

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
RESERVED ON : 09.04.2019  
PRONOUNCED ON: 03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.394 of 2007

Vijaya Ammal ... Appellant/1<sup>st</sup> Respondent/Plaintiff

Vs.

1. Radha Krishnan ...1<sup>st</sup> Respondent/2<sup>nd</sup> Respondent/ 1<sup>st</sup> Defendant
2. Block Development Officer,  
Thurinjapuram Panchayat Union,  
Thurinjapuram Village.
- 3.Union Engineer,  
Thurinjapuram Panchayat Union,  
Thurinjapuram Village. ...2<sup>nd</sup> and 3<sup>rd</sup> Respondents/ Appellants1&2  
2<sup>nd</sup> and 3<sup>rd</sup> Defendants
- 4.The Government of Tamilnadu,  
Rep. By the Collector of  
Thiruvannamalai District,  
Thiruvannamalai.  
...4<sup>th</sup> Respondent/3<sup>rd</sup> Respondent/4<sup>th</sup> Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.33 of 2005 on the file of the Principal Subordinate Judge, Thiruvannamalai dated 24.04.2006 against O.S.No.179 of 2003 on the file of the District Munsif Court, Thiruvannamalai, dated 28.02.2005.

For Appellant : Mr.S.Udhaya Kumar

For RR4 : Mr.N.Manikandan  
Government Advocate (CS)

For RR1 to R3 : No appearance

RR1 to R3 : Set exaparte vide order dated  
09.04.2019

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## J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 24.04.2006 passed in A.S.No.33 of 2005 on the file of the Principal Subordinate Court, Thiruvannamalai confirming/modifying the judgment and decree dated 28.02.2005 passed in O.S.No.179 of 2003 on the file of the District Munsif Court, Thiruvannamalai.

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

1. Whether the finding of the lower appellate court is correct in law overlooking the evidence of P.W.2 admitting the damage caused to the granite compound wall?

2. Whether the lower appellate court has failed to appreciate the oral and documentary evidence in a proper perspective in so far as the relief of mandatory injunction is concerned?

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

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiff against the defendants for permanent injunction and mandatory injunction.

6. Briefly stated, according to the plaintiff, she owns lands in survey No.167 and the defendants had engaged in the road work with reference to the battai portion lying to the north of her properties under the scheme "Food for Work" and according to the plaintiff, the defendants while proceeding with the abovesaid work, had employed the JCB machines to remove the bushes etc., and accordingly also pleaded that they had encroached into the plaintiff's properties and destroyed the stone compound wall put up by the plaintiff in her properties described in the plaint B schedule and proceeding with their work in laying the road by heaping morambu and despite the objections putforth by the plaintiff, the defendants have not restored the demolished compound wall and hence according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

7. The defendants 2 to 4 resisted the plaintiff's case contending that no compound wall was abutting the plaintiff's properties as claimed in the plaint and therefore there is no warrant or scope to demolish the same by the defendants while engaging in the battai work and therefore disputed the case of the plaintiff that they had destroyed the alleged compound wall belonging to the plaintiff as described in the plaint B schedule and further according to the defendants, some loose cut stones had been put up by the plaintiff as a ridge/border in her properties and while the defendants were engaged in the road work, the loose cut stones would have fallen down and on that score, the plaintiff is not entitled to seek any reliefs against the defendants whatsoever and therefore according to the defendants, the plaintiff has no cause of action against them and hence the suit laid by the plaintiff is liable to be dismissed.

8. Based on the materials placed on record, the trial court was pleased to grant the reliefs prayed for by the plaintiff against the defendants 1 to 3 and dismissed the suit against the fourth defendant. On appeal, the first appellate court granted the relief of permanent injunction in favour of the plaintiff against the defendants, and dismissed the suit in other aspects. Impugning the same, the plaintiff has preferred the present second appeal.

9. The present second appeal is only confined to the point as to whether the plaintiff is entitled to obtain the relief of mandatory injunction prayed for by her in respect of the plaint B schedule property. According to the plaintiff, the defendants while putting up the road work to the north of her properties, had destroyed the compound wall put up in the properties to a length of 700 links, height 3 - 5ft made up of granite stones and accordingly seeking the restoration of the same, the plaintiff has prayed for the relief of mandatory injunction. The existence of the compound wall described in the plaint B schedule in the properties belonging to the plaintiff itself is being challenged by the defendants. In such view of the matter, as rightly determined by the first appellate court, at the foremost, the plaintiff has to establish that the compound wall as described in the plaint B schedule to a length of 700 links and height 3 - 5 ft had been in existence in her properties before the formation of road in the area, on the part of the defendants. It is seen that the defendants had been engaged in the road work only in the area lying to the north of the plaintiff's properties. Admittedly, even as per the case of the plaintiff, the wall described in the plaint B schedule is lying only to the north of her properties. It is not the case of the plaintiff that the wall is available on all the directions of her properties. As abovenoted, the defendants have disputed the existence of the so called wall said to be lying in the northern

border of the plaintiff's properties measuring 700 links in length and 3-5 ft in height. To establish that such a wall had been in existence, absolutely there is no material worth acceptance placed on the part of the plaintiff. In the title deeds put forth by the plaintiff, marked as Exs.A1 to A3, there is no reference about the existence of any wall in the properties comprised therein. Therefore, it is seen that there is no proof on the part of the plaintiff that the compound wall has been in existence in the properties belonging to the plaintiff's as such.

10. In this connection, the plaintiff mainly relies upon the evidence of V.A.O examined as P.W.2. It is found that P.W.2, the V.A.O had given documents to both the plaintiff and the defendants which has come to be marked as Ex.A13 on the side of the plaintiff and Ex.B2 on the side of the defendants. In Ex.B2, the V.A.O, P.W.2 has certified that the road has not been formed in the property belonging to any private persons. Thus it is seen that the defendants have not put up the road on the property belonging to the plaintiff. Ex.B2 is dated 17.06.2003 and subsequent thereto, P.W.2 has issued a certificate Ex.A13 in favour of the plaintiff on 16.09.2004 in which, he has mentioned that while forming the battai, the compound wall had been demolished and morambu had been heaped in the said portion and further it also recites that when the surveyor measured the properties, the road is found to be laid only in the portion excluding the patta lands. Therefore, as per Ex.A13, P.W.2 would claim that the compound wall had been destroyed while the road work had been done by the defendants. During the course of evidence, P.W.2 had admitted that prior to the formation of the road, he has not measured the properties belonging to the plaintiff, in such view of the matter, it is evident that P.W.2 has no direct knowledge about the existence of any compound wall in the properties of the plaintiff's prior to the formation of the road in the area to the north of the plaintiff's properties. Further according to P.W.2, he had been informed about the destruction of the compound wall by the plaintiff and accordingly he had visited the spot and noted the features. He would state that the compound wall was in existence throughout the plaintiff's properties. However, when it is seen that it is not the case of the plaintiff that the compound wall was in existence throughout the properties, it is seen that the P.W.2 has endeavoured to adduce evidence as if the compound wall is lying throughout the properties of the plaintiff. He appears to be more loyal than the King. At the same time, P.W.2 was also stated that he does not know the measurements of the compound wall. Such being the evidence of P.W.2, when he is found to have been giving the certificates to one and all without any rhyme or reason and when he has no direct knowledge about the existence of any compound wall in the properties belonging to

the plaintiff, particularly, whether the compound wall as described in the plaint B schedule was in existence in the plaintiff's properties and whether the said compound wall is a permanent structure or not and when it is found that the photographs projected in the matter on the part of the plaintiff do not shown the existence of any wall in the properties of the plaintiff and on the other hand, as found by the appellate court, only loose stones are found to be scattered here and there, in such view of the matter, when there is no document projected on the part of the plaintiff that the compound wall of a permanent structure has been in existence in his properties, thus, it is evident that as contended by the defendants and as determined by the first appellate court, the loose stones had been put up by the plaintiff on the northern edge of his properties to serve as a border and accordingly while the road formation work was engaged by the defendants, the same is found to have fallen down and in such view of the matter, when as abovenoted, the plaintiff has miserably failed to establish the existence of the compound wall in his properties prior to the road work and also whether the said compound wall is a permanent structure or not and when the evidence of P.W.2 with reference to the same is found to be highly unbelievable and as determined by the first appellate court, P.W.2 is not found to be a worthy witness as such, in such view of the matter, when even the plaintiff has not come forward as to what is the actual measurement of the compound wall which had been in existence and when it is found that the plaintiff himself has pleaded that the compound wall would be about 3 - 5 ft in height which only lead to the conclusion that the plaintiff is not sure about the measurements of her compound wall, it is seen that the plaintiff had only heaped loose stones in his properties as a ridge one way or the other, in such view of the matter, merely because the stones heaped by the plaintiff had fallen down while the road work was engaged, that by itself, would not entitled the plaintiff to seek the relief of mandatory injunction against the defendants for the restoration of the so called compound wall. The plaintiff has miserably failed to establish the existence of the compound wall in his properties particularly, with reference to the measurements as claimed by him in the plaint B schedule, in such view of the matter, as determined by the first appellate court, the relief of mandatory injunction if granted in favour of the plaintiff, the same cannot be specifically enforced due to the unclear and ambiguous description of the compound wall by the plaintiff in her plaint as well as the failure of the plaintiff in establishing the existence of the compound wall as such and merely because the District Collector, Thiruvannamalai had conducted some enquiry regarding the demolition of compound wall that by itself, would not lead to the conclusion that the plaintiff's case has been admitted by the defendants. In such view of the matter, as determined by the first appellate court,

when the plaintiff could also be remedied for the alleged loss said to have been sustained by him by suitable compensation and when it is further noted that the plaintiff has already reserved her right to sue for damages against the defendants, in all, considering the abovesaid factors, the first appellate court is justified in not granting the relief of mandatory injunction prayed for by the plaintiff and also right in setting aside the judgment and decree of the trial court with reference to the same.

11. In the light of the abovesaid discussions, the first appellate court is found to have analysed the materials placed on record in the right perspective and come to the right conclusion that the relief of mandatory injunction sought for by the plaintiff cannot be granted in her favour in the light of the failure of the plaintiff to establish the existence of the compound wall as well as the failure of the plaintiff in establishing that the defendants had been the cause for the destruction of the said compound wall and also considering the fact that the relief of mandatory injunction sought for by the plaintiff cannot be specifically enforced and the plaintiff has other adequate remedies against the defendants by way of damages, in such view of the matter, it is seen that no interference is warranted to disturb the judgment and decree of the first appellate court and the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

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

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,  
Subordinate Court, Thiruvannamalai.
2. The District Munsif,  
District Munsif Court, Thiruvannamalai.

Copy to

The Section Officer,  
VR Section, High Court, Chennai.

+1 cc to Government Pleader Sr.No.

+1cc to Mr.S.Udhaya kumar , Advocate SR.No. 44537

S.A.No.394 of 2007

A.SK(05/03/2020)