

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2018

PRONOUNCED ON : 28.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1878 of 2003

The Executive Officer,
Vellakovil Town Panchayat,
Vellakovil, Erode District. ... Appellant/Defendant

Vs.

Duraisamy ... Respondent/Plaintiff

Prayer :-

Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 19.03.2002 passed in A.S.No.58 of 2001 on the file of the Subordinate Court, Dharapuram, confirming the Judgment and Decree dated 12.01.2000 passed in O.S.No.85 of 1998 on the file of the District Munsif Court, Kangeyam.

For Appellants : Mr.G.Sankaran

For Respondent : Ms.S.R.Vissalni
for Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 19.03.2002 passed in A.S.No.58 of 2001 on the file of the Subordinate Court, Dharapuram, confirming the Judgment and Decree dated 12.01.2000 passed in O.S.No.85 of 1998 on the file of the District Munsif Court, Kangeyam.

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

3. Suit for damages and mandatory injunction.

4. The case of the plaintiff, in brief, is that the suit property belonged to the plaintiff absolutely as per the compromise final decree for partition passed in O.S.No.225 of 1994 on the file of the District Munsif Court, Kangeyam and

taking advantage of the absence of the plaintiff in the suit village, the defendant, without any permission from the plaintiff, encroached upon the southern side of the suit property and built a drainage to a length of 100 feet and breadth of 6 feet and to a depth of 4 feet and similarly, dug a ditch for a length of 200 feet, to a breadth of 6 feet and to a depth of 4 feet to drain gutter water through a culvert in the Vellakovil to Mulanur north-south road and however, the defendant has no right to put up the above said drainage and ditch in the suit property and the above said constructed portion made by the defendant has been shown as "A,B" and the remaining portion has been shown as "B, C" in the plaint plan, but, on account of such unlawful acts, the defendant had caused damages to the suit property to the value of Rs.10,000/- and on account of overflowing of the drainage water from the ditch to the plaintiff's land, the land of the plaintiff had been damaged and it has also created pollution causing immense trouble to the plaintiff as well as the other residents of the area and accordingly, the plaintiff issued a notice to the defendant dated 12.03.1997 demanding the above said damages and also to remove the unauthorised construction put up by the defendant and though the defendant has received the said notice, failed to comply with the same as per law and hence, left with no other alternative, I according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiff is not entitled to damage as claimed in the plaint. The suit property has not been properly described and the plaint plan is incorrect. The plaintiff has not placed any title deed to show his entitlement to the suit property as described in the plaint. The defendant is not admitting the final decree passed in O.S.No.225 of 1994 on the file of the District Munsif Court, Kangayam as putforth in the plaint. Further, the defendant is not a party to the above said suit proceedings and the plaintiff cannot lay any claim of right over the area, where, the ditch and drainage had been put up and the abovesaid construction had been put up only in the property belonging to the Government i.e. Natham Poramboke and the plaintiff is not entitled to raise any objection to the same and the defendant has put up the abovesaid drainage and ditch only to serve the people and accordingly, only after inviting necessary tenders with reference to the same, endeavoured to put up the construction abovestated and therefore, it is false to state that the defendant has encroached into the plaintiff's property and put up the above said construction and it is false to state that the plaintiff had been put to damage on account of the construction put up by the defendant for draining the drainage water by way of the above said construction and

inasmuch as the construction had been put up by the defendant only in the poramboke property, the defendant had not chosen to send any reply to the plaintiff's notice and hence, according to the defendant, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A3 were marked. On the side of the defendant, DWs1 & 2 were examined and Exs.B1 to B6 were marked. Exs.C1 to C5 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to accept the plaintiff's case and accordingly, granted the decree in favour of the plaintiff. The first appellate Court also concurred with the judgment and decree of the trial Court. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

(i) Whether the Courts below are justified in granting decree for mandatory injunction in the absence of any title being proved by the plaintiff over the suit properties?

(ii) Whether the Courts below are justified in relying upon the compromise decree entered between the plaintiff and his brothers in O.S.No.225 of 1994 will be a conclusive proof to establish the title of the plaintiff over the suit properties when the defendant specifically pleaded that it is a natham poramboke?

(iii) Whether the Courts below are justified in awarding damages for the alleged mental agony suffered by the plaintiff by the action of the defendant in the absence of any evidence or material placed to quantify the same?."

9. Briefly stated, according to the plaintiff, the suit property belonged to him as per the final decree passed in O.S.No.225 of 1994 on the file of the District Munsif Court, Kangayam and further, according to the plaintiff, taking advantage of his absence, the defendant, without any authority,

put up the drainage and ditch in his property without his permission and thereby, caused damages to his property and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs, as the defendant had failed to remove the unauthorised construction put up by it, despite the issuance of the notice by the plaintiff with reference to the same.

10. Per contra, it is the case of the defendant that the drainage and ditch constructions put up by it had been not made in the plaintiff's property and on the otherhand, the same had been put up only in the Poramboke land and hence, the plaintiff cannot lay any claim of damages or the other reliefs against the defendant and hence, the suit laid by the plaintiff is devoid of merits and liable to be dismissed.

11. The certificate copy of the decree passed in O.S.No.225 of 1994 on the file of the District Munsif Court, Kangayam, has been marked as Ex.A3. On a perusal of the same, it is found that as rightly determined by the Courts below, it is only the plaintiff, who has title to the suit property and when it is noted that the title of the plaintiff to the suit property has been declared by the civil Court, as rightly found by the Courts below, the plaintiff has title to the suit property as claimed by him.

12. Now, according to the plaintiff, the defendant has encroached into a portion of the suit property and put up the drainage and ditch construction without his permission. However, according to the defendant, the abovesaid construction had been put up in the Poramboke property. However, as rightly determined by the Courts below, in the light of the Commissioner's report and plan marked as Exs.C3 to C5, in particular, it is found that the drainage and ditch construction put up by the defendant is only made in the suit property, to which, the plaintiff is entitled to as per the decree passed in O.S.No.225 of 1994. A perusal of Exs.C3 to C5 would go to show that the drainage is running only in the suit property of an area of 57.5 sq.metre in S.F.No.500 B and 87.5 sq.metre in S.F.No.494D and the position being above, it is found that the abovesaid construction of drainage had been put up by the defendant not in the poramboke land as claimed by it and on the otherhand, the same had been raised only in the plaintiff's property.

13. Admittedly, it is found that the defendant has not obtained any permission from the plaintiff before putting up the abovesaid construction. It is found that the defendant, even if it is entitled to put up any drainage construction for the benefit of general public, should have obtained the necessary

permission of the plaintiff, the title holder of the suit property before venturing to put up the same. However, it is noted that the defendant has not obtained any such permission from the plaintiff and accordingly, it is found that the defendant is unable to resist the claim of the plaintiff to the suit property as projected by the plaintiff in the notice sent by him marked as Ex.A1. The defendant has not disputed the receipt of the said notice. However, according to the defendant, inasmuch as the drainage construction put up by it had been raised in the poramboke land, it did not chose to send any reply to the plaintiff's notice. However, considering the above facts, when it is noted that the above said drainage construction had been put up by the defendant only in the property belonging to the plaintiff, it is found that as rightly determined by the Courts below, the defendant should have obtained the necessary permission from the plaintiff with reference to the same. Materials placed on record would go to show that the defendant had obtained the consent of the other land owners for putting up the drainage construction, which could be evidenced from the documents marked as Exs.B5 & B6. As such, it has not been explained by the defendant as to why it had not chosen to obtain the consent of the plaintiff before venturing to put up the drainage construction in the property belonging to the plaintiff. It is thus found that the defendant, without exercising any due care and caution, had trespassed into the plaintiff's property and put up the drainage construction and in such view of the matter, it is found that the defendant is liable to remove the unauthorised construction put up by it in the plaintiff's property and also liable to pay the damages to the plaintiff occasioned thereby. The Courts below had quantified the damages, to which, the plaintiff is entitled to, on account of the above said unauthorised construction, at Rs.2,000/-.

14. It is thus found that when the defendant has failed to establish that the drainage construction had been put up in the poramboke land and on the otherhand, when the materials placed on record clearly disclose that the same had been put up only in the property of the plaintiff, which has been upheld by the civil Court as abovenoted and when the defendant had not obtained the consent of the plaintiff before raising the said construction, it is found that as rightly argued, the defendant, taking advantage of the absence of the Plaintiff, had put up the same and hence, the plaintiff is justified in seeking the removal of the same by way of the mandatory injunction. The plaintiff having suffered damages as quantified by the Courts below on account of the above said unauthorised construction, it is found that the defendant is liable to pay the same as determined by the Courts below.

15. In the light of the abovesaid facts, I do not find any substantial question of law involved in this second appeal. When it is found that the Courts below had appreciated the evidence on record in the right perspective and by giving proper reasonings, upheld the plaintiff's case and when it is further found that the defendant has not shown its entitlement to put up the drainage construction in the property belonging to the plaintiff, the substantial questions of law formulated in the second appeal are answered against the defendant and in favour of the plaintiff.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Subordinate Judge, Dharapuram.
- 2.The District Munsif Court, Kangayam.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.23499

S.A.No.1878 of 2003

SAI (CO)
CS/15/05/18

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