

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.97 of 2017
and
C.M.P.No.2009 of 2017

R.Sadhasivam

... Appellant/Plaintiff

Vs

1. State of Tamil Nadu rep. by its District Collector, Erode District, Erode - 638 011.
2. The Revenue Divisional Officer, Office of the Revenue Divisional Officer, Brough Road, Erode - 638 001.
3. The Tahsildar, Taluk Office, Erode Taluk, Erode - 638 001.
4. The Village Administrative Officer, Nanjai Uthukuli Village, Erode Taluk.
5. The Block Development Officer, Modakurichi Panchayat Union, Modakurichi, Erode Taluk.
6. The President, Nanjai Uthukuli Panchayat, Nanjai Uthukuli, Erode Taluk.
7. The Junior Engineer, Highways Department, Moolapalayam, Railway Colony, Erode Taluk.

... Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 16.08.2016 passed in A.S.No.76 of 2015 on the file of the I Additional Sub Court, Erode, confirming

the judgment and decree dated 17.04.2015 made in O.S.No.91 of 2014 on the file of the Principal District Munsif, Erode.

For Appellant : Mr.N.Manokaran

JUDGMENT

The plaintiff is the appellant herein. Being aggrieved with the judgment and decree rendered by the Courts below, by which, though the prayer sought for has not been granted, modified relief has been given to the effect that the defendants shall not put up any construction or structures in the B Schedule property without affording an opportunity of hearing to the plaintiff and without following due process of law. Challenging the same, the present second appeal has been filed, by formulating the following substantial questions of law:

(a)Whether the plaintiff being the owner of A Schedule property abutting on the main road is entitled to maintain a suit for an actionable claim when his right of access to and from the main road is interfered with at the instance of the defendants?

(b)Have not the Courts below committed an error in refusing to grant the relief as prayed for, particularly, after arriving at a conclusion that the defendants have not issued any prior notice before removing the structures in the B Schedule?

(c)Whether the Courts below are correct in not drawing an adverse inference under Section 114(g) of the Indian Evidence Act, 1872 when the defendants have not entered into the witness box to subject themselves for cross-examination?

2.Mr.N.Manokaran, learned counsel appearing for the appellant submits that in view of the finding rendered by the Courts below, the prayer sought for ought to have been granted. Once it is found that the demolition is without the authority of law, by way of consequence, the suit prayer ought to have been granted.

3.This Court is not inclined to accept the submission made. On facts, the Courts below have found that the suit property, being the road margin, belongs to the respondents. When once it is found that the procedure has not been followed, the same would not entitle the plaintiff to violate the law once again by putting up construction in the road margin, which does not belong to him. The power of the civil Court is plenary. When a

larger relief is sought for, the Courts are at their discretion and entitled to grant a lesser relief.

4.In such view of the mater, this Court is of the view that the plaintiff is not entitled, as a matter of right, to put up construction over the Government road margin. Therefore, this Court does not find any substantial question of law, warranting interference. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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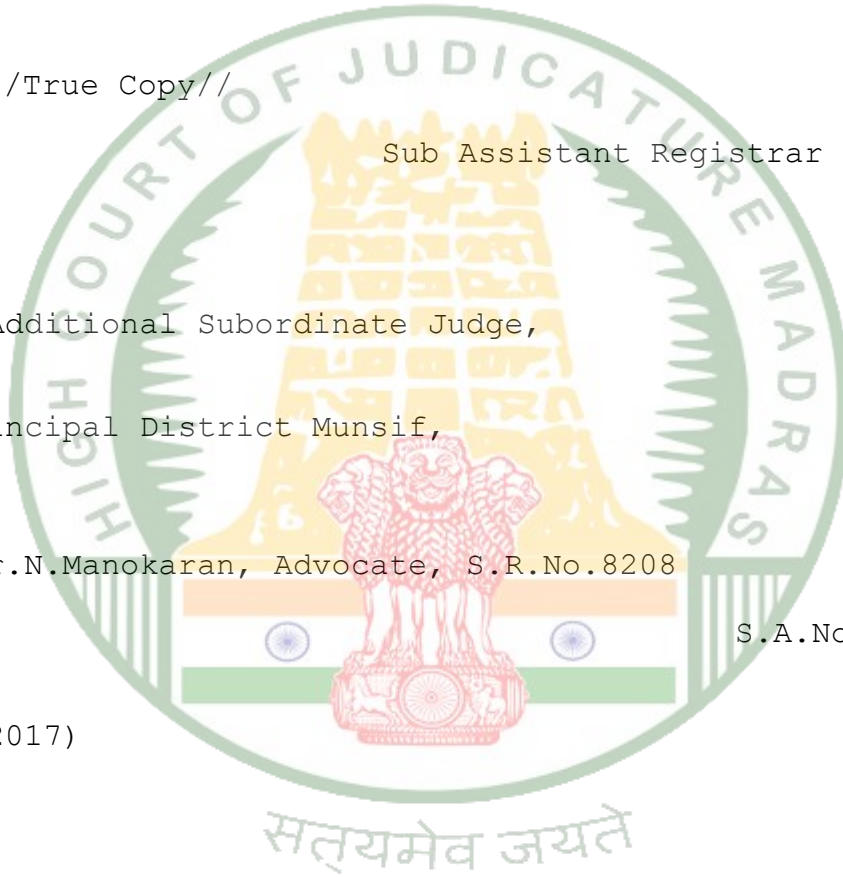
To

1. The I Additional Subordinate Judge,
Erode.
2. The Principal District Munsif,
Erode.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.8208

S.A.No.97 of 2017

KSJ(CO)
CA(27/02/2017)



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