



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
21.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

S.A. (MD) No. 331 of 2016

WEB COPY

G. Chinnammal

: Appellant/Appellant/Plaintiff

Vs.

1. The Government of Tamil Nadu
Rep by the District Collector,
Thanjavur.
2. The Block Development Officer,
Nanjikottai Panchayat Union,
Panagal Building,
Keelavasal Market Road,
Thanjavur.
3. The Nanjikkottai Village Panchayat Board
Rep by the President,
Nanjikottai Road, Thanjavur Taluk,
Thanjavur District.
4. Mathimalar John Peter : Respondents/Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Additional Sub Court, Thanjavur, dated 13.12.2012, passed in A.S.No.10 of 2012, confirming the Decree and Judgment of the District Munsif Court, Thanjavur, dated 15.12.2011, passed in O.S.No.373 of 2008.

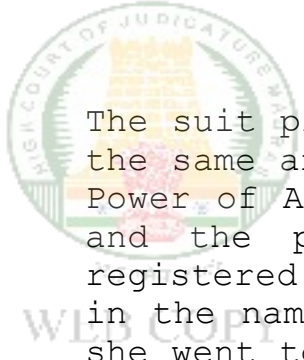
For Appellant : Mr. P. Sesubalanraja

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JUDGMENT

The appellant herein, who is the unsuccessful plaintiff in the suit for permanent injunction restraining the defendants, their men, employees and agents from laying any new road or street over the suit property and for a permanent injunction restraining the defendants, their men, employees and agents from disturbing the possession and enjoyment over the suit property, has come up with the present Second Appeal challenging the concurrent findings rendered by the Courts below.

2. The case of the plaintiff, as culled out from the plaint, for the purpose of disposal of the Second Appeal, is as follows:-
The suit property is situated in Loordhu Madha Nagar. There are two house plots, measuring to an extent of 7200 square feet.



The suit property belonged to one Arokciasamy Udayar. He developed the same and sold through his Power of Attorney on 15.04.1985. The Power of Attorney has formed a lay out, which is approved lay out and the plaintiff purchased plot Nos.17 & 18, by way of a registered sale deed dated 31.05.2000. The Revenue Records stood in the name of the plaintiff. On account of business transaction, she went to Thiruppur in the year 2003. At the time of purchase of the suit property, the other plots were kept vacant.

3. It has been further averred that the third defendant, along with his henchmen, trespassed into the suit property, removed the barbed wire fence and levelled the earth for the purpose of forming a road. The plaintiff, on coming to know about the same, rushed to the spot and made a request to stop the work. But, he has failed to do so. Hence, on 05.03.2008, the plaintiff went to the Panchayat Board Office and asked him to stop the work. The third defendant openly insisted the plaintiff to sell the suit property to herself, otherwise, a pucca thar road will be formed on the suit property. In this connection, on 07.03.2008, the plaintiff made a representation before the defendants. Since there was no action taken, he was constrained to file a Writ Petition being W.P(MD).No.2288 of 2008 before this Court. By order dated 18.08.2008, this Court directed the plaintiff to approach the appropriate Civil Court and establish her title, if she has any right over the suit property. Under the above stated circumstances, the plaintiff had to file the above suit, for the relief stated earlier.

4. The defendants three and four filed a Written Statement contending that the suit was not maintainable either in law or on facts. No approval plan was filed by the plaintiff to establish her contention. In Loordhu Madha Nagar, each plot is having only a total extent of 2400 square feet. The plaintiff claimed two plots. Therefore, the total extent of the land is 4800 square feet. The plaintiff claimed 7200 square feet of land. It shows that the plaintiff claimed excess of land of 2400 square feet on the road. The approved lay out would show that the road existed on the Eastern side. Hence, according to the defendants, the suit was not maintainable and it was liable to be dismissed with costs.

5. Based on the above facts, the Trial Court framed appropriate issues. On the side of the plaintiff, four witnesses were examined as PW-1 to PW-4 and as many as eight documents were marked as EX-A1 to EX-A8. On the side of the defendants, no witness was examined. However, one document was marked as EX-B1. During trial, an Advocate Commissioner was appointed and his reports were marked as EX-C1 to EX-C5. Having considered all the above, the Trial Court, by Decree and Judgment dated 15.12.2011, dismissed the suit. Assailing the validity and correctness of the Decree and Judgment passed by the Trial Court, A.S.No.10 of 2012 was filed, which was also dismissed by the Lower Appellate Court,



by Decree and Judgment dated 13.12.2012. That is how, the appellant, who is the unsuccessful plaintiff in the suit, is now before this Court with this Second Appeal.

6. I have heard the learned counsel appearing for the appellant and I have also gone through the materials available on record carefully, including the Judgments rendered by the Courts below.

7. The contention of the learned counsel appearing for the appellant/plaintiff is that the appellant/plaintiff purchased the suit property, which comprised of two house plots, measuring to an extent of totally 7200 square feet in S.No.116/4, Nanjikottai Village with Plot Nos.17 and 18. The suit properties and the other properties originally belonged to one Arokiasamy Udayar, who authorized his Agent namely S.M.Raman, S/o.Somasundaram to develop and sell the same under a registered deed of power of attorney dated 15.04.1985 and he formed a layout with plots, on obtaining necessary approval from the then Village Panchayat Board. One Ganesan, S/o.N.Kamatchi Pillai of Karuthattamkudi purchased the suit property, viz Plot Nos.17 and 18 from the said S.M.Raman. The plaintiff has purchased the suit property from him.

8. It is further submitted by the learned counsel appearing for the appellant/plaintiff that in order to prove her contention, the appellant/plaintiff relied on EX-A1 to EX-A3. EX-A2 shows that the extent of the property mentioned is 7200 Square feet. EX-A3 is the sale deed executed in favour of the appellant/plaintiff with respect to Plot Nos.17 & 18, which would go to show that plot No.17 comprised of 3600 square feet of land and Plot No.18 comprised of 3600 square feet of land, totally 7200 square feet. EX-A2 and EX-A3 show the ownership of the appellant/plaintiff with respect to Plot Nos.17 and 18. EX-A7 and EX-A8 are the Revenue Documents, which show that Survey No.116/4 B stood in the name of the appellant/plaintiff having patta No.8184. Thus, EX-A2, EX-A3, EX-A7 and EX-A8 established the factum of ownership of the appellant/plaintiff in respect of Plot Nos.17 and 18. Therefore, according to the learned counsel appearing for the appellant/plaintiff, the Decree and Judgment passed by the Trial Court, which was confirmed by the Lower Appellate Court is liable to be interfered with.

9. I have considered the above submissions.

10. On an earlier occasion, the appellant/plaintiff filed W.P (MD).No.2288 of 2008 before this Court seeking a Writ of Mandamus forbearing the second respondent, his men and subordinates from laying road in her property comprised in RS.No.116/4, Nanjikkottai Village with Plot Nos.17, 17A, 18 and 18A, Loordhu Matha Layout of Nanjikottai Village, Thanjavur. By order dated 18.08.2008, this Court directed the appellant/plaintiff to approach the appropriate



Civil Court and establish her title, if she has any right over the suit property. Thus, if the appellant/plaintiff has got any proprietary right over the land on which the road was laid, the proper remedy is not for permanent injunction. In order to establish the title and proprietary Right, the suit for injunction is not a correct remedy. The appellant/plaintiff, as rightly held by the Courts below, has to seek remedy to declare her right, which is the remedy for establishing the right over the suit property, but she has failed to do so.

11. Apart from the above, it is seen that in Loordhu Madha Nagar, each plot is only to the extent of 2400 square feet. Already, there was a road in existence and hence, the allegation that the defendants encroached the suit property and laid road cannot be accepted. The warrant issued to the Advocate Commissioner is with respect to Survey No.116/4. PW-3 and PW-4 have filed reports in respect of Survey No.116/4B. Their evidence speaks that the road was laid in the suit property and once a road was laid, the remedy of permanent injunction is not a proper relief. On a perusal of the evidence of PW-3 and PW-4, it is crystal clear that the appellant/plaintiff is not in possession and enjoyment of the suit property. On appreciating the oral and documentary evidence, two Courts below have concluded, on facts, that the suit property is not in possession and enjoyment of the appellant/plaintiff. This is essentially a question of fact, which cannot be re-opened in this Second Appeal, unless the said conclusion, arrived at by the Courts below, is shown to be perverse in legal sense. Thus, in view of the concurrent findings rendered by the Courts below, I do not find any substantial question of law involved in this Second Appeal and the appellant/plaintiff is not entitled for the relief sought for.

12. In the result, the Second Appeal is dismissed, confirming the Judgment and Decree passed by the Additional Sub Court, Thanjavur, dated 13.12.2012, passed in A.S.No.10 of 2012, confirming the Decree and Judgment of the District Munsif Court, Thanjavur, dated 15.12.2011, made in O.S.No.373 of 2008. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Additional Sub Court, Thanjavur.

2.The District Munsif Court, Thanjavur.

NB

<https://hcservices.courts.gov.in/hcservices/> : 20/05/2016 : 4P/3C

JUDGMENT MADE IN
S.A. (MD) No.331 of 2016
21.04.2016