

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A No.808 of 2009
and MP.No.1 of 2009

1.J.Ravikrishna
2.Nandhini Reddy

.. Appellants/Plaintiffs

vs.

M/s.Sathya Nagar Welfare Association
represented by its Secretary

1.Ponniappan
2.Anandarajan
3.R.Vasudevan
4.Vellaishwamy
5.Gopinathan
6.Ethirajulu Naidu
7.Suresh
8.S.K.Shankaran

.. Respondents/Defendants

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.4.2009 made in AS.No.2 of 2008 on the file of the Subordinate Judge, Poonamallee confirming the judgment and decree dated 24.4.2007 made in O.S.No.139 of 1998 on the file of the District Munsif cum Judicial Magistrate, Ambattur.

For Appellants : Mr.P.Sivamani
For Respondents : Mr.V.Srinivasa Babu

J U D G M E N T

The unsuccessful plaintiffs are the appellants herein. The plaintiffs filed the suit for the relief of permanent injunction restraining the defendants from in any way changing or altering or attempting to change the physical features of the suit property till the rights to it are declared as per the direction issued in WA.Nos.1128/96 and 1024/97.

2.The relief sought for in the suit is in respect of the land and building including the compound wall in plot no.SP/1 and SP/2 in the approved layout plan by L.P.D No.31/74 by D.T.C.P situated in S.nos.68 and 67/2 measuring an extent of 14,400 sq.ft. in Mogappair Village, Saidapet Taluk, Chinglepet District. It is the case of the plaintiffs that they purchased the suit property under two sale deeds in Document Nos.2763 and 2766 of 1992 dated 25.3.1992. The suit property was admittedly in the approved lay out earmarked as school and play ground and their vendor for want of recognition and sanction not utilised the same for running a school and its play ground. Thereafter, the vendor of the plaintiffs started dealing with the same as absolute owner and sold the property to the plaintiffs in the year 1992. While so, the first defendant Association filed

WP.16183/93 for issuance of a writ of Mandamus for preservation of the place earmarked for public purpose. Pending writ petition, the defendant Association as writ petitioner therein came forward with WMP.No.25125/93 for interim injunction restraining the vendors from interfering with their peaceful enjoyment of the property by the Residents of Sathya Nagar or by putting up any construction in that property or deal with it in any manner. Originally, interim injunction was granted by the learned brother judge. Thereafter, the writ petition was disposed of by directing the parties to approach appropriate forum for the relief to get their civil rights settled and further directed to maintain statusquo as on that date till such time. Against which, both the writ petitioner as well as the fourth respondent therein by name K.K.Sivanandam, who is none else than the husband of the vendor and power of attorney holder of the purchasers in the present suit, filed two Writ appeals in WA.1024/97 and 1128/96 respectively. The Division Bench of this court by order dated 16.9.1997 disposed of the writ appeals, by directing that the appellant in WA.1128/96 i.e., fourth respondent in the writ petition, will enforce his rights after getting appropriate relief from the civil court and till his right is declared by the civil court, the status quo with respect to the property in dispute be maintained. According to the plaintiffs, the cause of action for filing the suit arose when the Secretary of the first defendant Association and other defendants, in disobedience of the order passed by the High court to maintain status quo, started demolishing a portion of the compound wall in 1998.

3.The suit relief was seriously resisted by the defendants. According to them, the suit property was reserved for public purpose namely school and play ground in the approved lay out and the plaintiffs' vendor who was the promoter, executed a deed to hand over the same to the first defendant Association on 18.07.1982 and was running a school in a portion of the property till 1988, with the permission of the first defendant Association. It is the further case of the defendants that the promoter also built a temple and put up a compound wall around the temple and handed over the same to the Temple Committee in the year 1982 for its management and maintenance and the temple committee, after passing a resolution on 26.10.1997, started renovation work in November 1997. It is also their case that the plaintiffs predecessor one K.K.Sivanandam attempted to trespass into the place reserved for public purpose which compelled the defendants to file a writ petition in WP.16183 of 1993 and they obtained an order of interim injunction from the High Court and thereafter, the writ petitions were disposed of, against which, writ appeals were filed and the same were also disposed of, with a direction to maintain statusquo.

4.The trial court, on the basis of the oral and documentary evidence, dismissed the suit mainly on the ground that the plaintiffs failed to follow the direction of the High court by approaching the civil court for declaring their right in respect of the suit property. Aggrieved against the same, the plaintiffs preferred AS 2/2008. The lower appellate court also dismissed the appeal by

confirming the judgment and decree of the trial court. Hence, this second appeal by the plaintiffs before this court.

5.The second appeal is admitted on the following substantial question of law:

Whether the order passed in the Writ Appeals estopped the plaintiffs from approaching the civil court for bare injunction?

6.Heard the rival submissions made on both sides and perused the records.

7.The relief sought for in the present suit is based on the order passed by the Division Bench of this Court in WA.Nos.1128/96 and 1024/97, which in turn arose out of the order made in W.P.No.16183/93. The plaintiffs by names J.Ravikrishna and G.K.Nandhini Reddy are the purchasers of the suit property from one K.S.Saroja W/o.K.K.Sivanandam. The property purchased by the plaintiffs was admittedly earmarked as school and play ground in the approved lay out. As the original owner was unable to run a school for want of recognition and sanction, the property was thereafter dealt with by the original owner and was sold to the plaintiffs. The sale transaction was sought to be challenged by the first defendant/Sathya Nagar Welfare Association represented by its Secretary by way of the writ proceedings before the High Court.

8.The perusal of Exs.B2 to B4 copy of the orders made in WP.No.16183/93, WMP No.25125 of 1993 and WA Nos.1128 of 1996 and 1024 of 1997 would reveal that the writ petition was filed by Sathya Nagar Welfare Association against (i)Ambattur Municipality, (ii)Chennai Metropolitan Development Authority and two individuals by names K.S.Murthy and K.K.Sivanandam. The fourth respondent K.K.Sivanandam is the husband of the original owner and power of attorney holder of the present owners. The relief sought for in the writ petition is for issuance of writ of mandamus for preservation of the place earmarked for public purpose. The dispute raised between the parties in the writ petition is regarding the nature of the property as to whether the same remains to be earmarked for public purpose or ceased to be a public property. The learned brother judge who disposed of the writ petition was not inclined to go into such disputed question, but inclined to dispose of the writ petition, by directing the parties to approach the appropriate forum for relief to get their civil rights settled. The learned brother judge also ordered status quo as on date to be maintained till such time. Both the writ petitioner Sathya Nagar Welfare Association and the fourth respondent therein filed two independent writ appeals challenging the correctness of the order of the learned brother judge. Both the writ appeals were disposed of by the Division Bench by directing the 4th respondent by getting his rights declared before the Civil Court and by directing both the parties to maintain status quo. It may be true that the learned brother judge during the pendency of the writ petition, granted interim injunction restraining the respondents 3 and 4 therein from interfering with the peaceful possession of the Residents of Sathya Nagar and the interim injunction was later on modified and altered

into one that of status quo as on date of the order passed in writ petition and writ appeals.

9.The suit is filed by the purchasers through their power of attorney by name K.K.Sivanandam, who is the fourth respondent in the writ petition and the appellant in WA.No.1128/96 and who is also the husband of the plaintiffs' vendor, for the limited purpose of permanent injunction, restraining the defendants from in any way changing or altering or attempting to change the physical features of the suit property, till their rights in respect of the suit property is declared by the civil forum, as per the direction of this court in WA Nos.1128/96 and 1024/97.

10.However, both the trial court as well as the lower appellate court rejected the relief mainly on the ground that the contesting fourth respondent in the writ petition and the appellant in WA.No.1128/96 by name K.K.Sivanandam failed to approach the civil forum for declaring his right. Such ground is in my considered view, having regard to the defence raised by the defendants in their written statement, contrary to the order passed by the Division Bench. When the learned brother judge as well as the Division Bench of this Court directed status quo to be maintained, the same is binding on both the parties to the proceedings, that means both the plaintiffs as well as the members of the defendants Association by name Sathya Nagar Welfare Association, who are the residents of Sathya Nagar are bound by such direction. If that is so, any attempt made by either of the parties, to commit any act, in violation of the direction of this court, will entitle other party to get appropriate remedy before appropriate forum.

11.The plaintiffs have come forward with the suit for the restricted relief mainly on the ground that the order of status quo is sought to be disobeyed by other party, by demolishing the compound wall. The relief so sought for is only with an intention to preserve the physical state of affairs. That being so, both the courts below ought to have for the purpose of enforcing the order of the learned single judge as confirmed by the Division Bench of this Court, granted the relief as prayed for by the plaintiffs. But, both the courts below on misconception and erroneous approach, failed to consider the same and dismissed the suit and appeal. The Courts below failed to appreciate the purpose of the direction issued on the writ side. The order on writ side cannot be understood or interpreted in such a manner that one party to such order is at liberty to indulge in any act flouting the same. The dismissal of the suit will only lead to such factual anamoly. Hence, the judgment and decree of the courts below are legally and factually unsustainable and the substantial question of law is accordingly answered in favour of the plaintiffs.

12.In the result, the second appeal is allowed by setting aside the judgment and decree of the courts below. The plaintiffs are directed to approach appropriate civil forum by way of civil suit for appropriate main relief along with interim relief and in that event, the defendants are at liberty to agitate their rights on merits by

raising all the legal and factual grounds available to them.
Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Subordinate Judge, Poonamallee.

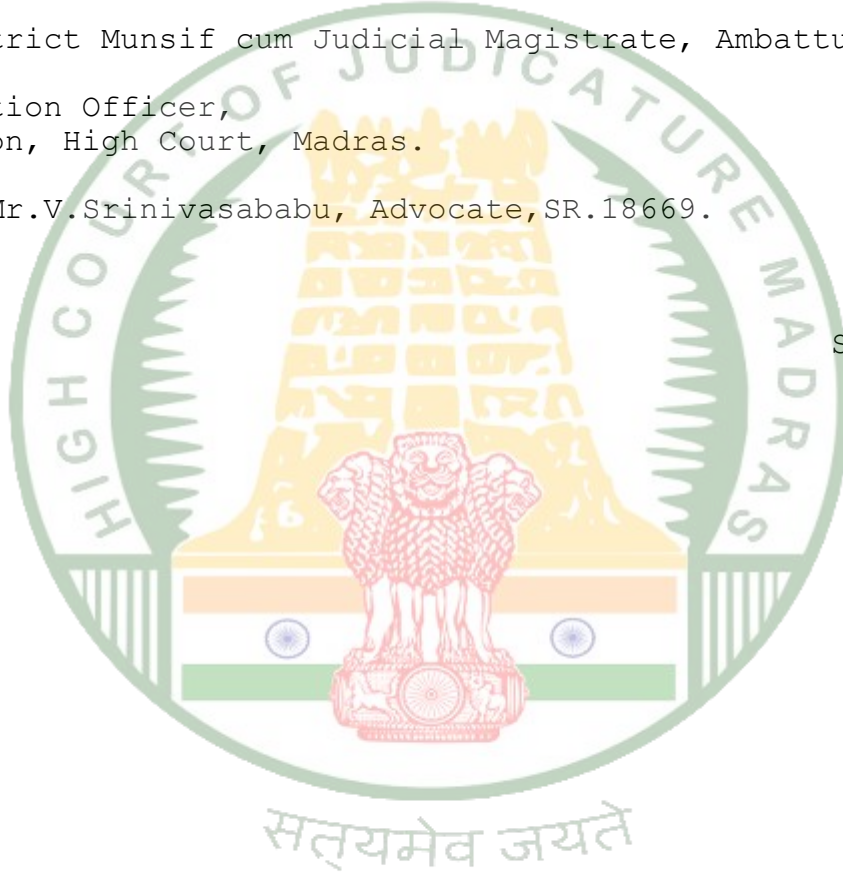
2.The District Munsif cum Judicial Magistrate, Ambattur.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.V.Srinivasababu, Advocate,SR.18669.

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SA.No.808 of 2009



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