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IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 05.02.2020

Delivered on: 07.02.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Rev.Appln.No.278 of 2018

in

S.A.No.1566 of 2011

1.M.Pratheepa

2.A.Charumathi

... Petitioners/Respondents

vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003

2.The Assistant Engineer,
Zone X, Division 153,
Corporation of Chennai,
Velachery Main Road,
Velachery,
Chennai-600 042

... Respondents/Appellants

Review Petition filed under Order 47 Rule 1 and 2 of CPC against the judgement passed by this Court, dated 16.03.2018, made in S.A.No.1566 of 2011.

SA No.1566 of 2011 : Second Appeal filed under Section 100 of CPC against the judgment and decree dated 13.11.2008 passed by the learned V Additional Judge, City Civil Court, Chennai in A.S.No.110/2008 allowing the appeal the Appeal, setting aside the decree and judgment of the IV Assistant City Civil Judge, Chennai in OS No.3327/2004 dated 21.09.2007.

For Petitioners :: Mr.R.Thiagarajan,Sr.Counsel for
Mr.S.Udayakumar

For Respondents :: Ms.Karthikaa Ashok



ORDER

The Review petitioners are the plaintiffs in the suit and respondents in the Second Appeal. The Review Petition has been filed against the judgement of this Court, dated 16.03.2018, rendered in S.A.No.1566 of 2011, allowing the appeal filed by the respondents/Corporation of Chennai, by setting aside the judgement and decree, dated 13.11.2008, passed by the V Additional Judge, City Civil Court, Chennai, in A.S.No.110 of 2008.

2.The facts, which gave rise to the filing of the present Review Petition, are briefly stated hereunder:

The Review Petitioners, namely, the plaintiffs, have approached the trial Court seeking for permanent injunction restraining the defendants 1 and 2 from interfering with their peaceful possession and enjoyment of the suit property. According to the plaintiffs, the suit schedule property, measuring about 2,440 sq.ft., was purchased by them by means of two sale deeds, as each of the plaintiffs has availed half share in the said land and the said sale deeds are dated 22.08.1996, Registered in the office of the Sub Registrar, Velachery, as document Nos.2584 and 2585 of 1996. After the purchase of the said property, the property has been sub-divided into Survey No.298/18. While so, the first defendant Corporation started claiming right over the suit property on the ground that in the plan maintained by them, the property, which was in possession of the plaintiffs, was shown as meant for children play area. Since, attempts were made to disturb the peaceful possession and enjoyment of the suit schedule property by the plaintiffs, the suit came to be filed.

3.The defendants filed the written statement resisting the claim of the plaintiffs on the ground that Plot No.64-B, ear marked in the layout 63/67, was not reflected in the records maintained by the Corporation. According to the defendant Corporation, the layout comprises of Plot No.64 only and the adjoining land of Plot No.64 has been ear marked as children play area. On the short ground, the suit claim was opposed by the Corporation.

4.The trial Court, which went into the issues and the materials placed on record, has accepted the case of the Corporation stating that there was an approved layout in regard to the suit schedule property, wherein, the land in question was shown as children play area and therefore, held that the



plaintiffs were not entitled to the injunction as prayed for. As against that, the plaintiffs have approached the lower appellate Court, viz., Principal City Civil Court, Chennai, by filing A.S.No.110 of 2008.

5.The lower appellate Court, which dealt with the appeal, has reversed the findings of the trial Court and allowed the appeal by setting aside the judgement and decree of the trial Court, dated 21.09.2007. According to the lower appellate Court, the official witness on behalf of the Corporation, who was examined as D.W.1, had deposed that no records were produced by the Corporation in regard to the approval or otherwise of the property in question. In fact, D.W.1 appears to have deposed that he had not verified with the Town Planning Section regarding the layout whether it was approved or not and he had not verified with the Town Planning Office also. He further deposed that if any area is allocated for public purpose, it should be handed over to the Panchayat by a Registered document and there was no such proof to show that the disputed land was so entrusted, through Registered document, to the Corporation.

6.In view of the categoric deposition by the official witness on the side of the Corporation, the contention of the Corporation that it was an approved layout was discountenanced by the appellate Court and the lower appellate Court found that the records did not show that the subject property was earmarked for public use i.e. children play area and accordingly allowed the appeal in favour of the appellants/plaintiffs. As against the said judgement and decree, the Corporation has filed the Second Appeal.

7.While admitting the appeal this Court has framed the following Substantial Questions of Law.

"1.When the suit was laid by the plaintiffs/respondents herein for seeking a decree for permanent injunction on the plea taken by the defendants/appellants denying the title of the land in question, whether it is open to the appellate Court to decree the suit particularly when the trial Court has accepted the case of the defendants/respondents?

2.When the suit for bare injunction has been filed by the plaintiffs/respondents, whether the appellate Court, with the impugned judgement can decree the prayer putting the burden on the defendants/appellants holding that they have failed to disprove the case of the plaintiffs/respondents?"



8.This Court, vide its judgement dated 16.03.2018 has allowed the Second Appeal, accepting the findings of the trial Court. Aggrieved by the judgement of this Court allowing the second appeal in favour of the Corporation and as against the plaintiffs, the present Review Petition has been filed by the petitioners herein/plaintiffs.

9.The learned Senior counsel Mr.R.Thiyagarajan, appearing for the Review Petitioners/plaintiffs would submit that this Court allowed the Second Appeal on the premise that the property was an approved layout, in which, the land in question was shown as a land ear marked for public purpose, viz., children play area, when admitted fact was that there were no documents produced by the Corporation in support of such contention. According to the learned Senior counsel, D.W.1, the Official witness of the Corporation, representing the Corporation, has clearly admitted that they did not produce any document to show that the subject property was an approved layout, in which, the land in question has been ear marked for public purpose. In the absence of any materials from the Corporation side, the conclusion by the trial Court and by this Court that the subject property was an approved layout and the land in question was ear marked for public purpose, was premised on erroneous understanding of the issues and facts. Therefore, the learned Senior counsel would submit that there is an error apparent on the face of the record, which requires to be reviewed by this Court.

10.The learned Senior counsel would also submit that unless there is any document to show that a land was given as a Gift or otherwise in favour of the Corporation, there cannot be any conclusion that the said land was to be used for public purpose. In this Case, on behalf of the Corporation, admittedly, no materials were produced to sustain the said contention in regard to the subject land being ear marked as children play area.

11.On notice, Ms.Karthikaa Ashok, learned counsel has entered appearance on behalf of the respondent/Corporation.

12.The learned counsel for the respondent/Corporation would submit that the trial Court was right in dismissing the claim of the plaintiffs and so this Court. The arguments now advanced by the learned Senior counsel were in fact canvassed earlier before this Court and the same was discountenanced and negatived by this Court by confirming the judgement and decree of the trial Court, dated 21.09.2007. Therefore, according to her, the Review Petition is not maintainable, as all the materials were considered by the trial Court as well as this Court.



13. Considered the submissions of the learned Senior counsel for the Review Petitioners and also the submissions made on behalf of the respondent Corporation.

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14. The learned Senior counsel, in support of his submission, has drawn the attention of this Court to the finding rendered by the lower Appellate Court on the basis of a clear evidence by the Official of the respondent Corporation, who was examined as D.W.1 before the trial Court. From the evidence, it could be seen that the Corporation had not produced any materials in support of its contention that the subject land was ear marked for public purpose or the subject property was an approved layout. The evidence of the official of the Corporation, in fact, fortified the contention of the learned Senior counsel for the appellants/plaintiffs that it was not established by the respondent Corporation in clear terms as to whether the subject property was an approved layout or not.

15. Although the learned counsel for the Corporation has contended that the burden was on the plaintiffs, who approached the trial Court seeking for injunction, to prove their case on the basis of their own pleadings and materials and they cannot be allowed to take advantage of the weakness of the defendants, yet, this Court finds that the plaintiffs have established their claim of title to the property by marking the sale deed - Ex.A5, dated 22.08.1996 and since the same was denied by the defendant Corporation, particularly on the ground that the suit schedule property was ear marked as children play area, the onus stood shifted on the Corporation to establish their contra plea that the subject land was indeed a public property. In this case, it appears that the Corporation has not established their case at all in regard to the factum of the land being shown as children area. Therefore, what emerges from the above narrative is that the factum of whether the subject property is approved layout or not and whether the property is ear marked as public space for children use, are not at all established. Therefore, this Court is of the considered view that a clear finding has to be rendered by the trial Court, so that, the present Review application, filed principally on the plea that this Court was erroneously guided by the fact that the subject property was an approved layout, in which, the land in question was ear marked for children play area and on that premise, allowed the second appeal in favour of the Corporation, can be decided, finally.

16. In order to render a clear finding on the said aspect, the matter is remanded back to the trial Court for the limited purpose of recording a finding in regard to the nature of the



suit property as to whether the same was an approved layout or not and whether there were any materials to show that the subject land was vested with the Corporation for public purpose i.e. for children play area, as against the claim of the Review petitioners.

17. For the above said purpose, the parties are at liberty to lead additional evidence and also produce any additional materials. The trial Court shall issue notice to the parties expeditiously and render a finding on the basis of additional evidence/materials, if any, and forward the same to this Court for disposing of the Review Application, finally.

18. It is made clear that the parties are not allowed to lead any fresh evidence in regard to other issues except the issue as indicated above.

19. The trial Court is also directed to complete the above exercise within a period of three months from the date when the matter is remanded back to its file and after recording its finding, the trial Court shall forward the same to this Court forthwith.

20. In the meanwhile, there shall be an order of status-quo to be maintained as on date.

21. The Registry is directed to forward the records pertaining to the suit to the trial Court immediately and the records shall be forwarded back to this Court along with the recording of finding by the trial Court in respect of the suit schedule property, as indicated above.

The Review application is directed to be listed after receipt of the findings from the trial Court.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Msk



To

1.The V Additional Judge,
City Civil Court,
Chennai.

2.The IV Assistant Judge,
City Civil Court, Chennai.

Copy To

1.The Section Officer,
VR Section,
High Court, Madras.

2.The Section Officer,
Judicial Department,
High Court, Madras.

+3ccs to Mr.S.Udayakumar, Advocate SR.No.9216, 9767

+1cc to Ms.Karthikaa Ashok, Advocate SR.No.9971

Rev.Appln.No.278 of 2018
in
SA No.1566 of 2011

GMR (CO)
GMY (28/02/2020)