

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1785 of 2000

And

C.M.P.No.16721 of 2000

1.Arthanari Gounder
2.Kaliyammal
3.A.Kathiresan

(3rd appellant impleaded as per the
order of this Court dated 15.02.2018
made in C.M.P.No.8719 of 2016
in S.A.No.1785 of 2000)

... Appellants/Plaintiff

Vs.

Salem Municipal Corporation
Salem, rep. by
its Commissioner
Municipal Building
Salem - 1.

... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C. against
the judgment and decree dated 18.08.1999 and made in A.S.No.14
of 1999 on the file of the Additional Sub Court, Salem,
confirming the Judgment and decree dated 25.09.1998 and made in
O.S.No.92 of 1990 on the file of the II Additional District
Munsif Court, Salem.

For Appellants : Mr.V.R.Rajasekaran

For Respondent : Mr.M.Karthikeyan
Additional Government Pleader

J U D G M E N T

The appellants 1 and 2 herein are the plaintiffs in
O.S.No.92 of 1990. The plaintiffs filed the suit for permanent
injunction restraining the defendant, his subordinate staffs and
men from in any manner interfering with the plaintiffs' absolute
possession and enjoyment of the suit property. The suit was

dismissed by the lower Court. Aggrieved by the same, the plaintiffs filed an appeal before the lower Appellate Court. The lower Appellate Court dismissed the appeal and confirmed the order of the Court below.

2.Hence, the un-successful plaintiffs who lost the case before both the Courts below have filed the second appeal before this Court. The third appellant expressed his intention to be impleaded in this second appeal by filing a miscellaneous petition and he is impleaded in this second appeal as per the order of this Court dated 15.02.2018 made in C.M.P.No.8719 of 2016 in S.A.No.1785 of 2000.

3.For the sake of convenience, the plaintiffs will be hereinafter referred to as per their rank in this appeal namely, appellants 1 and 2 and the defendant will be hereinafter referred to as per the rank in this appeal namely, respondent.

4.The sum and substance of the plaint averments are as follows: The suit schedule property originally belonged to Palanisamy Gounder son of Chinna Gounder of Sanjeevirayanpet, Dhadagapatti, Salem Town, Salem. The said Palanisamy Gounder is the father - in - law of the first appellant and father of the second appellant and he settled the common half share in the suit property in favour of the first appellant under a registered settlement deed dated 12.02.1973 under natural love and affection. The said Palanisamy Gounder had already sold a common half share in the suit property in favour of the second appellant for a valuable consideration of Rs.1,000/- on 12.02.1968.

5.Ever since the date of purchase and settlement, the appellants 1 and 2 are in absolute possession and enjoyment of the suit schedule property and they are paying the house tax for the suit schedule property which is situated within the municipal limits and has also obtained electricity and water tap connections. The suit property consists of tiled house facing towards Ammal Eri Road. The said Ammal Eri Road runs on the East West adjoining the suit property on the Northern side. The breadth of the Ammal Eri Road is 20 feet and some of the local residents of the locality in order to give trouble to the appellants 1 and 2 in the peaceful possession and enjoyment of the

suit property are proclaiming in the locality that they will widen the street by demolishing the front portions of the suit house.

6.The respondent/ defendant on the advice of some of the local party men without appraising the real state of affairs

started making arrangements to demolish the front portions of the suit property and other portions of the adjacent residents in the same locality. The appellants 1 and 2 have not encroached any portion of the East West Ammal Eri Road at the time of construction. The respondent has no manner of right to interfere with the peaceful possession and enjoyment of the suit schedule property. However, some of the local party men attempted to demolish the front portion of the suit schedule property alleging that they have instructions from the respondent to demolish the same. Aggrieved by the above cause of action, the appellants 1 and 2 filed the suit for injunction against the respondent Municipal Corporation.

7.The sum and substance of the written statement are as follows: The vendor of the appellants 1 and 2 has laid an unauthorized layout and sold house-sites to the individuals. The appellants 1 and 2 are one among them. The vendor has left lands for

road in front of the plot of the appellants 1 and 2 for the benefit of the plot owners. The land left for road is meant for common use of all residents in that area. The vendor has not followed the law for laying the layout.

8.The residents have requested the respondent Municipality to maintain the road but the Municipality was not able to take the maintenance of the road as the land was not handed over by the vendor to the Municipality. The respondent has not taken any steps to widen the road as alleged in the plaint. The respondent's staff have never attempted to remove any portion of the building of the plaintiffs/ appellants 1 and 2. The alleged building of the appellants 1 and 2 itself is an un-authorized one. However, the respondent Municipality categorically admitted that they are not taking any steps to either remove or interfere with the peaceful possession of the property.

9.The lower Court after elaborate discussions dismissed the suit on the ground that there is no cause of action for grant of injunction against the respondent and the lower Appellate Court also dismissed the appeal and confirmed the order of the lower Court. As against the

concurrent findings, the plaintiffs/ appellants 1 and 2 have filed the second appeal.

10.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

"1)When the property comprised under
Exs.A10 and A11 have four well defined

boundaries out of which northern boundary is shown as Amman Eri Road, would not the boundaries prevail over the extent actually conveyed under Exs.A10 & A11?

2.Whether the finding of the Courts below, that the plaintiffs had not established their possession to the property in dispute and that there is no cause of action for the plaintiff can be sustained in law?"

11.The learned counsel appearing for the appellants submitted that admittedly, the properties are purchased by the second appellant's father and first appellant's father - in - law from his vendor and the learned counsel also fairly admitted that those plots are un-approved plots which were purchased from the vendor at that time

and it is also admitted one that no roads were handed over by way of gift to the Municipality. However, all the roads were maintained by the residents and though there is no specific pleadings against the respondent for interfering with the possession and enjoyment of the property, however, at the instigation of the Municipality, the local rowdy elements interfered with the peaceful possession and thereby the appellants 1 and 2/ plaintiffs were forced to file the suit for injunction against the Municipality.

12.The learned counsel appearing for the appellants further submitted that during the pendency of the suit, the local residents removed the front portion of the appellants 1 and 2/ plaintiffs, however, they were not arrayed as party in the suit for taking action against them. He further contended that the appellants prescribed title with four boundaries. If at all the Municipality or any other person wants to widen the road, they have to follow the procedure as contemplated under law. Without following the procedure, interfering with the peaceful possession and enjoyment of the property is against law. Some of the un-authorized persons, based on the instructions of the Municipality tried to interfere with the peaceful possession of the appellants 1 and 2 and tried to demolish the front portion of the property and it is not sustainable in law. Hence, both the Courts below committed error in dismissing the suit. Accordingly, he prayed for allowing the second appeal.

13.The learned Additional Government Pleader appearing for the respondent Corporation would submit that the entire layout is an un-approved layout. The vendor of the plaintiff did not handover any road or public place to the Municipality and the Municipality also filed written statement showing that the

Municipality did not interfere with the peaceful possession and enjoyment of the suit property and they have no idea of widening the road. Since the road is an un-approved one, unless the vendor has gifted the same in favour of the respondent Municipality, the Municipality cannot maintain the road.

14.The learned Additional Government Pleader appearing for the respondent Corporation further contended that when there is no cause of action arisen for filing the suit and the respondent has categorically admitted that they are not going to interfere with the peaceful possession of the property, the suit is filed on mere apprehension.

15.Heard both sides and perused the entire materials available on record.

16.On a perusal of the entire records and on perusal of the findings of the lower Court as well as the lower Appellate Court, there is no dispute that the suit property is a portion of the property mentioned in Ex.B3. The lower Appellate Court raised the issue that the vendor of the appellants 1 and 2/ plaintiffs executed deeds including the excluded 12 feet land is not explained. The vendor himself has no right with respect to the 12 feet road which has been left for road in between the layouts and the Ammal Eri Road. However, this Court is not inclined to go into the merits of the case since the respondent themselves admitted in the written statement that they do not have any intention to widen the road as on that date and the respondent Corporation has not interfered with the peaceful possession and enjoyment of the property.

17.When there is no cause of action against the respondent Corporation, filing a suit against the respondent does not arise. However, it is made clear that the written statement was filed in the year 1990. On that day, the respondent had no intention to widen the road. However, in future, if the respondent/ defendant wants to widen the road, the respondent/ defendant will follow the procedure as contemplated under law.

18.In view of the above, I do not find any error in the findings of the lower Court as well as the lower Appellate Court since there is no cause of action for filing the suit. In view of the written statement filed by the respondent Corporation, the substantial questions of law are answered against the appellants.

19.Accordingly, the second appeal is dismissed. The judgment and decree dated 18.08.1999 made in A.S.No.14 of 1999 on the file of the Additional Sub Court, Salem, confirming the judgment and decree dated 25.09.1998 made in O.S.No.92 of 1990

on the file of the II Additional District Munsif Court, Salem,
is confirmed. No costs. Consequently, the connected
miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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To

- 1.The Additional Subordinate Judge, Salem.
- 2.The II Additional District Munsif Court, Salem.
3. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.M.Karthikeyan, Advocate SR.No.11945

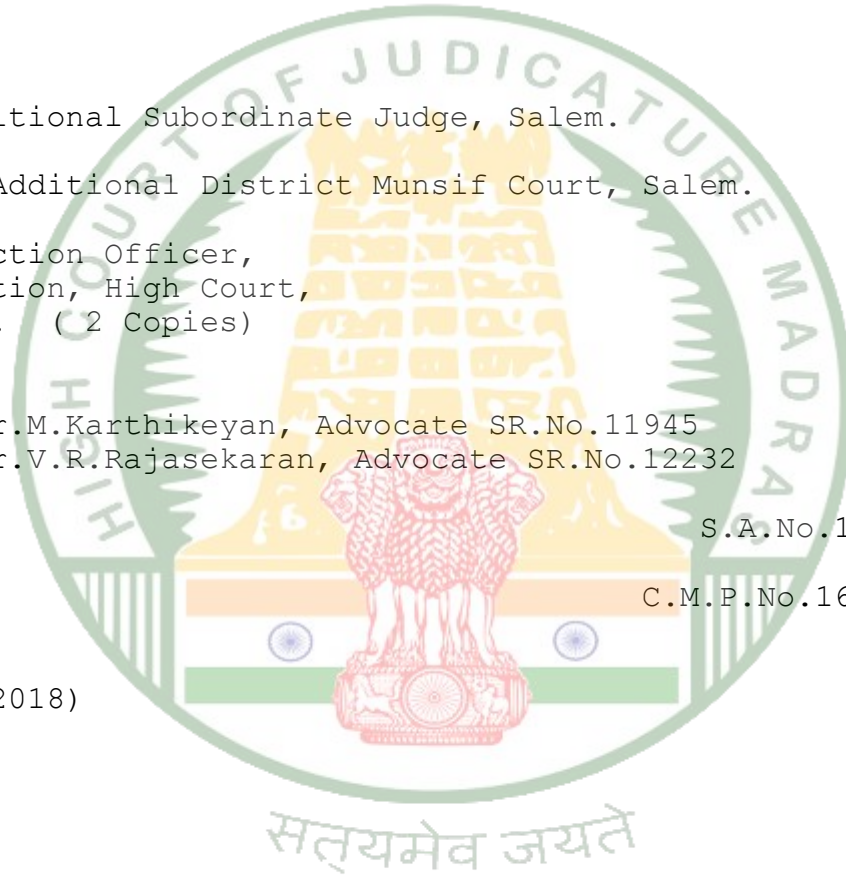
+1cc to Mr.V.R.Rajasekaran, Advocate SR.No.12232

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SR(CO)
GN(26/03/2018)



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