

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 17.07.2019

JUDGMENT DELIVERED ON : 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.NO.104 OF 2003

AND

MP.NOS.1167 OF 2008 & 251 OF 2012

- 1.R.Adhimoolam (Deceased)
 - 2.Maniammal
 - 3.Sarangapani
 - 4.Kannayiram
 - 5.Nataraj
 - 6.Janakiraman
 - 7.Govindammal
 - 8.Kasiammal
- ... Appellants/LRs of Plaintiff

[Appellants 2 to 8 brought on record as LR's of the deceased sole appellant vide order dated 07/08/2018 made in CMP.No.1166 to 1168 of 2008 in SA.No.104 of 2003]

Versus

1. Road Organisation, Pudupakkam,
by its Organisers,
i) Amaravathy
ii) Neela
iii) Chokkammal
 2. Road Organisation, Pudupakkam Village,
by its Director Mohammed Usman.
 3. Road Organisation, Pudupakkam Village,
by its Secreatry Fathima Usman.
 4. Road Organisation,
rep.by its Organizer Sundar @ Edwin Sundar
 5. Orchid Chemicals Private Limited,
Sidco Industrial Estate,
Pharmaceuticals Complex, Alathur
- ... Respondents/Defendants

Prayer:-

This Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and decree dated 31.01.2002 in A.S.No.7 of 2001 on the file of the Principal Sub Judge, Chengalpattu by reversing the Judgment and decree dated 26.06.2000 passed in O.S.No.237 of 1992 on the file of the District Munsif Court, Chengalpattu.

For Appellants : Mrs.J.Amrita Sarayoo
for Mr.J.Srinivasa Mohan

For Respondents : No Appearance - R1
: Mr.S.Ramesh (for R2 to R4)
: Given up - R5

JUDGMENT

The original plaintiff/Adhimoolam is the appellant herein. Pending appeal, Adhimoolam died and his LR's on record as appellants 2 to 8.

2.The plaintiff/Adhimoolam has filed the suit in O.S.No.237 of 1992 before the District Munsif Court, Chengalpet seeking relief of permanent Injunction against the defendant not to proceed into the suit property on the strength of Ex.A1/Sale deed.

3.For the sake of convenience the parties are referred to as per their array in the original suit.

4.Pending suit, the deceased plaintiff has filed an Interlocutory application in I.A.No.1010 of 1992 for appointment of Advocate Commissioner and the Advocate Commissioner has also filed a report, dated 30.06.1992. Again the deceased plaintiff filed another Interlocutory application in I.A.No.1192 of 1993 for re-inspection of the suit property and another report dated 05.11.1993 was also filed by the same Advocate Commissioner.

5.The first defendant filed a written statement, which was adopted by the defendants 2 to 4. During the trial, the plaintiff examined himself as PW.1 and marked Ex.A1 and on behalf of the defendants DW.1 was examined and Ex.B1 was marked.

6.On consideration, both the oral and documentary evidence, the learned District Munsif has come to the conclusion that the plaintiff is entitled for the relief of mandatory injunction and accordingly, decreed the suit.

7. Aggrieved against the judgment and decree granted in O.S.No.237 of 1992, the defeated defendants have preferred the appeal in A.S.No.7 of 2002 before the Sub-Court, Chengalpet and the same was allowed. Hence, the second appeal by the deceased plaintiff and the above Second appeal was admitted on the following substantial question of law:-

"Whether the plaintiff is entitled to the relief of injunction as prayed for?"

8. Learned counsel for the appellants would contend that the Judgment of the District Munsif is well considered with appropriate reasoning, However, the Lower Appellate Court reversed the same.

9. Per contra, the learned counsel for the respondents/defendants would contend that the judgment of the Lower Appellate Court is just and proper and made submissions in support of the Judgment of the Lower Appellate Court.

10. After hearing both sides and after perusing the oral and documentary evidence of DW.1, Exs.A1 & B1 and report of Advocate Commissioner, it is seen that the suit was filed by the plaintiff/Adhimoolam on the strength of Ex.A1/Sale deed dated 29.08.1991 and as per the schedule of property an extent of 2,600 sq.ft, with the clear boundaries on four sides the land was classified as Cheri Natham (Natham is house site) was purchased by Adhimoolam.

11. As per the plaint, the suit property was fenced on four sides the defendant organisation was trying to interfere with the possession and enjoyment of the property, plaintiff/Adhimoolam has filed OS.No.237 of 1992 and pending the suit, he has also filed an I.A.No.1010 of 1992 for appointment of Advocate Commissioner. It is seen from the records that the Advocate Commissioner appointed in the said application, inspected the suit property on 12.06.1992.

12. After giving notice to the both parties and their respective counsel as well as Ex-President of the defendant's organization, the Advocate Commissioner inspected the suit property and filed his report. The relevant portion of the Advocate Commissioner's report dated 30.06.1992 is extracted here under:

"The suit property is a vacant site. It is bounded on the north by colony road, south by Subramaniam's house and site, and east by Panchayat T.V.Room and Panchayat well and Angamuthu's house and on the west by Munuswamy's house.

4.I saw the thorn fence on the north, east and western boundaries. In the southern boundary about half portion on the east had thorn fence. In the northern boundary, I saw 7 Velikathan trees. They were aged about 10 to 12 years old. In southern boundary, I saw one Margoza tree, it is aged about 6 years old and 1 Velikathan tree and it is aged about 7 years old. I saw a small entrance in northern side as ingress and egress the suit property. This is shown an "E" in my rough plan.

5.In side the suit property, I have seen an old foundation in the middle of the suit property."

13.It remains to be stated that since after the inspection of the Advocate, Commissioner, the organizers, who were representing the first defendant, who filed a counter statement and saying that they are only the member of the organization, the plaintiff has filed an I.A.No.15 of 1995 to implead the defendants 2 to 5 and thereafter the cause title was suitably amended.

14.The written statement was filed by the first defendant namely the member of the organization and for the reasons best known, the Director and the Secretary, who have arrayed as defendants 2 & 3, have not filed any separate written statement. However, they had filed an adoption memo to adopt the written statement filed by the first defendant. It remains to be stated that the fifth defendant has filed a written statement stating that he has done repair work in the building and he has nothing to do with the litigation.

15.At this Juncture, it remains to be stated that since the construction activities were carried at site, during the pending Interim Injunction order, it appears that the plaintiff filed another Interlocutory Application in I.A.No.1192 of 1993 to re-inspect the suit property by the very same Advocate Commissioner. After observing the formalities, the same Advocate Commissioner again inspected the suit property, due notice to the both sides and he filed his report dated 05.11.1993, the relevant portion of the report is extracted hereunder:

" 3.The suit property has been shown as ABCD in my rough plan. The suit property during my previous visit i.e., on 12.06.1992 is a vacant site with the foundation. But during my second visit, I saw a new building on the foundation.

4.The distance between the road and the building is about 5 feet. There was no electric

service connection to the building. In my previous report, I have mentioned the Velikathan trees on the boundaries. But during this visit some of the Velikathan trees were cut and removed. During my previous visit on the eastern side or the western side and on the northern side, there was no compound wall, but during the visit, I saw a new compound wall constructed with mud and brick."

16.The suit was initially filed for permanent injunction against the first defendant and in view of the construction activities being carried on by the defendants, after the report dated 30.06.1992 of the Advocate Commissioner, a petition was filed for amending the relief as to that of Mandatory injunction over the removal of the superstructure put up by them by way of alternate remedy.

17.The plaint proceeds, on the basis that he is the sole and absolute owner of the suit property, having purchased the same under Ex.A1 and also relied the Advocate Commissioner's report dated 30.06.1992 and 05.11.1993.

18.Per contra, the defendants would submit that the first defendant filed a written statement stating that the land in question is the Government land and relied upon Ex.B1. Ex.B1 is the permission letter purportedly to have been given by the Collector of the District. However, it remains to be stated that no persons have been examined in connection with alleged proceedings of the Revenue Department. The defendants not even examined any witness in connection with Ex.B1 as rightly observed by the Trial Court. Furthermore, though the contesting defendants are the defendants 1 to 4, for the reasons best known, none of them have entered into the witness box, it assumes significance.

19.At this juncture, it is pertinent to note that after the order of appointment of Advocate Commissioner and filing of his report dated 30.06.1992 in I.A.No.1010 of 1992, it appears that certain development activities seems to be have been taken place compelling the plaintiff to file re-inspection petition and after re-visiting the suit property by the very same Advocate Commissioner and he has filed the report dated 05.11.1993 in I.A.No.1192 of 1993 was indicating with vast difference and improvements made by the defendants in the suit property, which compelled the plaintiff to seek alternative prayer for mandatory injunction.

20.It is to be stated that the plaintiff claims right under Ex.A1/ Sale deed, which was executed by one A.R.Nagappan. It remains that the classification of land is Natham land. On a

combined reading of Ex.A1, its contents relating to classification of lands, this Court is of the considered view that the plaintiff has acquired the title under Ex.A1 as it conveys the possessory title of its vendor. Though Ex.B1 was marked, as stated supra, none in connection with the said document nor any revenue officials were examined by the respondent/defendant and corroborating the version of the defendants organisation. Furthermore, in the cross-examination, DW1 had admitted that he has not challenged the title of the plaintiff nor the defendants organization claimed any right or title over the suit property and according to him Ex.B1 is only a letter of permission and it is not be produced from the competent evidence to mark as document. Furthermore, none in connection with the said Ex.B1 document were examined before the Court to substantiate its truth and veracity of the said document. Furthermore, as per the documents produced during the pendency of the suit, the defendants have made improvements in the suit property and subsequently stopped the improvements. Thereafter, no objection has been filed by the defendants to the report dated 30.06.1992 and subsequent report dated 05.11.1993 of the Advocate Commissioner is also assumes significance.

21. On the facts and circumstances of the case and taking note of the fact that the office bearers of the defendants organization have not entered into the witness box and as narrated above the factual position, though DW.1 claims to be the co-ordinator of the first defendant organization, who had stated that he had authorization letter to authorize him to depose on the first defendant. However, for the reasons best known, no letter of authorization has been filed before the Trial Court and taking note of the entirety of the consideration and also the fact that as per Ex.A1 possessory title is conveyed to the plaintiff and on the contrary the defendant has not established or let in any legal, acceptable evidence to show that they are in possession of the property nor any document has been filed to substantiate with revenue records, the Trial Court has rightly come to the conclusion that the possession of the plaintiff was established on the facts and circumstances of the case. The said finding is well considered and well merited and on an erroneous consideration, it appears that the Lower Appellate Court has vacated the said finding. In view of the decision in the preceding paragraphs as to the rights of the plaintiff, which has been fact duly corroborated with the reports of the Advocate Commissioner, this Court is of the considered view that the finding of the Trial Court is to be restored and accordingly, the contra finding rendered by the Lower Appellate Court is hereby stands vacated. Therefore, the finding of the Trial Court is hereby restored and consequently the Second Appeal is allowed. The Judgment passed in A.S.No.7 of 2001 is hereby set aside and the Decree and Judgment in

OS.No.237 of 1992 is restored. There shall be an order of mandatory injunction against the defendants as prayed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Principal Sub Judge, Chengalpattu.

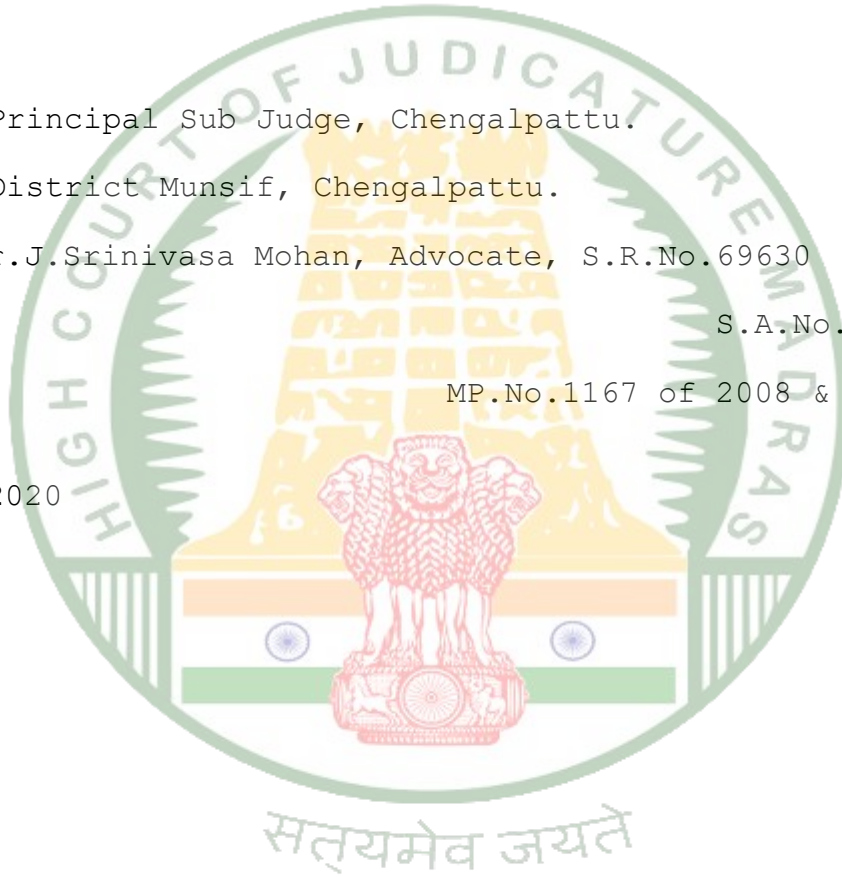
2. The District Munsif, Chengalpattu.

+1cc to Mr.J.Srinivasa Mohan, Advocate, S.R.No.69630

S.A.No.104 of 2003
and

MP.No.1167 of 2008 & 251 of 2012

TM(CO)
CS/07/02/2020



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