

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.553 of 2013

and

M.P.Nos.1 of 2013 and 1 of 2014

The Commissioner,
Namakkal Municipality,
Namakkal.

... Appellant/1st Defendant

Vs.

1. P.Veerappan

...1st Respondent/
Plaintiff

2. The District Collector,
Collector Office,
Thiruchengode Road,
Namakkal.

...2nd Respondent/2nd Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 07.06.2011 in A.S.No.58 of 2011 on the file of the Additional District Court (Fast Track Court), Namakkal, against the judgment and decree dated 12.09.2005 in O.S.No.610 of 2004 on the file of the Additional District Munsif Court, Namakkal.

For appellant : Mr.P.Srinivas

For respondents : Mr.T.Dhanyakumar for R-1

No appearance for R-2

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 07.06.2011 in A.S.No.58 of 2011 on the file of the Additional District Court (Fast Track Court), Namakkal, in partly allowing the appeal filed against the judgment and decree dated 12.09.2005 in O.S.No.610 of 2004 on the file of the Additional District Munsif Court, Namakkal.

2. The suit is filed for declaration, permanent injunction and mandatory injunction. The disputed property in the present suit which is the subject matter of this Second Appeal is 382-

1/2 Sq.Ft. out of the total extent of 972 Sq.Ft. belonging to the plaintiff. According to the appellant/first defendant-Municipality, the entire land of 972 Sq.Ft. is said to have been belonging to the plaintiff based on patta issued and not of any sale deed. It is further averred that the extent of the subject matter of the suit is poramboke land belonging to Municipality and that there is a bus stand abutting the site which forms part of the bus stand. Based on a partition suit between the plaintiff and one Rajaram, the said land vested with the plaintiff and the land that belongs to the plaintiff is based on collusive suit and the plaintiff is entitled to any relief, but unfortunately, the suit for declaration and mandatory injunction, apart from permanent injunction sought for, has been decreed by the lower Court. Aggrieved by the judgment and decree of the trial Court, the defendants, namely Namakkal Municipality and the District Collector, Namakkal have preferred First Appeal before the lower appellate Court, which confirmed the relief granted by the trial Court with regard to the declaration and mandatory injunction, but however, the lower appellate Court reversed the finding with regard to the permanent injunction and observed that since the Municipality is in possession of the disputed site in question, it is open for the plaintiff to seek the relief of possession by filing a separate suit. Admittedly, no appeal has been preferred insofar as that finding is concerned, by the plaintiff who is the first respondent herein. However aggrieved by the relief of declaration and mandatory injunction granted by the Courts below, this Second Appeal has been preferred by the Municipality.

3. Though it has been brought to the attention of this Court that a plea has been taken that the land is poramboke land which belongs to the Municipality and that the land is in possession with the Municipality, it is contended by the learned counsel for the first respondent/plaintiff that both the Courts below should have granted the relief in entirety as sought for by the appellant/defendant.

4. Refuting the above contentions, it is the contention of the appellant/first defendant that the property was purchased in 1974 by the plaintiff from one Rajaram, and after partition with regard to the property, the appellant-Municipality owned the extent of 972 Sq.Ft. of land based on the sale deed, which was filed and marked as a document in Ex.A-3 before the trial Court and it is incorrect to contend that the land has been allotted to him based only on patta. After the sale deed, he has taken the patta for the said land. It is further contended by the first defendant that the plaintiff's land has been taken by Namakkal Municipality and the trial Court, having accepted the contentions of the plaintiff, has granted the relief of declaration and mandatory injunction, however, if at all any one

who is aggrieved, he is the person to ask his relief of permanent injunction which has not been granted to him. He would further contend that no verbal evidence, oral and documentary evidence has been produced by the Municipality in support of their contentions, except pleading in the written statement and based on the document and evidence let in by the plaintiff who is the first respondent herein, the relief of declaration and mandatory injunction has been granted by both the Courts below.

5. Heard both sides and perused the materials available on record.

6. The substantial question of law that arises for consideration in this Second Appeal is as follows:

"Is not the plaintiff barred from seeking the declaratory relief when the property has not even been identified to be that which is set out in the title deeds even assuming that the said title deeds are pertaining to that of the plaintiff ? "

7. The aforesaid facts discussed supra, are not in dispute. Admittedly, the Municipality has not established their case through oral and documentary evidence in support of their contentions. Mere pleading alone is not sufficient, as the pleading has been disputed and both oral and documentary evidence had been let in by the first respondent/plaintiff and the relief of declaration and mandatory injunction has been granted by both the Courts below. It cannot be contended that based on the sole testimony of the plaintiff, the relief has been granted to the plaintiff.

8. It is incorrect to state that the property has not been identified and taking note of Ex.A-3, the relief has been granted to the plaintiff. Hence, I find that the declaratory relief together with the mandatory injunction granted to the plaintiff, cannot be found fault with. Hence, the judgment and decree of the Courts below with regard to the grant of relief on that score, cannot be interfered with. The substantial question of law is answered accordingly.

9. As the first respondent/plaintiff contended that he will be filing the suit for possession as observed by the lower appellate Court, if such steps are taken, this will not preclude the appellant-Namakkal Municipality from producing necessary documents including the Revenue Records to put forth the defence that the land belongs to the Municipality. The Courts below have not prevented or excluded the appellant-Municipality from putting forth any defence in case the suit for possession is

filed. Hence, I find that there is no reason to interfere with the concurrent findings of the Courts below on that aspect. The Second Appeal is accordingly dismissed. No costs. The Miscellaneous Petitions are closed.

10. Before parting with this judgment, this Court observes that if the contention of the learned counsel for the Municipality that they have Revenue Records to show that the land belongs to the Municipality, it is very unfortunate that the officials of the Municipality have not taken steps to put forth their defence. The conduct of the Municipality in not putting their defence, is deprecated.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Additional District Judge (Fast Track Court),
Namakkal.
2. The Additional District Munsif, Namakkal.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.T. Dhanyakumar, Advocate Sr.24108
+ 1 cc to Mr.P. Srinivas, Advocate Sr.24628

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SV(CO)
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