' schedule property. As the poultry Farm would emanate bad smell and offensive odour, which would be causing health hazards to the plaintiffs, besides the noise pollution and the nuisance that may be made by the birds

would be unpleasant and disturbing for the neighbours, the plaintiffs objected to the start of Poultry Farm. The plaintiffs have also contended that the Poultry Farm would spread infectious diseases. Hence the suit was filed for permanent injunction restraining the defendant from starting a Poultry Farm.

3. The contention of the plaintiffs were assailed by the defendant, contending that 'A' and 'B' schedule properties are 25 feet away from each other and the allegation of the plaintiffs about running a poultry Farm and causing of nuisance were all denied by him. The defendant also submitted that the chicks are called as basket chicken which do not make noise. It is admitted by the defendant that on the southern side of the B schedule property, there is already a poultry Farm, which is running for more than 10 years and so far, there has been no complaint from the inhabitants of the village. Hence, he prayed for the dismissal of the suit.

4. Before the trial Court, on the side of the plaintiffs, the third plaintiff was examined as PW.1 and one more witness was examined as P.W.2 and marked the documents as Exs.A1 to A.10. On the side of the defendant, the defendant examined himself as D.W.1 and marked the document as Ex.B.1. On the side of the Court, Commissioner Report and Sketch were marked as Exs.C1 and C2.

5. The Trial Court held that in the event of the poultry Farm being started in the B schedule property, there is every chance of foul smell, health hazard and mental agony being caused to plaintiffs, decreed the suit as prayed for. On appeal, the Appellate Court also confirmed the decree. Aggrieved by the same, the above Second Appeal has been filed.

6. Pending the suit, the Commissioner was appointed and the report of the Commissioner was marked as Ex.C1, in which it is stated that the bathrooms were made up of thatched sheets; the plaintiffs have their houses on the east of the bathrooms; there is about 15 feet gap between the plaintiffs house and the defendant's new construction; but there is more than 100 feet gap between the plaintiffs house and the poultry belonging to the defendant. However, the defendant has not produced any evidence to show that he had obtained appropriate permission and sanction from the local authorities. The defendant has produced only Ex.B1-building permit. Before commencing a poultry Farm, the defendant ought to have obtained necessary sanction from the local authorities and from the Pollution Control Board. The defendant has not produced any such kind of 'No Objection Certificate' for establishment of the Poultry Farm in a residential area. The defendant, who is intentional about starting a Poultry Farm, ought to have produced concerned orders from the authorities concerned who would be experts to decide the question of sanctioning permit. No doubt,

the act of the defendant in commencing a Poultry Farm requires promotion and encouragement of business. However, unless a clearance is obtained from the authorities viz., Pollution Control Board etc., the defendant cannot start his business.

7. The plaintiffs also have not proved the allegations stated in the plaint for the grant of decree in his favour. There is no evidence produced with regard to the alleged nuisance and in the absence of proof of any nuisance in locating the Poultry Farm in the suit property, a decree cannot be granted in favour of the plaintiffs. The plaintiffs also have not produced any evidence to show that the business of the appellant affected peaceful living of the plaintiffs, which would outweigh the constitutional rights guaranteed to the appellant in carrying on his trade or business. When the Constitution guarantees the right of the citizen to carry on his own trade or business, the Courts cannot stop them from doing such business. From the facts of the case, it is only a private nuisance that has been complained of by the plaintiff, for which, the fundamental rights guaranteed to the defendant under the Constitution cannot be taken away. In such circumstances, it would be justifiable to impose necessary conditions on the appellant to prevent the alleged smell or noise that may arise from the Poultry Farm. No doubt, the defendant ought to have obtained 'No Objection Certificate or clearance certificate' from the authorities concerned before starting the Poultry Farm. The mere apprehension of the private nuisance to the plaintiffs cannot take away the right of the defendant. The plaintiffs have not made out the ingredients of a public nuisance. The question of causing nuisance due to running a poultry farm is purely a question of fact which can be decided by evidence only. The Courts below failed to see that nuisance alleged was not nuisance for community as no complaint from the community is ever made. The slight discomfort that may be caused to some people passing by the road or living in the neighbourhood cannot be considered. Therefore instead of stopping the poultry farm from starting the business the defendant may be given an opportunity to obtain necessary sanction orders from appropriate authorities and be directed to abide by the conditions.

In the result, the Second Appeal is disposed of modifying the judgment and decree of both the Courts below to the effect that the defendant should get appropriate clearance from the appropriate authorities before starting the Poultry Farm. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

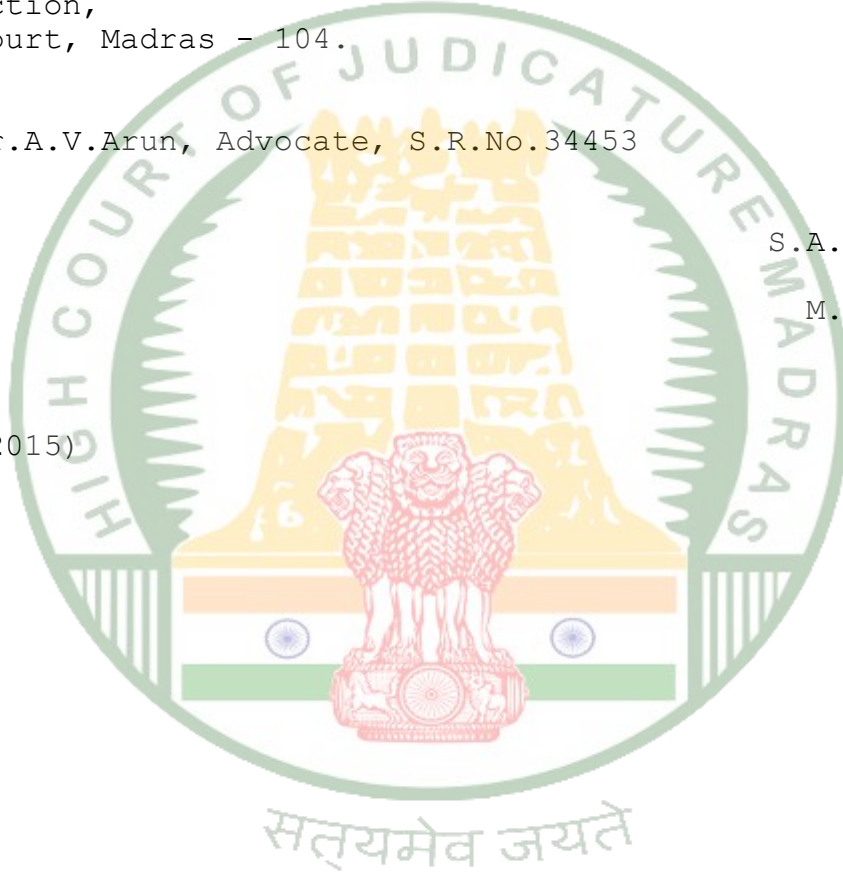
To

1. The Principal District Judge,
Erode
2. The District Munsif cum Judicial Magistrate,
Perundurai, Erode District.
3. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.A.V.Arun, Advocate, S.R.No.34453

S.A.No.485 of 2009
and
M.P.No.1 of 2009

NM(CO)
CA(05/08/2015)



WEB COPY