

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.944 of 2008

M/s.Ceebros

rep. by its Managing Director

19/1, III Cross Street,

R.A.Puram,

Chennai - 600 028.

..... Appellant/Appellant/1st Defendant

versus

1. G. Rajabai

2. G.Raja

3. G. Nandakumar

all rep. by their

Power Agent R. Vanitha

..... Respondents /Respondent/Plaintiffs

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the Judgment and decree passed in A.S. No.731 of 2006 dated 31/10/2007 on the file of the Additional District Judge, Fast Track Court - V at Chennai confirming the decree and judgment dated 3.07.2006 in O.S. No.2893 of 2004 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For appellant : Mr.P.B.Balaji

For respondents : No appearance

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the first defendant in the suit and the respondents Nos.1 to 3 are the plaintiffs. The second defendant in the suit has remained ex-parte both before the Trial Court as well as the lower Appellate Court. He has also not been represented before this Court despite service of notice on him.

2. Notice has been duly served on the respondents Nos.1 to 3 and they are represented herein by a learned counsel, but there is no representation on their side, today

3. The Second Appeal is admitted on the following Substantial question of law

Were the Courts below correct in granting a decree for permanent injunction merely because Plaintiffs proved their title but failed to establish their case of encroachment and trespass and also possession?

Brief facts leading to the filing of the Second Appeal

4. The Appellant is the first defendant in the suit O.S. No.2893 of 2004 filed by the respondents before the XVIII Assistant, City Civil Court, Chennai. The respondents filed the suit O.S. No.2893 of 2004 against the appellant as well as Patham, the second defendant seeking for a permanent injunction restraining the appellant as well as the second defendant from encroaching or constructing any building in the suit property.

5. It is the case of the respondents as seen from the plaint that they are the absolute owners of the suit schedule property comprised in Survey Nos. 212/4 measuring an extent of 47 cents at Thiruvannmiyur village. It is their case that the appellant is a Flat Promoter and they are attempting to encroach upon the suit schedule property and they are trying to put up Flats in the suit land. But the appellant, who is the first defendant in the suit has categorically pleaded in their written statement that they are no way concerned with the suit schedule property and they have also not seriously disputed ownership of the suit schedule property by the respondents. It is their case that they were developing the adjoining lands to the suit schedule property by constructing Flats as Promoters. They have categorically pleaded that they never attempted to construct Flats in the suit schedule property and that they are developing only in the property situated in Survey Nos. 212/1B, 2B, 3A, 212/1A, 2A and 211/16 part alone and they have stated that they have already completed construction of Flats in those lands and there are 48 Flats constructed in the said land. It is also their case that they have sent a reply to the legal notice dated 23.02.2004 issued by the respondents to the appellant on 25.02.2004, which was suppressed in the plaint.

6. The Trial Court after framing issues and after trial has decreed the suit O.S. No.2893 of 2004 in favour of the respondents against the appellant on 03.07.2006.

7. Aggrieved by the same, the appellant herein preferred an appeal before the lower Appellate Court in A.S. No.731 of 2006. The lower appellate Court also confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, this Second Appeal has been filed by the first defendant in the suit, who is the appellant herein.

8. Heard Mr.P.B.Balaji, learned counsel for the appellant.

Submission of the learned counsel for the appellant :

9. The learned counsel for the appellant drew the attention of this Court to the plaint, written statement and the impugned Judgments of the Courts below and submitted that despite a categorical pleading in the written statement that the appellant is no way concerned with the suit schedule property and no attempts were made by them to encroach upon the same for the purpose of constructing Flats, the Trial Court as well as the lower Appellate Court has not applied its mind to the pleadings and evidence of the appellant and has erroneously granted permanent injunction to the respondents. Therefore, according to him, without any evidence, permanent injunction has been granted against the appellant in favour of the respondents. Hence, according to him, substantial question of law formulated by this Court will have to be answered in favour of the appellant.

Discussion :-

10. The appellant has categorically pleaded in paragraph Nos.3 and 4 of the written statement that they are no way concerned with the suit schedule property and they have also denied that they are attempting to encroach upon the suit schedule property for the purpose of construction of Flats. They have pleaded that they have constructed Flats only in the adjoining lands comprised in Survey Nos.212/1B, 2B, 3A, 212/1A, 2A and 211/16. As seen from the Written statement and the oral evidence of the appellant before the Trial Court, they have also not seriously disputed the ownership of the suit schedule property by the respondents. However, the Trial Court without any basis, on its own has observed that the appellant is attempting to encroach upon the suit schedule property and trying to put up construction.

11. The Trial Court has not applied its mind while decreeing the suit in favour of the respondents as it has been the consistent stand of the appellant that they are not concerned

with the suit schedule property nor are they attempting to encroach upon the same. The Burden of proof to establish that the appellant is attempting to encroach the suit schedule property is upon the respondents, as it is they who are alleging the same against the appellant. However, as seen from the evidence available on record, the respondents have miserably failed to establish their case. Excepting for filing their title deeds to prove their title of a suit schedule property before the Trial Court, which were marked as Exhibits, no documentary evidence has been produced by the respondents to prove that the appellant is attempting to encroach upon the suit schedule property. Infact, if there was encroachment, a prudent owner of a property would have given a police complaint against the encroacher. In the case on hand, there is not even a police complaint given by the respondents against the appellant. There is absolutely no iota of evidence to prove that the appellant is attempting to encroach the suit schedule property. When there is absolutely no evidence, the Trial Court ought not to have decreed the suit in favour of the respondents. The lower Appellate Court has also without any evidence against the appellant has confirmed the findings of the Trial Court and has erroneously dismissed the appeal. There is total non application of mind by the Courts below in favouring the respondents.

12. A permanent injunction is only granted when a) some established right has been invaded and 2) when damage has occasioned or must necessarily accrue from the act or omission complained of. In the case on hand, the respondents miserably failed to establish any such infringement by the Appellant and the Courts below by total non application of mind and without any evidence whatsoever have favoured the respondents by granting a permanent injunction.

13. The appellant has been made to suffer by the frivolous litigation of the respondents. They have suffered this long drawn litigation for no fault of theirs as the suit was filed as early as in the year 2004. By this senseless and ill considered litigation, the appellant's reputation may have taken a beating. If such claims are allowed to be entertained, the judicial system will be choked with false claims when the judiciary is already burdened with docket explosion. The conduct of the respondents to institute the suit against the appellant without any iota of evidence is deprecated and they must be mulcted with costs for this senseless and ill considered suit.

14. For the foregoing reasons, the substantial question of law formulated by this Court supra is answered in favour of the appellant and the concurrent findings of the Courts below are hereby set aside and the Second Appeal is allowed with costs from the date of the institution of the suit.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court - V,
Chennai
2. The XVIII Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.P.B.Ramanujam, Advocate Sr.88525

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srg 09/06/2020

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