

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM :

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.NOS.1973 OF 2004

P.Arumugham

...Appellant

Vs.

The Arakkonam Municipality,
Rep by its Commissioner,
Arakkonam Vellore District.

...Respondent

Prayer:-

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the learned Sub-ordinate Judge, Ranipet dated 30-01-2004 made in A.S.No.22 of 2003 on his file reversing the judgment and decree dated 31-01-2003 made in O.S.No.435 of 1992 on the file of the learned District Munsif, Arakkonam.

For Appellant :Mr.G.Jeremiah

For Respondent :No appearance

JUDGMENT

The plaintiff in O.S.No.435 of 1992 has come forward with this appeal challenging the judgment and decree in A.S.No.22 of 2003 on the file of Subordinate Judge, Ranipet, by which, the first appellate Court has reversed the judgment and decree granted by the trial Court in favour of the plaintiff/appellant. The parties would be referred to by their ranks before the trial court.

2.1The suit is for bare injunction, and in the context of the case, the facts do not require any elaboration. The Plaintiff contends that the A Schedule property was allotted to his father under a partition deed dated 02.02.1920. By devolution of title he claims to be in absolute possession and enjoyment of the entire A Schedule property. In the A schedule property he had put up a residential house for which he had obtained permission from respondent as indicated in Ex.B.4. This

house faced the west and it is described as B Schedule property in the plaint. The backyard on the east is described as C schedule property. The plaintiff has given specific boundary measurements of C schedule property, of which, a triangular portion measuring about 130 sq ft in the eastern extreme is the subject matter in dispute.

2.2 According to the plaintiff, he is in possession of this triangular portion too. Regarding this property the plaintiff faced some obstructions from his neighbours, which forced the plaintiff to prefer a Suit in O.S.No.201 of 1992 and he had obtained a decree therein, which is marked in the present Suit as Ex.A.2. When the plaintiff faced some interference to his possession of the suit property from the defendant Municipality for this 130 sq ft, he rushed to the Court with the present Suit.

3.The contention of the defendant is that the plaintiff's portion is limited to that property covered under Ext.B-4 building plan, and he does not enjoy any property beyond that. In particular, it would plea that the plaintiff under the guise of claiming title over the entire A schedule property has conveniently taken the municipal lane along with the municipal drainage within it.

4.1The matter went for trial and before the trial Court, both the plaintiff and the defendant were examined as P.W.1 and D.W.1. Besides the documents already indicated above, both sides have preferred other documents as well.

4.2.The trial Court in the process of ascertaining if the plaintiff's possession of the suit property is lawful, had went about a meticulous analysis of the evidence before it, and entered a finding that the plaintiff indeed has been in possession of the property. In particular, it relied on Ex.A.1, the partition deed dated 02.02.1920, and then relied on Ex.B.5, the register maintained by the Municipalit, and proceeded to record in its judgment that in Ext.B-5 Register which was produced by the Municipality to sustain the claim right over C schedule property herein, there is a material correction of the extent from 130 sq ft. to 130 sq mts, and if converted to square feet, the corrected area will be about ten times more, but the total extent available in C schedule is only 130 sq ft and not 130 sq mts. Short of recording that there cannot be a property measuring 130 sq mts on the rear side of plaintiff's house, it has merely entered a finding that this 130 sq ft is part of A schedule property.

5.The learned counsel for the appellant/plaintiff further submitted that the municipal lane is shown as the eastern

boundary of the plaint plan AEFD as well as C schedule property, which itself indicates that the plaintiff has no interest or claim over the lane, nor has he attempted to include the same with his property. Even though he further added that plaintiff neither encroached the lane nor he is interested in encroaching the lane in the future, the first appellate Court appeared to have short circuited the entire exercise undertaken by the trial Court and entered a finding that in order the plaintiff could justify his prayer for injunction, he ought to have established his title to the property and inasmuch as the same was not so done, his possession was not lawful and hence he cannot sustain a prayer to injunction.

6.This Second Appeal was admitted on the following substantial questions of law:

a)Whether the decree and judgment of the lower appellate court reversing the well considered judgment of the trial court is sustainable in law?

b)Whether the lower appellate court has found that 'c' schedule property is part of the entire 'ABCI' and the 'C' schedule property is shown as EBCF and when the appellant has filed the partition deed Ex.A.1 dated 02.12.1920 and his further enjoyment of the same as per Exs.A.2 to A.8 and when the trial court has elaborately discussed these details and come to the conclusion that the appellant has enjoyed the 'c' schedule property, whether the conclusion of the lower appellate court in reversing the judgment of the trial court is sustainable in law.?

7.None represented the Municipality/respondent.

8.This Court carefully considered the material papers and found that the first Appellate judgment is bereft of any reasoning as to justify its finding that the plaintiff's claim for C schedule property is not established. The trial Court has made a painstaking effort to come to the conclusion that the plaintiff has been in lawful possession of the C schedule property which the first Appellate Court chose to ignore this aspect.

9.This Court has no hesitation in holding that the finding of the first Appellate Court is perverse and necessarily this Court is required to interfere with the said finding, which it now does.

10.In the result, the second appeal is allowed and the Judgment and Decree of the learned Sub-ordinate Judge, Ranipet, dated 30.01.2004 made in A.S.No.22 of 2003, on his file reversing the judgment and decree dated 31.01.2003 made in O.S.No.435 of 1992, on the file of the learned District Munsif, Arakkonam is hereby set aside. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

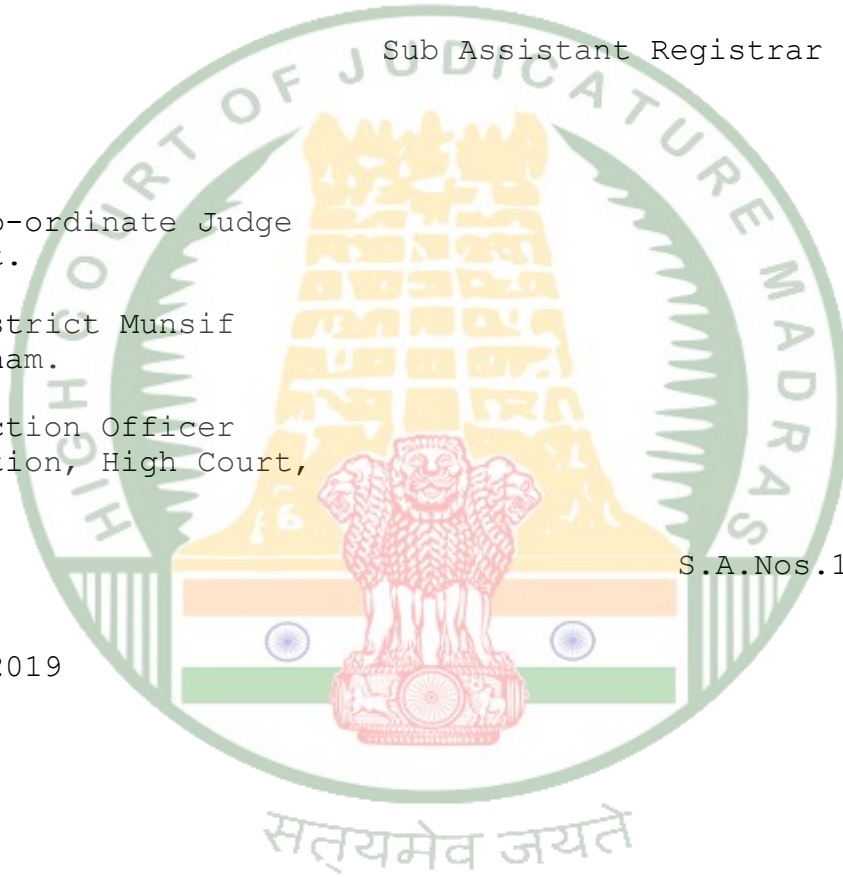
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To

1. The Sub-ordinate Judge
Ranipet.
2. The District Munsif
Arakkonam.
3. The Section Officer
VR Section, High Court,
Madras.

S.A.Nos.1973 of 2004

RR(CO)
CS/16/12/2019



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