

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

S.A.No.527 of 2016

&

CMP.No.9292 of 2016

1.Alwar  
2.Syamala  
3.Gomathi  
4.Kumaraghurubaran ... Appellants/Appellants/  
Defendants

Vs.

1.Chinnadurai  
2.Malarkodi ... Appellants 1 & 2/Respondents 1 & 2  
/Plaintiffs

3.The Executive Officer,  
Vadalur Town Panchayat,  
Vadalur. .... 3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent/  
3<sup>rd</sup> Defendant

Second Appeal is filed under Section 100 C.P.C., against the judgment and decree of the learned Principal Subordinate Judge, Cuddalore dated 04.09.2012 in A.S.No.33 of 2011 confirming the judgment and decree of the learned Principal District Munsif, Cuddalore dated 16.12.2010 in O.S.No.313 of 2008.

For Appellants : Mr.N.Damodaran

For respondents : Mr.D.Baskar for R1 & R2  
No appearance for R3

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JUDGMENT

Challenging the concurrent findings rendered in a suit filed on a representative capacity for declaration and for permanent injunction, the appellants, who are defendants 1 and 2 being husband and wife, have filed the above second appeal by raising the following substantial questions of law.

1. Whether the Courts below erred in law and misdirected themselves in granting a decree of

permanent injunction of the present nature in favour of the respondents 1 and 2 herein when in law the suit property which is reserved for a public purpose in the layout plan continue to vest with the appellants as the owners thereof and in the absence of any Deed of Gift being executed in favour of the third respondent herein?

2. Whether the suit for permanent injunction of the present nature as sought for by the respondents 1 and 2 is maintainable in law as against the true owner of the suit property viz., the appellants herein?

3. Whether the Courts below erred in law and misdirected themselves in granting a decree for declaration as sought for by the respondents 1 and 2 herein in the absence of any cause of action especially when the appellants herein have not denied the nature of the suit property as reserved for public purpose at any point of time?

4. Whether the lower appellate Court erred in law and misdirected itself in failing to frame the points for determination, the decision thereon and reasons for arriving for the decision as mandated under Order 41 Rule 31 C.P.C.?

2. The suit has been filed by the plaintiffs being the residents of Alwar Nagar promoted by the appellants. At the time of obtaining approval for the layout, the appellants left sufficient space to be utilised for public purpose. One of the larger space is meant for the construction of a school by the local authority viz., defendant No.3. As there was an attempt on the part of the appellants to violate the terms and conditions and the provisions of the Town and Country Planning Act, 1971, a suit was filed by the plaintiffs earlier in O.S.No.911 of 1993. This suit was compromised on 18.01.1994 with the due signatures of the parties to the effect that there can be an addition of some more properties with the corresponding deletion of the portion of the suit property. Accordingly, the revised plan was drawn and approved by the defendant No.3. Now, the present suit in O.S.No.313 of 2008 has been laid on the premise that the appellants are once again violating the approved layout plan through encroachment and construction in the public space meant for the construction of school. The appellants took up the plea that earlier compromise dated 18.01.1994 has been obtained by force and coercion and the settlement deed having not been executed, there is no transfer of title from them. The Courts below, placing reliance upon the evidence available including that of D.W.1, decreed the suit. This appeal has been filed seeking to challenge the decree for permanent injunction alone.

3. The learned counsel appearing for the appellants submits that even as per the affidavit filed which is in tune with the written statement, there is no issue with respect to the declaration portion. Hence, the learned counsel submits that taking into consideration of the fact that there was no transfer of title coupled with the fact that the property only being used as school, the decree for injunction requires interference.

4. The learned counsel appearing for the respondents submits that it is only a continuation of the earlier decree obtained under the Town and Country Planning Act, 1971. Hence, in terms of the lay out and approved plan, the property would vest with the localbody - the third defendant. Hence, no interference is required.

5. In this case, strangely before all the forums, the third defendant has not chosen to appear. When once the lay out is approved along with the conditions, the same is binding on the applicant concerned. The execution of a settlement deed is only a ministerial act. Under those circumstances, in the case on hand, even the appellants have accepted to leave public space for construction of the school. The trial Court has recorded the evidence of P.W.1 with reference to the acceptance of the resolution passed in this regard. Evidence is available to the effect that already steps have been taken by the third defendant to permit the third party to construct the school. Therefore, this Court does not find any error in the judgment and decree rendered by the Courts below. It is not, as if, the appellants are the pre-owners of the suit property. The judgment and decree rendered by the Courts below, though by compromise on an earlier occasion in O.S.No.911 of 1993, would be binding on the appellants as rightly held by both the Courts below. There is no necessity to frame the point for determination by the lower appellate Court as the appellants clearly understood their case as against that of the plaintiffs. Accordingly, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Principal Subordinate Judge,  
Cuddalore.

2.The Principal District Munsif,  
Cuddalore.

+lcc to Mr.N.Damodaran, Advocate, S.R.No.4172

+lcc to Mr.R.Gururaj, Advocate, S.R.No.3809

S.A.No.527 of 2016

NRJK(CO)  
CA(13/02/2017)



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