



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.98 of 2015

and

M.P. (MD) .No.1 of 2015

Ravi

... Appellant / Appellant /
1st Defendant

Vs.

Sivanandam (Died)

1. Jothi
2. Murugan
3. Vijayalakshmi
4. Selvi
5. Sasikala
6. Thulasi

... Respondents 1 to 6/
Respondents 2 to 7/Plaintiffs 2 to 7

7. Kumbakonam Municipality,
rep. by its Commissioner,
Kumbakonam,
Thanjavur District.

... 7th Respondent /
8th respondent / 2nd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 27.08.2014, made in A.S.No.49 of 2013 by the learned Principal Subordinate Judge, Kumbakonam, confirming the judgment and decree, dated 14.08.2013, made in O.S.No.89 of 2004 by the learned Principal District Munsif, Kumbakonam.

For appellant	: Mr.V.Chandrasekar
For respondents 1 to 6	: Mr.M.V.Santharaman
For respondent No.7	: Mr.M.Rajarajan

JUDGMENT

The first defendant, who had lost before both the Courts below, is the appellant. The suit was filed for permanent injunction restraining the first defendant from putting up shed by



encroaching the suit pathway and for mandatory injunction directing the second defendant to remove any such encroachment made.

2. The case of the plaintiffs is that the first plaintiff has purchased the property in Door Nos. 26-A and 26-B under a registered sale deed, dated 04.07.1974 and since then, they have been in possession and enjoyment of the same. As per the said sale deed and the documents pertaining to the Corporation, on the northern side of the property, there is a street called Uppukkara Street. Encroaching the said street, the first defendant attempted to put up a shed. Hence, the suit was filed.

3. The suit was resisted by the first defendant contending that the suit property is a temple property and the four boundaries mentioned in the plaint is not correct. The northern wall of the property is the common wall of the plaintiff and the first defendant. The first defendant have been enjoying the suit property for more than 30 years. Neither the plaintiff nor the second defendant had any right over the suit property. Hence, he prayed for dismissal of the suit.

4. The 2nd defendant has filed a written statement contending that a suit in O.S.No.55 of 2004 is pending between the first and second defendants, wherein the first defendant contended that the suit property is a temple property, in which the second defendant has no right. The 2nd defendant did not give any permission to the 1st defendant to put up construction on the suit property.

5. On the above pleadings and after the first round of litigations before the Courts below as well as this Court, which went upto review application, this Court had remitted the matter to the trial Court with a liberty to adduce additional evidence. Based on the said order, a fresh trial was conducted. After considering the facts and evidences, the trial Court had decreed the suit and on appeal, the same was confirmed. Aggrieved by the concurrent judgment passed by the Courts below, the first defendant has filed the above appeal.

6. At the time of admission, the following questions of law were framed for consideration:

"(1) Whether the Courts below are right in passing a decree in favour of the respondents 1 to 6 when the respondents 1 to 6 failed to comply with the direction given by this Hon'ble Court in S.A. (MD). No. 1223 of 2011 dated 30.01.2012 to file documents of title of their predecessors?

<https://hcservices.ecourts.gov.in/hcservices/>

(2) Whether the Courts below have committed a grave error in decreeing the suit when the



respondents failed to prove their title by way of filing relevant documents to establish title?

(3) Whether the perverse appreciation of facts by the Courts below resulted in chaos which also defeats the ends of justice?

(4) Whether the Courts below are right in decreeing the suit when the respondents 1 to 6 as plaintiffs have not established their title to the property in question?"

7. Heard the learned counsel for the appellant and the learned counsel appearing of the respondents.

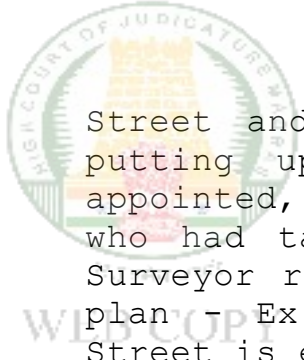
8. The dispute is with respect to the northern side wall of the plaintiff's property which is on the south of Uppukara Street. The specific case of the Plaintiff is that the northern wall belongs to him and he has every right to have an opening into Uppukara Street. But, the defendant has put up the construction touching the northern wall of the plaintiff, thereby obstructing the free ingress and egress of the Plaintiff.

9. In the earlier round of litigation, this Court had given liberty to the parties to file documents of title of their predecessor and remanded the matter to the trial Court. Accordingly, after the remand, the Plaintiffs had filed Exs.A8 to A14. Ex.A8 is the Judgment in A.S.No.108/1950 passed by the Subordinate Court, Kumbakonam, in which one Govindasamy Padayachi, Logambal Ammal filed a suit against the Trustee of Kaliga Parameswari Temple. The said Judgment in Ex.A8 ended in favour of Logambal Ammal, who is the vendor of the first plaintiff - Sivanandam. Ex.A11 is another Judgment, which is the suit in O.S.No.270 of 1949.

10. Considering the above said Ex.A8 to Ex.A11, the Courts below have come to the conclusion that S.Nos.376 to 379 belong to Logambal Ammal and Logambal Ammal had valid right and title over the suit properties and sold it in favour of the Plaintiffs under Ex.A1. The right and title of the vendor of the Plaintiffs was declared by the Courts in earlier proceedings as early as in the year 1949-1950 and the suit properties are also identified to be situated in Survey Nos.376, 377, 378 and 379. It is clear that the Plaintiff had purchased from the real owner for valid consideration. Therefore, there cannot be a dispute over the title of the Plaintiff. That apart, documents viz., Exs.A10, A12 and A13 were also produced by the Plaintiff to substantiate his vendor's title.

<https://hcservices.ecourts.gov.in/hcservices/>

11. Ex.B11 is the Survey Plan. Ex.B12 is the Survey Register. It is evident from these two documents that S.No.417/1 is Uppukara



Street and there is an encroachment by the first defendant by putting up a thatched shed over the same. The Commissioner appointed, after the remand, had also filed his plan and report, who had taken assistance of the surveyor. The Commissioner and Surveyor reports were also filed as Exs.C1 and C3. The Surveyor plan - Ex.C4 categorically explains that a portion of Uppukara Street is encroached by the first defendant.

12. The contention of the first defendant/appellant is that there is a small portion between the plaintiffs' property and Uppukara Street, which belongs to the temple and the defendant has put up the thatched shed in that portion only. It is the further contention of the learned counsel for the appellants that though there was a direction of this Court to file documents of title of Predecessors of the Plaintiffs, the same is not done. The Plaintiff had produced only the Judgments and Decree under Exs.A8 to A11. The Civil Court had declared the title of the vendor of the plaintiffs in those documents. Hence, the argument of the learned counsel for the appellant cannot be accepted. The first defendant/appellant being the person without any right or title cannot be allowed to encroach upon somebody's property and put up thatched shed upon the Plaintiff's property or by restraining the free way of the Plaintiff through northern wall towards Uppukara Street. Hence, the prayer sought for by the Plaintiff is sustainable and the decree granted by the Trial Court as confirmed by the first Appellate Court is correct. When the 2nd defendant / Municipality has specifically mentioned about the encroachment by the first defendant, the Plaintiff is entitled for the relief of mandatory injunction also. As directed by the Trial Court, Exs.C4-plan filed by the Surveyor should be attached to the copy of the decree.

13. In the light of the above, the concurrent findings of the Courts below are liable to be confirmed answering the substantial questions of law in the negative.

14. In fine, this second appeal is dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

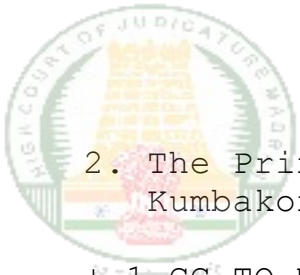
/True copy/

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Principal Subordinate Judge,
Kumbakonam.



2. The Principal District Munsif,
Kumbakonam.

+ 1 CC TO MR.V.Chandrasekar, ADVOCATE IN SR No.80429

+ 2 CC TO MR.M.Rajarajan, ADVOCATE IN SR No.76738 & 80471

+ 1 CC TO MR.T.R.Subramanian, ADVOCATE IN SR No.80089

gcg/arr

MK/MR KKR/SAR-2/06.10.2017/5P/7C

S.A. (MD) No.98 of 2015

21.09.2017