

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

S.A.No.1116 of 2003

P.Suseela

..Appellant/Plaintiff

Vs.

S.R.Krishnasamy

..Respondent/Defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.137 of 2000 dated 25.07.2001 on the file of the II Additional District Court, Salem, confirming the judgment and decree dated 24.12.1999 made in O.S.No.582 of 1992 on the file of the II Additional District Munsif, Salem.

For Appellant : Ms.T.Jayalakshmi  
for M/s.Paul & Paul

For Respondent : Mr.T.V.Krishna Kumar

J U D G M E N T

The suit in O.S.No.582 of 1992 has been filed by the plaintiff / appellant for declaration, permanent injunction, mandatory injunction and for direction, directing the defendant / respondent to remove the super structure made in the portion of the suit property. The plaintiff who had lost his case before the Trial Court as well as the First Appellate Court has filed the second appeal before this Court.

2.The appellant herein is the plaintiff and the respondent herein is the defendant in the suit in O.S.No.582 of 1992. For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows:

The suit property originally belonged to one Pappammal and others. The plaintiff purchased the same with a tiled house by means of registered sale deed dated 04.02.1991 for a sum of Rs. 40,000/-. After purchase, the plaintiff demolished the tiled house and constructed five shops. The Municipality assigned door Nos. 49A to 49 E for the said five shops. The plaintiff also paid house tax for the said shops to the Salem Municipality

thereafter mutated revenue records, obtained patta and survey plan for the suit property. There is a lane on the southern side by 2 feet breadth and 45 feet length which is marked as ABCD in the rough plan filed along with the plaint.

4.The defendant recently purchased the land on the southern side of the suit property. After the said purchase, the defendant started to put up construction on the said land. During the course of his construction, the defendant inserted basement below the A B vacant lane of the suit property with the help of his followers on 06.07.1992 by trespassing into the suit property. When the same was questioned by the plaintiff, the defendant without hearing the plaintiff continued his construction. Hence, the plaintiff filed a suit for declaration and permanent injunction. In the year 1999, the plaintiff filed I.A.No.450 of 1999 for amending the prayer for mandatory injunction. The said I.A.No.450 of 1999 was allowed on 31.08.1999 and mandatory injunction was also included in the plaint prayer.

5.The sum and substance of the written statement filed by the defendant is as follows:

The defendant denied the title of the plaintiff. The description of the property is vague and incorrect. The plaint plan is incorrect and misleading. The defendant further denied two feet lane on the southern side of the suit property to the length of 15 feet as shown in A, B, C, D in the rough plan. The plaintiff purchased 60 x 15 feet property by virtue of a sale deed dated 04.02.1991. Except that, the plaintiff is not entitled to any more portion. The plaintiff had already constructed a pucca building in the entire 60 x 15 feet. There is no window or opening on the southern wall of the plaintiff. Just abutting the said wall the defendant purchased the property which was delivered through Court Amina measuring about 15 x 60 feet with specific boundaries as mentioned in R.E.P.2/91 in R.C.O.P.152/87, on the file of the District Munsif Court, Salem. The plaintiff has nothing to do with the property purchased by the defendant. The defendant had never trespassed into any portion of the plaintiff at any point of time as alleged in the plaint. The plaintiff's husband is working in the Municipality and obtained a plan containing wrong particulars and the same was questioned by the defendant before the Tahsildar, Salem. The Tahsildar, inspected the property and passed orders on 29.08.1992 in favour of the defendant that the defendant is entitled to 900 sq. ft. in S.No.7/1E2. Hence, the plaintiff is not entitled to the alleged lane as claimed in the suit. The plaintiff has not come before this Court with clean hands and there is no cause of action and hence the suit is liable to be dismissed.

6. In order to establish the case of the plaintiff, the husband of the plaintiff was examined as PW1 and Exhibits Ex.A1 to Ex.A13 were marked. On the side of the defendant, DW1, who is none other than the son of the defendant was examined and Exhibits Ex.B1 to Ex.B10 were marked.

7. The Trial Court after framing issues and after perusing the entire documents, dismissed the suit on the ground that the plaintiff did not establish her title over the suit property and the mandatory injunction filed by the plaintiff is barred by limitation. As against the dismissal order, the plaintiff preferred an appeal in A.S.No.137 of 2000 before the First Appellate Court. The First Appellate Court also confirmed the dismissal order passed by the Trial Court.

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

(i) Whether the courts below were right in law in disregarding the Advocate Commissioner's report and Plan (Ex.C3 and Ex.C4), particularly when no objections were filed by the respondent to the said report?

(ii) Whether both the Courts below were right in denying title to the appellant, when admittedly the appellant was entitled to enjoy her property to the extent of 900 sq. ft. situate in Survey No.7/iE1 of the suit property formed part of the said extent of land?

9. The learned counsel for the appellant would submit that the appellant purchased the suit property to the extent of 900 sq. ft. from one Pappammal. After the purchase, the appellant constructed five shops in the suit property and the same has been assessed under property tax by the Municipality. The vendor's title has also been produced before the Trial Court, however, the appellant established her title over the suit property.

10. Apart from the above, the plaintiff has also filed Advocate Commissioners' report and the same has been marked as Ex.C3 & Ex.C4. Further, both the Courts below arrived at a conclusion erroneously that the plaintiff did not establish his title for the prayer of mandatory injunction to remove the superstructure made by the defendant and dismissed the suit on the ground that the same is barred by limitation and the same is liable to be interfered with and accordingly prays for allowing the second appeal.

11.The learned counsel appearing for the respondent would submit that the appellant purchased the suit property with an actual measurement of 15 x 60 sq. ft., totally 900 sq. ft. from one Pappammal. After purchase, the plaintiff constructed five shops to the extent of 14½ sq. ft. on the northern side and 13½ sq. ft. on the southern side. Apart from the above, the plaintiff also constructed a door steps in 1½ sq. ft. and constructed a pucca building. Other than that, he is also claiming the defendant's property which is unsustainable one.

12.The learned counsel further submitted that the plaintiff has put up construction to an extent of 15 x 60 sq. ft. in the suit property, Ex.A1 discloses the extent of suit property of the plaintiff. The suit schedule property is 2 x 60 sq. ft., which is lying along with the defendant's property. Just abutting the said wall, the defendant purchased the property which was delivered through Court Amina measuring about 15 x 60 feet with specific boundaries as mentioned in R.E.P.2/91 in R.C.O.P.152/87, on the file of the District Munsif Court, Salem. The plaintiff has nothing to do with the property purchased by the defendant. The defendant had never trespassed into any portion of the plaintiff at any point of time as alleged in the plaint. The plaintiff had filed a vexatious suit against the defendant and the Trial Court after perusing the entire records and depositions rightly dismissed the suit and the same was confirmed by the First Appellate Court, which need not be interfered with and prays for the dismissal of the second appeal.

13.Heard the learned counsel appearing on either side.

14.On a perusal of the entire records and findings of the Trial Court as well as the First Appellate Court, it is seen that the appellant / plaintiff had filed a suit, claiming the relief of declaration and permanent injunction. The other prayer for mandatory injunction was subsequently introduced in the plaint by way of amendment. Though the suit had been filed in the year 1992, the amendment petition was filed only in the year 1999 i.e. after a lapse of seven years.

15.According to the plaintiff, she has purchased the suit property along with other property described in the registered sale deed dated 04.02.1991 i.e. Ex.A1. On a perusal of Ex.A1, it discloses that the plaintiff purchased the property to the extent of 15 x 60 sq. ft. i.e. 900 sq. ft. According to the defendant, he has also purchased the same extent of 15 x 60 sq. ft. on the southern side of the plaintiff's property. Admittedly, the plaintiff constructed five shops on her property. After her construction, the defendant started to construct his property. At that time, the plaintiff filed the above suit on the ground that the defendant had encroached 2 x

60 sq. ft. of lands on the southern side of the plaintiff's property. In order to establish his case, Advocate Commissioners were also appointed to find out the physical features of the suit property. The report of the commissioners has been marked as Ex.C1 to Ex.C4.

15.The Commissioners' report reveals that the plaintiff had constructed five shops on the suit property in S.No.7/1E1 on the Northern side to the extent of 14½ sq. ft. and 13½ sq. ft. on the Southern side and she has constructed 1½ sq. ft. door steps on the northern side of the plaintiff's property, which comes around 14½ sq. ft. and remaining ½ sq. ft. is the open space available on the Northern side of the suit property. Accordingly, the plaintiff has possessed more than the property she has purchased through Ex.A1 and the same is demonstrated before the Trial Court as well as the First Appellate Court and the Courts below have concurrently dismissed the suit as if the plaintiff has not established her right in the suit property measuring to an extent of 2 x 60 sq. ft. Admittedly, the suit property lies on the side of the defendant's property.

16.Though the plaintiff filed a suit in the year 1992, the mandatory injunction petition was filed only in the year 1999, after a lapse of seven years, which is barred by limitation, on that ground also, the Trial Court as well as the First Appellate Court concurrently dismissed the suit. Hence, I do not find any error or infirmity in the order passed by the Courts below. Thus, the substantial questions of law are answered against the appellant.

17.In the result, the second appeal is dismissed. The judgment and decree passed in A.S.No.137 of 2000 dated 25.07.2001 on the file of the District Court, Salem is confirmed. No costs.

kas

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.District Court  
Salem

2.The II Additional District Munsif Court  
Salem

+lcc to Mr.M.Sathiamurthy, Advocate Sr.No.21147

MG (CO)  
sm:18.4.2018

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