

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2018

PRONOUNCED ON : 14.08 .2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1647 of 2003

AND

CMP NO.3501 OF 2018

1. Smt.Vilasini Ammal (deceased)
 2. Sri. Venugopal
 3. V.Sheela Venugopal @ Venugopal Vilasini Sheela
 4. V. Prashanth
- (Appellants 3 and 4 bought on record as LRS of the deceased 1st Appellant)

... Appellants/Defendants 2 and 4 & LRS of the Defendants

Vs.

1. S.M.S. Husain Ameena Beevi
2. Junaaid Askar Ali
3. Junaaid Abith Ali ... Respondents 1 to 3/Plaintiffs
4. The Commissioner
Chennai Corporation
Rippon Building,
E.V.R. Road, Chennai 600 003
...4th Respondent/1st Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.12.2002 passed in A.S.No.80 of 2001 on the file of the VII Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 13.08.1999 passed in O.S. No.1275 of 1992, on the file of XIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr. S.Krishnasamy

For Respondent : No appearance

Set ex-parte

vide order dated 18.07.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 16.12.2002 passed in A.S.No.80 of 2001 on the file of VII Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 13.08.1999 passed in O.S. No.1275 of 1992, on the file of XIII Assistant Judge, City Civil Court, Chennai.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for mandatory injunction.

4. The second appeal has been admitted on the following substantial questions of law.

a) Whether the Appellate Judge is correct in holding that the defendants 2 and 3 encroached upon the corporation lane and put up constructions as shown under Exs.A6 and A7 without discussing the important documents Ex.B2 to B13 filed by the defendants 2 and 3?

b) Whether the suit for mandatory injunction even without specifying the extent of the corporation lane and the extent of the alleged encroachment and the alleged unauthorised constructions are maintainable in law?

c) whether Ex.A6 and A7 are the conclusive proofs of encroachment and unauthorised constructions and the grant of mandatory injunction on the basis of such documents by the first appellate court is sustainable in law?

5. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to deal into the facts of the case in detail.

6. Suffice to state that the plaintiffs have laid the suit for the grant of mandatory injunction directing the defendants to remove the unauthorised construction put up in the premises bearing Door No.22, Sriram colony, Abhiramapuram, Madras-18 as described in the plaint schedule and remove the encroachment put up by them on the corporation public lane running north to south in between the third street and Sriram colony, Abhiramappuram, Madras-18 and for costs. The defendants have resisted the

plaintiffs' suit inter alia that they had not put up any new construction in the property purchased by them and on the other hand, it is stated that they had only changed the roof in the first floor and raised the level in the front side of the house in the gate portion and not made any encroachment in the alleged lane as sought to be projected by the plaintiffs and accordingly contended that the plaintiffs enjoyment of his property is not interfered with in any manner by the defendants by putting up construction as abovestated and had not hindered the access of light and air to the plaintiffs' property as such and the plaintiffs have no cause of action to lay the suit. Further, it is also stated that the relief sought for by the plaintiffs is very vague and accordingly the suit is therefore liable to be dismissed.

7. On the basis of the materials placed on record, it is found that the second defendant had purchased the property bearing Door No. 22, Sriram colony, Abhiramapuram, Madras-18 under Ex.B1 and it is seen that the western boundary of the abovesaid property is shown as Sriram colony salai. The plaintiffs' property is stated to be situated to the west of the second defendant's property. However, Sriram colony salai is shown as the western boundary of the second defendant's property. As rightly determined by the trial court, the length and breadth of the abovesaid salai has not been disclosed by either of the parties. In this connection, the plaintiffs had not placed any material to show as to what is the actual extent of the salai or lane lying in between his property and the second defendant's property. Further, it is also seen that as even admitted by PW1 examined on behalf of the plaintiffs, the defendants had only put up the construction upon the compound wall already in existence and accordingly, it is found that the construction had been raised by the defendants only upon the construction already available in the area. However, it is noted that the plaintiffs have come forward with the case as if the defendants had thereby encroached into the street, the public lane running north to south between the third street and Sriram colony, Abhiramapuram. To maintain the suit, as rightly determined by the trial court, the plaintiffs, at the foremost has to establish as to what is the extent of public lane in between the plaintiffs' property and the defendants' property and also the length and breadth of the alleged street /lane in between their properties and with reference to the same, the plaintiffs had not endeavoured to summon the documents from the corporation of Chennai in the present suit. It has been admitted that the public lane lying in between the properties of the parties is belonging to / vested with Chennai Corporation. However, when according to the plaintiffs, the defendants by way of putting up the construction had encroached into the alleged public lane, without determining as to what is the original extent of public lane, both lengthwise and breadthwise, we

cannot determine as to the extent of the alleged encroachment said to have been made by the defendants in the said lane by way of putting up the construction in their property. No doubt, in this matter, the commissioner had inspected the properties and filed his report and plan and on a perusal of the same, it is found that as determined by the trial court, both the plaintiffs as well as the second defendant and also the property owners of Door Nos.31-C and 31-D had encroached into the common lane / public lane and however, it is found that the plaintiffs had not initiated any action against the alleged encroachment made by the owners of Door Nos.31-C and 31-D and had only come forward with the present suit against the defendants complaining of the encroachment made by them in the public lane. When as per the commissioner's report and plan, the plaintiff himself is found to have made the encroachment in the alleged public lane, it is seen that the case of the plaintiffs that on account of the alleged encroachment made by the defendants into the public lane, the same affects his access through the said lane and also the flow of light and air to the plaintiffs property through the said lane, as such, cannot be countenanced.

8. At the foremost, the property in respect of which the plaintiffs seek to enforce their right, namely, the public lane, admittedly is not belonging to the plaintiffs and the plaintiffs are attempting to enforce the right of mandatory injunction as against the defendants on the footing that by way of the alleged encroachment put up by the defendants, his access through the said lane and the flow of light and air through the said lane to his property has got affected and as rightly argued, only on the establishment of the abovesaid right, at the best, the plaintiffs could be held to be entitled to seek the further relief of mandatory injunction for the enforcement of said right. For the same, the plaintiffs should have sought for necessary declarative reliefs that he is entitled, to have access through the alleged public lane and also entitled to have the easementary right of the flow of air and light through the public lane and however when it is noted that the plaintiff had not sought for the declarative reliefs with reference to the same and on the other hand, is found to have come forward with the suit only for the grant of mandatory injunction and when with reference to the actual length and breadth of the alleged lane having not been established by placing acceptable materials and when the second defendant is found to have put up the construction after obtaining the necessary sanctions from the corporation, which could be evidenced from the documents projected by the defendants as noted by the trial court, it is found that and when it is further noted that the plaintiffs had not initiated any action as against the alleged encroachment into the public lane by the property owners of Door Nos.31-C and 31-D, as rightly determined by the trial court, the plaintiffs do not acquire any cause of action, as such, to

institute the suit against the defendants.

9. No doubt, it is noted from the materials placed on record that the plaintiff had filed writ petition No. 5531 of 1991 against the corporation and the defendants, alleging that the defendants had put up an unauthorised construction in the public lane and thereby sought for necessary direction to the corporation to take action against the defendants. On a perusal of the said order marked as Ex.A6, it is found that this court had only directed the corporation to consider the objections of the plaintiff with reference to the alleged encroachment made by the defendants in the public lane and accordingly disposed of the said matter. Thus, it is noted that by way of the said order, this Court had not held that the defendants had, as such, encroached into the public lane by putting the unauthorised construction. Further, complaining that despite the abovesaid order passed in the Writ petition, the corporation had not initiated necessary action against the defendants, it is found that the plaintiffs had preferred contempt application No.212 of 1991 against the corporation and this court, after considering the materials placed by the corporation that they had taken due action against the defendants with reference to the construction put up by them in their property, accordingly noting that there is no substance in the contempt application, dismissed the same and the said order has been marked as Ex.A7. Thus, as rightly argued, based on Exs.A6 and A7, it cannot be held that the defendants had put up the unauthorised construction in the public lane as claimed by the plaintiffs and on the other hand, from the materials placed on record by the defendants, as determined by the trial court, it is found that the defendants had obtained necessary sanction from the corporation as regards the construction put up by them, which could be evidenced from the documents Exs. B2 to B13 and without considering the same, it is found that the first appellate court had, by placing the reliance upon Exs.A6 and A7 alone, had proceeded to accept the plaintiffs' case by setting aside the judgment and decree of the trial court. When as above discussed, under Exs.A6 and A7, this court had, in no manner, proceeded to hold that the defendants had put up the unauthorised construction in the public lane and on the other hand, there has been only the direction issued to the corporation to look into the aspect whether any encroachment had been made by the defendants into the public lane and accordingly the corporation having also initiated necessary action and when it is seen that the defendants had obtained due permission and approval of the corporation in raising the construction in the property belonging to them, it is seen that the first appellate court by erroneously entertaining the import of Exs.A6 and A7 order, had erred in decreeing the suit laid by the plaintiff.

10. As abovenoted, at the foremost, the plaintiff should establish his right that he is entitled to have the free flow of light and air through the public lane as avered in the plaint and also further establish that he is entitled to have access through the public lane in the manner known to law and for sustaining the said reliefs, the plaintiff should have sought for the necessary declarative prayers. However, the plaintiff without seeking any declarative reliefs as regards the above, which he seeks to enforce, it is found that the present suit laid by the plaintiffs only for the relief of mandatory injunction, as such, is not maintainable. However, when as per the materials placed on record, the defendants are found to have not put up any construction by intruding into the lane belonging to the corporation, on the other hand, when the construction put by the defendants are found to have the sanction and approval from the corporation as abovenoted, it is found that the plaintiffs have no cause of action to institute the suit and in such view of the matter, the judgment and decree of first appellate court cannot be allowed to be sustained any further.

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11. In this second appeal, an application has been laid by the defendants / appellants for the reception of additional evidence contending that the plaintiffs / respondents, since the date of disposal of the first appeal, had demolished the super structure in the property belonging to them and sold the same to the third parties by way of a sale deed dated 24.06.2011 and further one of the purchasers, namely Mary Chellathai had settled the property belonging to her in favour of her son M.G.M.Anand and accordingly, the purchasers have put up three storied building in the said property subsequently, hence it is stated that the plaintiffs / respondents have no cause of action to sustain the suit further and accordingly prayed for the reception of the abovesaid documents in support of their case. However, in the light of the above discussion, when it is found that the plaintiffs have no cause of action to institute the suit against the defendants and in such view of the matter, when the projected documents by way of additional evidence are not required as such for the determination of the issues involved in the matter, in my considered opinion, the petition for the reception of additional evidence need not be entertained and accordingly the petition deserves rejection.

12. In the light of the above discussion, the first appellate court had erred in placing sole reliance upon Exs.A6 and A7 for accepting the plaintiff's case without analysing the materials placed by the defendants by way of Exs.B2 to B13 as to whether the defendants had actually encroached into the public lane as sought to be projected by the plaintiff and when it is noted that the defendants as such have not encroached into the

public lane and put up the construction only upon the property belonging to them after getting necessary sanction from the the corporation of Chennai and when it is further noted that the plaintiff has not established the extent of length and breadth of the lane in respect of which he is seeking the relief of mandatory injunction and also failed to establish the extent of alleged encroachment put up by the defendants in the said lane and on the other hand, when the construction put up by the defendants had been authorised by the corporation of Chennai as above discussed and when this Court by way of Exs.A6 and A7 is not shown to have determined as to any alleged unauthorised construction put up by the defendant's in the public lane and there is no determination of the above aspects in the said proceedings, it is found that the first appellate court had erred in disturbing the well considered judgment and decree of the trial court in accepting the plaintiffs' case. In such view of the matter, as rightly argued, it is found that the reasonings and conclusions of the first appellate court in accepting the plaintiffs' case are found to be not proper and based on the correct appreciation of the materials placed on record both on factual as well as legal aspects and in such view of the matter, the judgment and decree of the first appellate court are liable to be set aside. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the defendants and against the plaintiffs.

13. In conclusion, the judgment and decree dated 16.12.2002 passed in A.S.No.80 of 2001 on the file of VII Additional Judge, City Civil Court, Chennai, are set aside and judgment and decree dated 13.08.1999 passed in O.S. No.1275 of 1992, on the file of XIII Assistant Judge, City Civil Court, Chennai, are confirmed. Accordingly, the second appeal is allowed with costs. CMP No.3501 of 2018 is dismissed. Connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. XIII Assistant Judge,
City Civil Court, Chennai

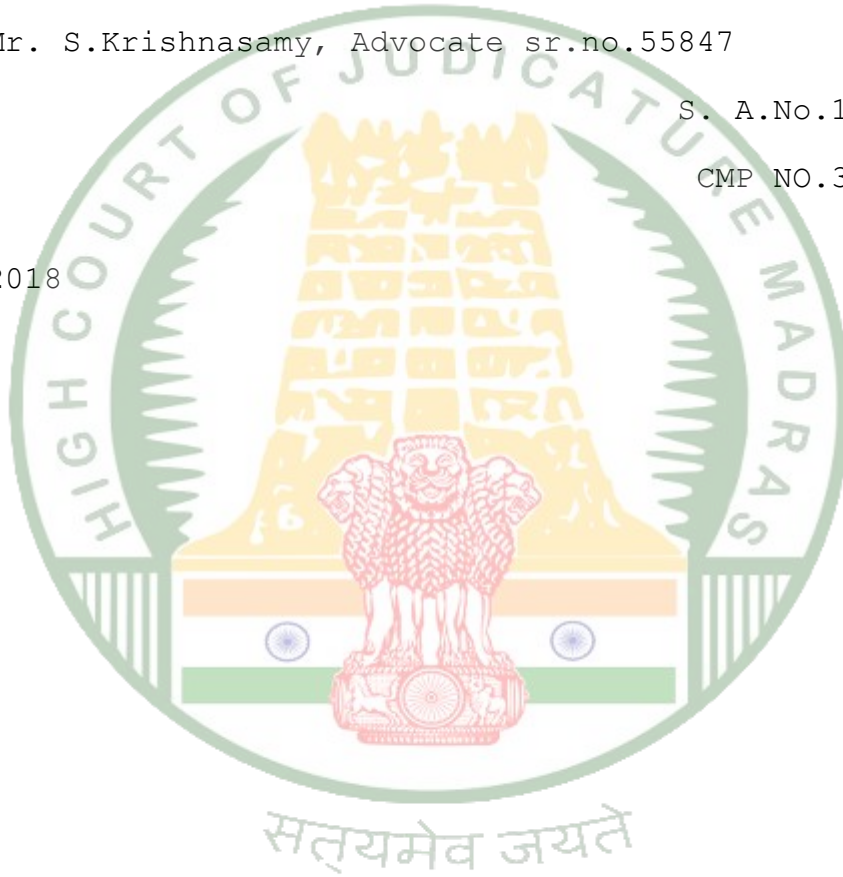
2. VII Additional Judge,
City Civil Court, Chennai,

3. The Commissioner
Chennai Corporation
Rippon Building, E.V.R. Road, Chennai 600 003

+lcc to Mr. S.Krishnasamy, Advocate sr.no.55847

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