



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.08.2017
CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

SECOND APPEAL (MD) No.661 of 2014

1.M.Jesu Antony Arulraj

2.M.Christopher

... Appellants /
Appellants / Plaintiffs

Vs.

1. The President,
Kommadikottai Panchayat,
Kommadikottai.

2. The Block Development Officer,
Sathankulam Panchayat Union,
Sathankulam.

3. The District Collector,
Thoothukudi District,
Thoothukudi.

... Respondents /
Respondents/ Defendants

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 10.09.2012, made in A.S.No.03 of 2012 by the learned II-Additional District Judge, Tuticorin, confirming the judgment and decree, dated 16.03.2011, made in O.S.No.62 of 2008 by the learned District Munsif, Sathankulam.

For appellants ... Mr.R.Balakrishnan

For respondents 1 & 2 ... Mr.Raja Prabhakaran,
for Mr.K.Mariappan

For 3rd respondent ... Mr.S.Sathish Kumar,
Additional Government Pleader

JUDGMENT

The plaintiffs are the appellants. The suit was filed for permanent injunction restraining the first defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs, by encroaching and blocking the passage of the schedule property in any manner and for mandatory injunction directing the first defendant to remove unlawful construction put up in front of the schedule property by blocking



the passage measuring an extent of 8.58 feet in width and 15.18 feet in length.

2. The suit property is the ancestral property of the plaintiffs, having inherited the same as legal heirs. The plaintiffs are in peaceful possession and enjoyment of the same. Presently, the plaintiffs are residing in Chennai due to their avocation and visiting the suit property at regular intervals. The suit property is the Punja land having 35 feet frontage facing Tiruchendur to Thisaiyanvillai Road. The first defendant, who is the President of the Kommadikottai Panchayat, planned to construct a bus-stop in front of the plaintiffs' land. The plaintiffs were trying to stop the same. However, it is stated that the first defendant had attempted to encroach the front portion of the suit property. The plaintiffs had also issued a legal notice to the first and second defendants. But, there was no response to the same. It is also stated in the plaint that during the pendency of the suit, in the month of September, 2008, the defendants had proceeded with the construction and completed the construction of the bus-stop. Hence, the relief of mandatory injunction was also sought.

3. The first defendant / Panchayat has filed a written statement stating that in Sokkankudieruppu village, there are about 100 families residing and there is no bus-stop on the Udankudi to Thisaiyanvillai Road. For the benefit of the students, women, patients and passengers, a resolution was passed and a tender was called for constructing the bus-stop. It is stated by the first defendant that even before filing of the suit, the construction of the bus-stop had been completed. The bus-stop is stated to be six feet away from the suit property and only a portion of the bus-stop is in front of the suit property and rest of it is in front of the land belonging to one Simon. The construction of the said bus-stop will not in any way hinder or cause any disturbance to the plaintiffs' property.

4. Before the trial Court, on the side of the plaintiffs, PWs.1 to 4 were examined and Exs.A1 to A10 were marked. On the side of the defendants, DWs.1 and 2 were examined and Exs.D1 to A3 were marked. The Advocate Commissioner's report, sketch and plan were also marked as Exs.C1 to C3. The trial Court, on consideration of the documents and evidences, had allowed the suit only in respect of granting permanent injunction and as regards, the prayer for mandatory injunction the suit was dismissed. Aggrieved by the same, the plaintiffs have preferred an appeal in A.S.No.3 of 2012. The first appellate Court also dismissed the suit confirming the judgment and decree of the trial Court.

5. At the time of admission of the second appeal, only notice was ordered.



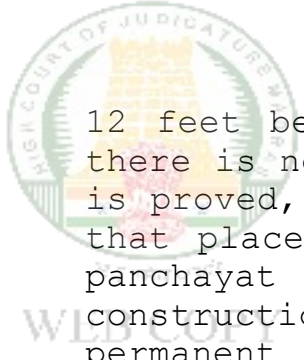
6. Heard the learned counsel for the appellants and the learned counsel for the respondents.

7. The case of the plaintiffs is that since the lands viz., the suit property, is on the highway, he is entitled to have ingress and egress at every point to his land. The construction of the bus-stop in front of his property is blocking the passage to his land. According to the defendants, the construction of a bus-stop on a National Highway is in the interest of the public, when the particular area has got more than 100 families. The construction of a bus-stop would only be a facility for the village and the same cannot be opposed. The said bus-stop was constructed only in the prompoko land and not on the private land of the plaintiffs.

8. It is clearly demonstrated by the defendants that between the plaintiffs' property and the bus-stop, a clear six feet passage is there. The bus-stop also is in front of the property of one another person by name Simon and only one half of the same is in front of the plaintiffs' property. The said Simon in the interest of the villagers had not opposed the construction of the bus-stop. When there is sufficient passage between the bus-stop and the plaintiffs' property, and the bus-stop is constructed only in the Government prompoko land, the plaintiffs cannot have any grievance over the same.

9. The trial Court had not granted injunction at the time of moving the suit. In the absence of an order of injunction, the first defendant had completed the construction pending suit. Therefore, the plaintiffs had asked for the relief of mandatory injunction also. In the absence of any evidence that the ingress and egress to the suit property by the plaintiffs is in any way affected or the construction of the bus-stop would totally block the access to their property, the plaintiffs cannot ask for removal of the same. The allegation of the plaintiffs that the said bus-stop had been constructed unauthorisedly by the first defendant without obtaining any permission from the National Highways Department or from the Government, need not be addressed, as it is for the authorities to take care of the same. In fact, a Commissioner was appointed in the trial Court to find out the physical features of the plaintiffs' property and also construction of the bus-stop. A perusal of the report of the Commissioner also shows that there is no hindrance caused to the plaintiffs to reach the property, due to the construction of the bus-stop.

10. As stated earlier, DW1 has stated in his evidence that the bus-stop was put up by the Panchayat only based on the resolutions given by the residents of Sakkankudieruppu. The said resolutions were also marked as Exs.B1 to B3. The evidences of PWs.2 and 3 also would go to show that there is a gap of 10 to



12 feet between the suit property and the bus-stop. Thus, when there is no hindrance or difficulty, as alleged by the plaintiffs, is proved, the construction of the bus-stop cannot be removed from that place. It is also not the case of the plaintiffs that the panchayat had encroached into their property and put up the construction. The trial Court has rightly granted the decree for permanent injunction and rejected the relief of mandatory injunction. As the final fact finding Court, the first appellate Court has also considered the every aspect of the case and confirmed the judgment and decree passed by the trial Court. There is no justifiable reason warranting any interference much less a question of law arising out of the said facts. Hence, this second appeal is liable to be dismissed.

11. In the result, this Second Appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The II-Additional District Judge,
Tuticorin.
2. The District Munsif,
Sathankulam.
3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. The Block Development Officer,
Sathankulam Panchayat Union,
Sathankulam.
5. The District Collector,
Thoothukudi District,
Thoothukudi.

GCG

VB/GT/SAR3/18/09/2017/4P/6C