

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.1103 of 2008
and
M.P.No.1 of 2008

1. The Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
Division No.1,
Transport House,
Chennai-600 002.
 2. The Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
Division No.II,
Anna Salai,
Chennai-600 002.
- ... Appellants

Vs.

Mr.Babu Pillai (Deceased)
1.Ranga Pillai
2.B.Rajendran

... Respondents

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 31.01.2007 and made in the appeal in A.S.No.41 of 2004 on the file of the learned Additional District Judge, (FTC IV), Poonamallee, confirming the judgment and decree dated 24.07.2003 and made in the suit in O.S.No.818 of 1984 on the file of the learned Principal District Munsif, Poonamallee.

For Appellants : Mr.M.Chidambaram

For Respondents : Mr.S.V.Jayaraman, Senior
Counsel for T.Subramanian.

J U D G M E N T

This Memorandum of Second Appeal has been directed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 31.01.2007 and made in the appeal in A.S.No.41 of 2004 on the file of the learned Additional District Judge, (FTC IV), Poonamallee, confirming the

judgment and decree dated 24.07.2003 and made in the suit in O.S.No.818 of 1984 on the file of the learned Principal District Munsif, Poonamallee.

2. The appellants herein are the defendants in the suit in O.S.No.818 of 1984, whereas the respondents 1 & 2 are the plaintiffs.

3. Originally, the suit was instituted by one Mr.Babu Pillai. Since he had passed away, his legal representatives were impleaded as the plaintiffs 1 & 2.

4. Heard Mr.M.Chidambaram, learned counsel appearing for the appellants and Mr.S.V.Jayaraman, learned Senior counsel appearing for Mr.T.Subramanian, who is on record for respondents 1 & 2.

5. For easy reference and for the sake of convenience, the respondents may herein after be referred to as the plaintiffs 1 & 2 and the appellants 1 & 2, be referred to as the defendants 1 & 2, where ever, the context so require.

6. This second appeal came to be admitted before this Court on the following three substantial questions of law:

(i)Whether the Courts below rightly concluded that the suit is maintainable without seeking either the relief of declaration or recovery of possession?

(ii)Whether the Courts below rightly concluded that the suit is maintainable since the disputed place comes under the territorial jurisdiction of Chennai City?

(iii)Whether the Courts below have rightly concluded that the suit is maintainable without impleading the Chennai Corporation as one of the defendants?

7. The plaintiffs had instituted the suit as against the defendants seeking the relief of permanent injunction as against the defendants restraining them from in any manner trespassing or interfering with their peaceful possession and enjoyment of 'B' schedule land described in the schedule.

8. The plaintiffs mother Rathinammal was the absolute owner of the entire 'A' schedule property and she was in possession and enjoyment of the same till her death in the year 1963. After her demise, the plaintiffs being her sons had inherited the 'A' schedule property. Thus, the plaintiffs have become the owners of the 'A' schedule property and they were in possession and enjoyment of the same without any hindrance or interference of any third party.

9. The western portion of 'A' schedule property was originally belonged to one Vadamalai Pillai of Villivakkam. He had died leaving behind his only son Varadha Pillai as his

legal heir and as such he had inherited the western portion of the 'A' schedule property and accordingly he was in possession and enjoyment of the same as its absolute owner. The said Varadha Pillai and his son Kuppa Pillai had executed a registered Sridhana Settlement Deed dated 09.04.1920 in favour of one Rathinammal, the wife of Raghava Pillai of Villivakkam.

10. The Eastern portion of the 'A' schedule property was originally belonged to Varadha Pillai. The said Varadha Pillai had died leaving behind his sons Kuppa Pillai and Kishta Pillai. They had inherited the same and subsequently, they had sold the eastern portion of the 'A' schedule property in favour of Rathinammal, wife of Raghava Pillai by a registered Sale Deed dated 12.08.1934. Thus, the entire 'A' schedule property came to be in the exclusive ownership of Rathinammal and she had been in possession and enjoyment of the same as the absolute owner till her death in the year 1963.

11. The plaintiffs are the sons of the said Rathinammal. They had inherited the 'A' schedule property as her legal heirs, since their father had predeceased their mother.

12. The plaintiffs are having their own house in the western portion of the 'A' schedule property facing Reddy street on the west. The second plaintiff is residing in the said house with the permission of the first plaintiff. The eastern portion of the 'A' schedule property is the backyard which is described in the 'B' schedule. The plaintiffs are using the 'B' schedule land as their backyard by having cattle shed and also storing hay and other materials.

13. The defendants are having their bus stand on the northern side of the 'B' schedule property. They knew fully well that they did not have any right and title or possession over 'B' schedule property, which is lying on the south of the compound wall of the defendants.

14. That on 13.07.1984, the defendants alongwith their men had entered the western portion of the 'B' schedule property and started digging pits. On enquiry, it was found that at the instigation of the defendants, their men had made an attempt to trespass in the plaintiffs 'B' schedule property. Hence, this suit is filed by the plaintiffs seeking the prayer of permanent injunction.

15. The defendants have contended that the plaintiffs had admitted that the 'A' schedule property is only a village site. This itself would clearly show that the plaintiffs have in any manner no right or title even in

respect of the 'A' schedule property. The plaintiffs are not using the 'B' schedule property for having their cattle shed and to place the hay and other materials. The defendants have specifically contended that they were fencing of their own land in order to protect the same from encroachment. An extent of 0.60 acres in S.No.11A/7B-2A(2) of Villivakkam and S.No.348/1(part of village) was handed over by the Corporation of Chennai to the defendants on 25.09.1979. The defendants have understood that the Survey number of plaintiffs land is 11A/7B of Villivakkam.

16. Under these circumstances, there is no question of trespassing upon the plaintiffs property which is of different survey number. The defendants do not admit the boundaries of the 'A' and 'B' schedule properties and that the suit for bare injunction without a prayer for declaration is not at all maintainable.

17. The defendants have also contended that the plaintiffs had earlier filed a suit in O.S.No.910 of 1977, which was dismissed by the trial court. This fact was deliberately suppressed by the plaintiff and therefore, this suit is not at all maintainable in law, in view of the dismissal of the earlier suit in O.S.No.910 of 1977.

18. The Trial Court based on the pleadings of the parties has formulated the following issues:

- (i) Whether this suit is barred by res-judicata?
- (ii) Whether the plaintiffs have got any title or right over the suit property?
- (iii) Whether the plaintiffs are in possession of the suit property?
- (iv) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
- (v) to what relief?

19. The first plaintiff in order to substantiate their claim had examined himself as PW1. During the course of his examination Ex.A1 to A10 were marked. On the other hand, one Raja Mahendra Selvam and one S.Mani, who were the Officials of the defendants Transport Corporation were examined as DW.1 and DW2 respectively. During the course of their examination, Ex.B1 to B4 were marked. On evaluating the evidences both oral and documentary, the trial court had proceeded to decree the suit on 24.07.2003 as prayed for. Challenging the correctness of the judgment and decree, the defendants had preferred an appeal in A.S.No.41 of 2004 on the file of the learned Additional District Judge(FTC-IV), Ponamallee. After hearing both sides, the first Appellate Court had dismissed the appeal confirming the judgment and decree of the Trial Court. Having been aggrieved by the impugned judgment and

decree of the first Appellate Court, the defendants stand before this Court with this second appeal.

20. Substantial question of law No.1:

This substantial question of law is relating to the maintainability of the suit seeking the relief of bare injunction without seeking the prayer for declaration and recovery of possession. This substantial question of law has been wrongly formulated because the possession of the 'A' & 'B' schedule properties have already been with the plaintiffs 1 & 2. They never pleaded that they were out of possession of the plaint 'A' & 'B' schedule properties. The defendants have also admitted that there is a wall bifurcating the defendants property as well as the plaint 'B' schedule property.

It is also an admitted fact that the plaintiffs were having a cattle shed in the plaint 'B' schedule property. It is also an admitted fact that the 'B' schedule property has been classified as Gramanatham land. Apart from this, Ex.A1 & A2 are the parental deeds, conveying the suit property to Rathinammal, who is none other than the mother of the plaintiffs. While finding answer to the issue No.2, the Trial Court has clearly found that Ex.A1 & A2 would go to establish the right and title of the said Rathinammal over the suit property. Further Ex.A3 to A6 being the Tax receipts would be sufficient to prove the possession of the appellants. When the plaintiffs have proved their claim of possession over the suit property as well as their right and title, which was inherited by them through their mother, the first substantial question of law with regard to the maintainability of the suit without seeking the prayer for declaration and recovery of possession is not sustainable. Therefore, the substantial question of law No.1 is answered as against the defendants/appellants. सत्यमेव जयते

21. Substantial question of law No.2:

This substantial question of law is relating to the jurisdiction of the District Munsif Court, Poonamallee to entertain this suit. According to Mr.M.Chidambaram, learned counsel appearing for the defendants/appellants at the time of institution of the suit, the suit property came under the territorial jurisdiction of Chennai City. He has also drawn the attention of this court to the written statement filed by the second defendant, wherein, it is contended that since the suit property is situated at Villivakkam village, it is out side the territorial jurisdiction of District Munsif Court, Poonamallee and therefore, Mr.M.Chidambaram has urged that the District Munsif Court, Poonamallee was not having competency to entertain the suit. In this connection

Mr.S.V.Jayaraman, learned Senior Counsel has drawn the attention of this court to the schedule of properties viz., 'A' & 'B' schedule, wherein, it is stated that the suit property is situated at No.1B, Reddy Street, Villivakkam within the Sub Registration of District of Saidapet, Chengalpet District. In this connection Mr.S.V.Jayaraman has pointed out that since the suit property, at the time of filing of the suit, was situated within the Sub Registration District of Saidapet, Chengalpet District, the District Munsif, Poonamallee was having jurisdiction to entertain the suit and therefore, he has submitted that the argument advanced by Mr.M.Chidambaram, in this connection might be discarded.

On perusal of the records, this court finds that the suit in O.S.No.818 of 1984 was filed and numbered on 16.07.1984. The plaint was thoroughly verified by the Office of the Registry of the District Munsif Court, Poonamallee and only thereafter, it was numbered and signed by the Principal District Munsif, Poonamallee on 16.07.1984. If the Principal District Munsif, Poonamallee did not have territorial jurisdiction to entertain the suit as argued by Mr.M.Chidambaram, it would not have been taken on file and the plaint itself would have been returned immediately. Therefore, the substantial question of law regarding the territorial jurisdiction of the District Munsif Court, Poonamallee is not sustainable. Accordingly, the substantial question No.2 is answered as against the appellants.

22. The substantial question of law No.3:

When the second substantial question of law goes against the appellants/defendants, the question of impleadment of Chennai Corporation does not arise and therefore, the third substantial question of law is also answered against the appellants.

23. In view of the above fact, this Court finds that the Trial Court as well as the first Appellate Court have given the concurrent findings with regard to the entitlement of plaintiffs to get the relief as prayed for by them, and therefore the interference of this court does not warrant.

24. In the result, the second appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

dn

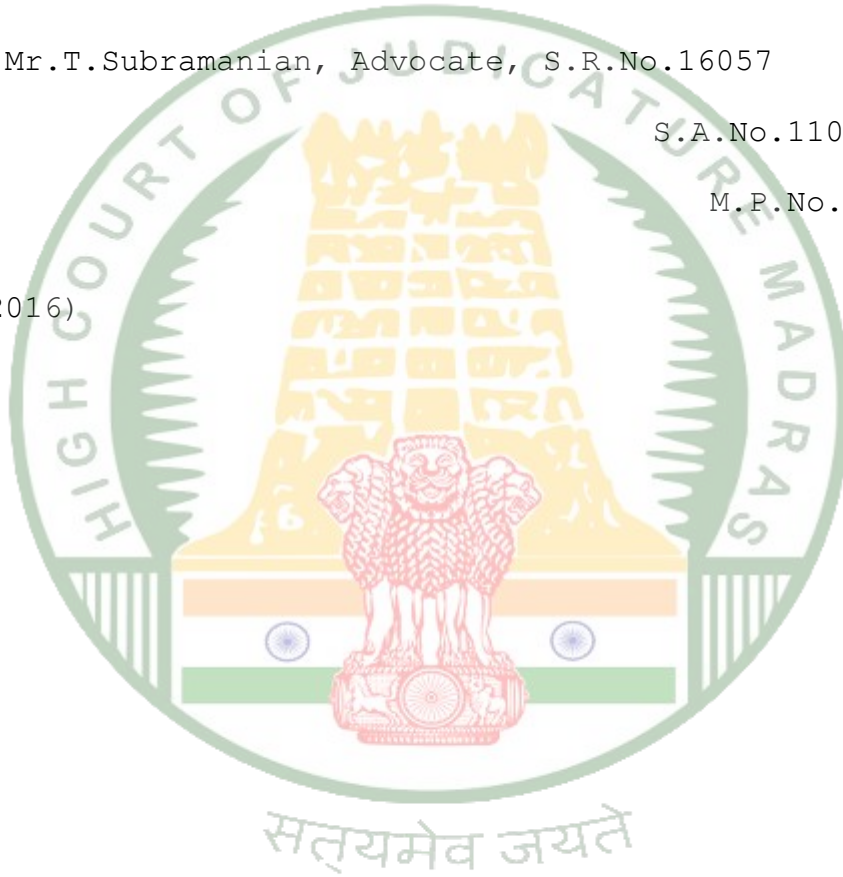
To

1. The learned Additional District Judge,
(FTC IV),
Poonamallee
2. The District Munsif,
Poonamallee.

+2cc's to Mr.T.Subramanian, Advocate, S.R.No.16057

S.A.No.1103 of 2008
and
M.P.No.1 of 2008

SAI (CO)
CA(27/04/2016)



WEB COPY