

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.229 of 2014

AND

MP NO.1 of 2014

1.Selvam

2.Singaravelu

... Appellants/Defendants 1 & 2

vs.

1.Kasthuri

...1st Respondent/Plaintiff

2.The ComMISSIONER,
Cuddalore Municipality,
Cuddalore.

...2nd Respondent/3rd Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 01.10.2013 made in A.S.No.64 of 2012 on the file of the II Additional Subordinate Judge, Cuddalore, confirming the judgment and decree dated 30.08.2012 made in O.S.No.45 of 2010 on the file of Principal District Munsif, Cuddalore.

For Appellants : Mr.N.C.Ashok Kumar

For Respondents : Mr.R.Sunilkumar for R1
Mr.S.Deivasigamani for R2

J U D G M E N T

The defendants are the appellants. They concurrently suffered a decree for mandatory injunction. The first respondent herein as the plaintiff filed the suit seeking for such relief by contending that the construction put up by the appellants is causing hindrance to the plaintiff to have access to the road called Mission road.

2.The contention of the defendants 1 and 2, who are the appellants herein, before the courts below is that they are in

possession and enjoyment of the property under dispute for more than 40 years by putting up a construction and residing therein. It is also contended by them that apart from these defendants, there are several other persons who are in occupation of the property lying on the edge of the Mission street. Both the courts below have concurrently found against these defendants and granted the decree for mandatory injunction.

3. The third defendant is the local Municipality. When this matter was taken up before this court on earlier occasion, in order to ascertain the steps taken by the Municipality for removal of the encroachment made in the Mission street, this court called upon the third defendant/second respondent Commissioner to file an affidavit before this court. Accordingly, an affidavit dated 08.09.2016, sworn in by the Commissioner, Cuddalore Municipality, is filed before this court, wherein it is stated as follows:

"1. It is humbly submitted that the property disputed in this appeal petition is located on Municipality road at "Mission Street: in T.S.No.913, Block No.13, Ward 7 of Manjakuppam village which is public pathways. The 1st respondent Smt.Kasthuri is having a patta vacant site abutting the roads of Sudharsanam street and Mission street. The vacant site of the 1st respondent is having main access from Sudharasanam street which is open without any hindrance.

2. It is submitted that the Appellant's house on road at Mission street is an obstruction for the access of 1st respondent's plot through Mission street. The 1st respondent filed the suit for order to remove only the Appellant's house obstructing the entry of 1st respondents vacant land through Mission street. But in the above mentioned Mission street there were 27 Nos. of houses of similar nature, all of them had been constructed 40 years back.

3. It is humbly submitted that Cuddalore Municipality has already initiated several steps to evict all these 27 huts from Mission street. But, due to public agitation and non-availability of any other scheme for providing alternate accommodation, the Municipality could not succeed in evicting these 27 houses. But, now there is a housing scheme called Hon'ble Prime Minister's Housing for all, which has provision for allocation of houses to the encroachers. Now, the enumeration of beneficiaries is going on and on completion of enumeration further process will be initiated for construction/allotment of houses to all the eligible beneficiaries. Since, this scheme covers encroachers on objectionable locations these 27 huts will be included in this scheme. It is also submitted that the above process will take some time of atleast one year.

In this circumstances, it is humbly submitted that after allotment of houses to these 27 encroachers, all the 27 huts will be removed by the Municipality."

4.Learned counsel appearing for the Municipality after reiterating the contentions referred to in the above affidavit submitted that all the encroachers including the appellants will be removed by providing alternative accommodation under the Hon'ble Prime Minister's Housing for all scheme. However, he submitted that it is a time consuming process which can be achieved only after a year.

5.Perusal of the affidavit filed by the Cuddalore Municipality would show that the access to the plaintiff's plot is also available through Sudharsanam street, which is open without any hindrance and the access from the Mission street is obstructed by the appellants house.

6.The learned counsel appearing for the plaintiff/first respondent contended that it is for the plaintiff to have access from the Mission street according to his convenience and the mere availability of another access cannot give any right for the defendants/appellants to put up construction in the property which is admittedly blocking his access from the Mission street.

7.It is seen from the above stated facts and circumstances that the construction put up by these appellants which is admittedly blocking the access of the first respondent to the Mission street is an encroachment and the Cuddalore Municipality/third defendant in the suit is taking all effective steps to evict the appellants as well as other encroachers from their respective encroachments, also by providing alternative house site under a different housing scheme, as stated supra. Therefore, the appellants herein cannot, as a matter of right, be there in the property and obstruct the access of the first respondent. However, as it is stated that they are in possession and enjoyment of the property for more than 40 years and also residing therein and also considering the fact that the Cuddalore Municipality is also taking steps to evict the appellants including other encroachers by providing house site in other area, it would suffice if the second appeal is disposed of with the following observations and directions:

a) The second appeal is dismissed. However, the eviction of the appellants shall not be undertaken for a period of one year;

b) The second respondent Municipality shall take all effective steps to remove the encroachments within one year by providing an alternative accommodation as undertaken by them before this court in the affidavit filed by the Commissioner Municipality as extracted supra;

c) If no steps are taken by the Municipality within the above time, it is open to the first respondent/plaintiff to initiate execution proceedings to execute the decree granted by the courts below already.

No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal District Musnif,
Cuddalore.

2.The II Additional Subordinate Judge
Cuddalore

+1 cc to Mr.R.Sunil Kumar Advocate sr 52176

+1 cc to Mr.C.Jagadish Advocate sr 52151

+1 cc to Mr.S.Deivasigamani Advocate sr 52430

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