

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.683 of 2009
and M.P.No.1 of 2009

1.State of Tamil Nadu,
Rep. by is District Collector,
O/o District Collector,
Thiruvarur Munsif Taluk, Town & Post,
Bypass Road, Thiruvarur.

2.The Executive Engineer,
Public Works Department,
Vennar Drainage Division,
Thiruvarur Munsif Taluk, Town & Post,
Thiruvarur.

3.The Junior Engineer,
Public Works Department,
Thiruvarur Section, Thiruvarur.

... Appellants/Respondents/
Defendants

-Versus-

G.Thiyagasundaram

... Respondent/Appellant/
Plaintiff

This second appeal is filed against the judgment and decree dated 19.10.2006 made in A.S.No.11 of 2006 by the learned Subordinate Judge, Thiruvarur, reversing the decree and judgement dated 21.12.2005 made in O.S.No.34 of 2004 by the learned District Munsif, Thiruvarur.

For Appellants : Mr.T.Jayaramaraj, GA (CS)

For Respondent : Mr.C.Umashankar

JUDGMENT

The defendants in O.S.No.34 of 2004 on the file of the learned District Munsif, Thiruvvarur, are the appellants herein. The sole respondent is the plaintiff in the said suit. The plaintiff filed the said suit for permanent injunction restraining the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial court, by decree and judgement dated 21.12.2005, dismissed the suit. Challenging the same, the plaintiff filed an appeal in A.S.No.11 of 2006 before the learned Subordinate Judge, Thiruvvarur. By decree and judgement, the learned Subordinate Judge, allowed the appeal and set aside the decree and judgement of the trial court and decreed the suit as prayed for, however, granting the limited relief of permanent injunction to the plaintiff restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff until the plaintiff is evicted by following the procedure established by law. Challenging the same, the defendants are now before this court with this second appeal.

2. This second appeal has come up today for admission. I have heard the submissions made by the learned Government Advocate appearing for the appellants and the learned counsel appearing for the respondent and also perused the records carefully.

3. Admittedly, this is a simple suit for permanent injunction to protect the possession of the plaintiff. It is not in dispute that the plaintiff is in possession of the property. As a matter of fact, the defendants have issued a notice under the provisions of The Land Encroachment Act for removal of the plaintiff from possession. There can be no legal impediment for the defendants to evict the plaintiff from the suit property by following the procedure established by law. Since the defendants were trying to remove the plaintiff from the possession of the property without following the procedure established by law, the said suit was filed. The first appellate court has rightly held that the possession of the plaintiff shall not be disturbed by the defendants except by following the due procedure established by law. Therefore, I do not find any infirmity in the findings given by the first appellate court. Further, I do not find any question of law much less a substantial question of law to admit the second appeal. Thus, the second appeal must fail.

4. In the result, the second appeal is dismissed. The decree and judgement dated 19.10.2006 made in A.S.No.11 of 2006 by the learned Subordinate Judge, Thiruvarur, stands confirmed, however, making it clear that the appellants/defendants are at liberty to evict the respondent/plaintiff by following the procedure established by law. No costs. Consequently, connected MP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk
To

1.The Subordinate Judge, Thiruvarur,
Thiruvarur District.

2.The learned District Munsif,
Thiruvarur, Thiruvarur District.

3.The Section Officer,
VR Section, High Court, Madras

+1 cc to Mr.C.Umashankar Advocate sr.60188/15
+1 cc to Government Pleader sr.60521/15

Second Appeal No.683 of 2009

aa23/12/2015

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