

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.480 of 2013
and
M.P.No.1 of 2013

1. The Government of Tamil Nadu,
Rep. By the District Collector, Tiruvarur,
Tiruvarur Taluk and Munsif.
 2. The Tahsildar,
Nannilam,
Nannilam Taluk and Munsif.
- .. Appellants/Respondents/Defendants
- Vs -
- Kandasamy .. Respondent/Appellant/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 21.03.2012, made in A.S.No.2 of 2012 on the file of the learned Subordinate Judge, Tiruvarur reversing the Judgment and Decree dated 31.10.2011, made in O.S.No.8 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Nannilam.

For Appellants : Mr.T.Jayaramaraj, G.A.(CS)

For Respondent : Mr.S.Sounthar.

J U D G M E N T

The defendants in O.S.No.8 of 2011 on the file of the learned District Munsif cum Judicial Magistrate, Nannilam are the appellants. The respondent is the plaintiff in the suit. The said suit was filed seeking mandatory injunction directing the defendants to install and maintain Touchscreen equipment within the office premises of the Tahsildar, Nannilam so as to enable the people to operate the same and to find out the ownership of the lands situated within Nannilam Taluk without paying any cost and without any difficulty.

2. The trial Court by decree and judgment dated 31.10.2011, dismissed the suit. As against the same, the respondent filed an appeal in A.S.No.2 of 2012 and by decree and judgment dated

21.03.2012, the lower appellate Court allowed the appeal and set aside the decree and judgment of the trial Court and decreed the suit as prayed for. As against the same, the appellants are before this Court with this second appeal.

3. I have heard the learned counsel on either side and perused the records carefully.

4. The case of the plaintiff is that he is the organizer of an organization known as "Makkal Maiyam" at Nannilam. According to him, just in front of the office of the second appellant a touchscreen electronic device was installed, by which, the general public could know the ownership of the lands by operating the same by paying a sum of Rs.Two. Though, it was operational for sometime, from the year 2009 onwards, it became defunct and the same has been taken out of the said place. In this regard, the plaintiff made several representations to the respondents but of no avail. Therefore, he filed the present suit for the relief mentioned above.

5. In the written statement, it was contended that the device has become useless due to technical snag developed over it and therefore it was removed. Further, database has not been created in respect of survey records and therefore it has become impossible to operate the machine. It is also contended before the lower appellate Court that the respondent has got no locus standi to maintain the appeal.

6. On the side of the plaintiff, before the trial Court, he was examined as P.W.1 and as many as eight documents were exhibited and on the side of the defendants one witnesses was examined. Having considered all the above, the trial Court dismissed the suit by decree and judgment dated 31.10.2011. As against the same, the respondents filed an appeal in A.S.No.2 of 2012 and by decree and judgment dated 21.03.2012, the lower appellate Court allowed the appeal and set aside the decree and judgment of the trial Court and decreed the suit as prayed for. Therefore, the appellants are before this Court with this second appeal.

7. In this second appeal, the following substantial question of law is framed for consideration:

"Whether the lower appellate Court was right in granting the decree for mandatory injunction when the plaintiff has no personal interest in the matter ?"

8. Admittedly, in this case, there is no pleading that the plaintiff has got any interest over the touchscreen as it is not his case that he wanted to use the same to find out the ownership of his land. Section 41(j) of the Specific Relief Act, 1963 reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/> "Section 41 - An injunction cannot be granted -

(a) to (i) ***
(j) When the plaintiff has no personal interest in the matter."

9. This provision squarely applies to the facts of the present case. The lower appellate Court has not considered this legal issue. The lower appellate Court has in a callous manner reversed the decree and judgment of the trial Court. In my considered opinion, the decree and judgment of the lower appellate Court cannot be sustained in view of the above legal position. The decree and judgment of the lower appellate Court deserves to be set aside and accordingly the substantial question of law is answered.

10. In the result, the appeal is allowed and the decree and judgment of the lower appellate Court is set aside and that of the trial Court is restored. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Tiruvarur.
2. The District Munsif-cum-Judicial Magistrate,
Nannilam.
3. The Section Officer, सत्यमेव जयते
V.R. Section,
High Court, Madras.

1 cc to Mr.S.Sounthar ,Advocate, SR.No.6628
1 cc to Government Pleader,Sr.No660

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and M.P.No.1 of 2013

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