

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :19.06.2018

PRONOUNCED ON :09.07.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1748 of 2004

Ranjitham ... Appellants/1st Respondent/
1st Defendant

Vs.

1.Gopalakrishnan

2.E.Jayapathi

...Respondent 1 & 2/Appellant 1 & 2/
Plaintiff 2 & 3

3.Tahsildar

Guindy-Mambalam Taluk.

...3rd Respondent/2nd Respondent/
2nd Defendant

4.The Commissioner,

Corporation of Chennai.

...4th Respondent/3rd Respondent/
3rd Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the VIth Additional Judge, City Civil Court, Chennai dated 17.01.2001 in A.S.No.103 of 1999 reversing the judgment and decree of the Lower Court in O.S.No.954 of 1992 on the file of XIVth Assistant Judge, City Civil Court at Chennai, dated 29.01.1998.

For Appellant : Mr.T.V.Krishnakumar

For RR1 : No representation/No appearance

For RR2 : No appearance

For RR3 :Mrs.A.Madhumathi, AGP (CS)

For RR4 :No representation/No appearance

R1, R2, R4 :Set exparte vide order dated
19.06.2018

J U D G M E N T

Challenge in this second appeal is directed against the judgment and decree dated 17.01.2001 passed in A.S.No.103 of 1999 on the file of the VI Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 29.01.1998 passed in O.S.No.954 of 1992 on the file of XIV Assistant Judge, City Civil Court at Chennai.

2.The Second Appeal has been admitted on the following substantial question of law:

Whether the lower appellate court has completely ignored the documentary evidence as well as the oral evidence?

3. Considering the scope of the controversy involved in the Second Appeal, lying in a narrow compass, it is not necessary to deal with the facts of the case in detail.

4. The parties are referred to as per the rankings in the trial court.

5. Suffice to state that the plaintiffs have laid the suit against the defendants, particularly the first defendant seeking the relief of permanent injunction restraining her from trespassing into the Public MGR street measuring north to south 10 ½ feet and east to west 41 feet in Anna nagar, Tharamani, Madras 113. Alleging that the first defendant, taking advantage of the location of her property lying in between the MGR Street and Pandian Street, according to the plaintiffs is endeavouring to encroach into the suit property as described in the plaint and therefore according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs and the first defendant in particular, has taken the defence that her property is not located in between MGR street and Pandian Street as put forth by the plaintiff and according to her, there is no MGR street adjoining her property and therefore there is no question of any encroachment into the MGR street as put forth by the plaintiffs and it is the case of the first defendant that it is only the plaintiffs who are preventing the first defendant from enjoying her property purchased by her and it is also stated that in this connection, the suit in O.S.No.3301 of 1991 is pending and according to the first defendant, at the instigation of the defendants in O.S.No.3301 of 1991, the plaintiffs have come forwarded with the present false and vexatious suit and hence the suit is liable to be dismissed.

6.The second defendant has filed the written statement without clearly outlining as to the location of MGR street and Pandian street and further as seen from the averments contained

in the written statement filed by the second defendant, there is no clear picture as to the location of the MGR street adjoining the plaintiffs' property and also the alleged encroachment made into the same by the first defendant.

7. On the basis of the materials placed on record, it is found that the trial court, on an appreciation of the same, was pleased to dismiss the plaintiffs' suit. The first appellate court set aside the judgment and decree of the trial Court and thereby granted the reliefs sought for by the plaintiffs. Impugning the same, the present Second Appeal has been preferred.

8. The plaintiffs' claim that MGR street is a public street located adjoining the first defendant's property and it is the grievance of the plaintiffs that the first defendant in the guise of enjoyment of her property, she is attempting to encroach into the public MGR street as described in the plaint and hence it is stated that the plaintiffs have been necessitated to institute the suit for necessary reliefs. With reference to the abovesaid case of the plaintiffs, to sustain the same, they have marked five documents Exs.A1 to A5 and they are found to be the ration card of Venkata Subbu Reddy, the temple notification and voters list of 1989 and on a perusal of the documents, there is a reference about the MGR Street, however from the abovesaid documents, as rightly determined by the trial court, it could not be ascertained that the said MGR street abuts the first defendant's property acquired by the first defendant by way of the sale deed dated 15.04.1976 marked as Ex.B2. Thus it is found that when there is no reference about the first defendant's property abutting MGR street in her sale deed marked as Ex.B2 and when the documents projected by the plaintiffs, do not also show that MGR street is abutting the first defendant's property, it is seen that absolutely the allegations put forth by the plaintiffs that the first defendant attempted to encroach into the suit property i.e., MGR street as such cannot be readily accepted. As seen from the sketch marked as Ex.B5, it is found that MGR street is not abutting the first defendant's property. When the first defendant has taken the defence that her property does not abut the MGR street it is for the plaintiffs, who have come forward with the suit, to place acceptable materials to show that MGR streets is a public street maintained by the Corporation of Chennai and the same exists on ground and the same abuts the property acquired by the first defendant and the MGR street measures as averred in the plaint and the same is a continuation of Thamirabarani street and connecting with another street as claimed in the plaint and when with reference to the same, the plaintiffs have not chosen to summon the requisite records from the Corporation of Chennai and place the same before this Court for seeking their entitlement to the reliefs claimed, as rightly determined by the

trial court, merely on the basis of Exs.A1 to A5, we cannot determine that MGR street is a public street and the same measures and lies as projected in the plaint and the same is abutting the first defendant's property as contended by the plaintiffs.

9. That apart, it is found that the oral evidence adduced on behalf of the plaintiffs also does not inspire the confidence in granting the reliefs sought for in the plaint. In this connection, P.W.1, the second plaintiff, during the course of cross examination has admitted that he does not who is the first defendant and one Murugesan is the husband of the first defendant and it is only the said Murugesan who used to come to the place and inasmuch as the plaintiffs' property is located there, they had impleaded the first defendant in the suit and not impleaded Murugesan and further according to him, the first defendant has not raised any wall or prevented the usage of the MGR street and the same had been done only by her husband and such being the evidence of P.W.1, it is found that as such the first defendant has not made any encroachment into the MGR street as projected by the plaintiffs and at the most, it could be seen that it is only the first defendant's husband as per the version of P.W.1 who had made the alleged encroachment. However, when the very existence of MGR street as detailed in the plaint has not been established by the plaintiffs and further when the plaintiffs have miserably failed to establish that MGR street is a public street and abutting the first defendant's property and when the requisite documents maintained by the Corporation of Chennai with reference to the same had not been summoned and produced and when the documents Exs.A1 and A5 projected by the plaintiff would not in any manner advance the plaintiffs' case as such and when the title deed of the first defendant describing the property comprised therein is not advancing the plaintiffs' case and when it has not been established by the plaintiffs that MGR street had been formed thereafter and is in existence adjoining the first defendant's property and that it is a public street, it is found that on the materials placed by the plaintiffs' as above stated would not entitle the plaintiffs, to seek the reliefs as prayed for. Though, P.W.2 Kasi Rajan, who has been examined to sustain the plaintiffs' case, would claim that the first defendant had encroached into the MGR street as such, however, when from the documents projected by him, the same could not be sustained, accordingly, it is found that, no safe reliance could be attached to his testimony for upholding the plaintiffs' case.

10. Thus, it is found that the trial court on a proper appreciation of the materials placed on record correctly held that the plaintiffs have miserably failed to establish the existence of the suit property as abutting the first defendant's

property and also failed to establish the alleged encroachment of the first defendant into the suit property as claimed and thereby is found to have rightly dismissed the plaintiffs' suit.

11. However, the first appellate court on basis of the Commissioner's report and plan, seem to have accepted the plaintiffs' case. However, as rightly put forth by the first defendant's counsel, when the documents projected by the plaintiff do not in any manner advance the plaintiffs' case and that when the existence of MGR street abutting the first defendant's property has not been established by placing the relevant documents maintained by the Corporation of Chennai and when the plaintiffs have also failed to establish that the first defendant had made any encroachment into the public street as such, it does not stand to reason as to how the Commissioner had ventured to hold that the street abutting the first defendant's property is a public street based on the name board found therein. In such view of the matter, when the parties are vying with each other, that each is attempting to encroach and occupy the others' property and accordingly considering the rival claims projected by the parties with reference to the suit property and the very existence of the suit property itself is in question, as rightly put forth, the bare suit for permanent injunction laid by the plaintiffs without seeking the relief of declaration, as such, is found to be not maintainable and on that score also, the plaintiffs' suit deserves rejection. That apart, the Commissioner's report and plan by itself would not be safe to hold that the first defendant had made attempts to encroach into the suit property particularly when the very existence of the suit property is in dispute and the plaintiffs have failed to establish the same by placing acceptable and reliable materials. Further more, when the Commissioner has not placed any materials as to how he had come to the conclusion that the road adjoining the first defendant's property is a public street and the same is MGR street, it is found that no reliance as such could be placed upon the Commissioner's report and plan for accepting the plaintiffs' case. The first appellate court is found to have fallen into error in relying upon the Commissioner report solely for accepting the plaintiffs' case, which cannot be sustained.

12. In the light of the above reasonings, the first appellate court has failed to appreciate the import of the oral and documentary evidence projected by the plaintiffs in the right perceptive and seem to have upheld the plaintiffs' case merely on surmises and conjectures and only on the basis of the Commissioner's report, despite the Commissioner failing to place any acceptable and reliable materials as to how he had come to the conclusion that the alleged MGR street is a public street. The substantial question of law formulated in the

Second Appeal is accordingly answered against the plaintiffs and in favour of the first defendant.

13. In the light of the above discussions, the judgment and decree dated 17.01.2001 passed in A.S.No.103 of 1999 on the file of the VI Additional Judge, City Civil Court, Chennai are set aside and the judgment and decree dated 29.01.1998 passed in O.S.No.954 of 1992 on the file of XIV Assistant Judge, City Civil Court, Chennai are confirmed.

14. Accordingly, the Second Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To

1. The the VI th Additional Judge,
City Civil Court,
Chennai.

2.The XIV th Assistant Judge,
City Civil Court,
Chennai.

+lcc to Mr.T.V.KRISHNAKUMAR, Advocate SR.No.45243

+lcc to Additional Government Pleader SR.No.44465

Judgment made in
S.A.No.1748 of 2004

GJII (CO)
SMI/23.08.2018

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