

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.07.2019
CORAM
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1745 of 2004

1. Ramakkal (Died)
2. Muthunaicker
- 3.C.M.Appusamy
- 4.Chinnasamy
- 5.Ramasamy
- 6.Madheswaran
- 7.Madheswari
- 8.Rajeswari : Appellants/Plaintiff

(Appellants 2 to 8 brought on record as Legal Representatives of the deceased sole appellant viz., Ramakkal vide Court order dated 05.07.2019 made in C.M.P.No.13833/2019 in S.A.No.1745/2004).

versus

- 1.Palanisamy
 - 2.Ramasamy
 - 3.Kuppanaicker
 - 4.The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Jambai Village,
Bhavani Taluk.
 5. The Superintending Engineer,
Tamil Nadu Electricity Board,
Erode.
- : Respondents/Defendants 1 to 5

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the decree and judgment dated 31.07.2003 passed in A.S.No.41 of 2003 on the file of Fast Track Court No.IV Bhavani, Erode District, reversing the Judgment and Decree dated 02.07.2001 passed in O.S.No.629 of 1993 on the file of the District Munsif, Erode.

For Appellants : Mr.K.S.Jeyaganeshan
For Respondents: Mr.S.Kaithamalai Kumaran [R1 to R3]

JUDGMENT

The plaintiff who was successful before the trial Court in a suit for declaration of title, recovery of possession and for mandatory and prohibitory injunction has suffered a reversal in the First Appellate Court and has come before this Court with this appeal.

2. The brief facts are:

The suit property is described as a plot of 6 cents in S.No.315/10 with a building. According to the plaintiff, she owns this property along with various other properties covered under Exts.A1 and A2 sale deeds, the property covered under these sale deeds though are blocked in different survey numbers, according to her, the property was purchased by her husband Muthu Nayakkar under Ext.A7 dated 16.07.1990. She entered into an agreement of sale, marked as Ext.A8 dated 22.10.1993, for an extent of 84 cents, from the same vendor who executed Ext.A7 to her husband. She would allege that the defendants had encroached into 6 cents of her plot, and had put up a construction and had sought electricity connection. Hence, she laid the suit for declaration of her title for recovery of possession and for mandatory injunction to remove the structure and for injunction against electricity power not to provide connection.

3.1 The defendants 1 to 3, the alleged encroachers of the plaintiff's property, have pleaded in the written statement that the property in which they have put up the building belonged to their predecessors in title, and also pleaded that in case the Court finds that the property belonged to the plaintiff, they are willing to purchase the site. They have also added that they would pay compensation at Rs.50/- per feet.

3.2 The 5th respondent has filed his written statement but in the context of the present appeal, it is not very relevant.

4.1 The matter went for trial. Before the trial Court, both sides produced their oral and documentary evidence, and the material documents have already been referred to here. So far as the contesting defendants are concerned, they have not produced any documentary evidence to establish their title, superior to the title of the plaintiff or her predecessors in title. The trial Court had decreed the suit. So far as the prohibitory injunction is concerned, the trial Court has stated that inasmuch as the electricity service connection has been provided by the defendants 4 and 5, it moulded the relief and decreed that the same has to be disconnected.

4.2 The defendants 1 to 3 took the matter in first appeal. The first appellate Court while allowing the appeal, has opined that the exercise of the trial Court in moulding the relief of prohibitory injunction was beyond the scope of the litigation. On the point of title, the judgment was silent. It is now challenged by the plaintiff.

5. This appeal was admitted on the following substantial questions of law:

'Could a relief granted pending suit by way of interim arrangement, which was made subject to the final decision in the suit, can be taken as a legal ground by the Lower Appellate Court to deny the relief of permanent injunction prayed for by reversing the judgment of the Trial Court?'

6. The arguments of the counsel for the appellants is to the effect that he is restricting his argument with regard to Exts.A7 and A8, and relied entirely on the written statement of the defendants where they admitted the title of the plaintiff, and even offered to compensate the plaintiff at Rs.50 per sq.ft.

7.1 If the maxim ''res ipsa loquitur'' is applied for decreeing the suit, then there cannot be a better suit than this, but, sadly this has reached this Court for an ultimate redressal. When the plaintiff established a superior title and the defendants literally conceded the title of the plaintiff in the written statement, a decree ought to have been passed even under Order XII Rule 6 CPC. What was omitted 26 years back is now required to be done by this Court in this appeal.

7.2 The trial Court (and also the first appellate Court) ought to realise that they get the first, or the earliest opportunity to resolve the dispute, and to resolve it rightly. In not doing what they are required to do at the first instance also contributes to the clog in the legal system. After all, irrespective of the number of courts an action may travel, the cause for litigation remains the same.

8. Accordingly, this second appeal is allowed and the decree and judgment dated 31.07.2003 passed in A.S.No.41 of 2003 on the file of Fast Track Court No.IV Bhavani, Erode District, is set aside. The defendants 1 to 3 are directed to hand over the possession after removing the construction, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

ssn Sub Assistant Registrar

To

1. The Fast Track Court No.IV Bhavani,
Erode District.
2. The District Munsif,
Erode.
- 3.The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Jambai Village,
Bhavani Taluk.
4. The Superintending Engineer,
Tamil Nadu Electricity Board,
Erode.

Copy to: The Section Officer, V.R Section,
High Court, Madras.

+1cc to Mr..S.Jeya Ganeshan, Advocate, SR.No.62015.

WEB COPY

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SAI(CO)
CSR: 19.03.2020