

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2019

PRONOUNCED ON : 21.01.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.2129 of 2004

1.Sakunthala
2.Kamala

...Appellants/Plaintiff

Vs

1.Kunjammal
2.Seetha @ Theertha
3.Lakshmi
4.Thangaraj
5.Thangamani

.... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree against the judgment and decree dated 03.09.2004 and made in A.S.No.2 of 2004 on the file of the learned Subordinate Judge, Mettur, confirming the judgment and decree dated 21.10.2003 and made in O.S.No.381 of 1998 on the file of the learned District Munsif, Mettur.

For Appellants : Mrs.P.Veena for
Mr.T.R.Rajaraman

For Respondents : No Appearance

JUDGMENT

The appellants herein are the plaintiffs in the suit. The respondents are the legal representatives of the deceased first defendant. The suit filed for permanent injunction to restrain the defendants from interfering the suit property. The suit was allowed by the trial court, but reversed in the first appeal preferred by the defendants. Hence the present second appeal.

2.The case of the plaintiffs/appellants is that, they are neighbours of the defendants. The first item of the suit

property belongs to the first plaintiff. The second item belongs to the second plaintiff. They have constructed houses in the respective item of the suit property. They have water supply connection and paying tax. The defendants wanted to purchase the suit property for a low price. The plaintiffs refused to sell it. So the defendants with their men and agents tried to trespass the suit property. Hence, injunction sought against the defendants.

3.The case of the defendants is that, the plaintiffs are not the owners of the suit property. The suit property is not in their possession of the entire extent in the property shown in the suit schedule. The vacant land abutting the plaintiffs house is in fact with the defendants. Formerly, the suit property was with one Ramasamy. He had no issues. He was taken care by one Govindan. After the demise of Ramasamy, Govindan, took the possession of the property. Govindan is the maternal uncle of the first defendant (deceased). They are in possession and enjoyment of the vacant land. Using it to tethering cattles, store cow dung in the manure pit. Without mentioning the survey number of the suit property and proof of enjoyment, injunction cannot be sought.

4.The plaintiffs relied on the house tax receipts, kist receipts, water charge receipts, Electricity bills, commissioner's report. Whereas, the defendants relied upon the communication received from the Mettur Thermal Power Project and the kist receipts for their land.

5.The trial court considering the tax receipts, commissioner's report and the admission of the 3rd defendant (DW-3) in the cross examination, allowed the suit. On appeal, the First Appellate Court reversed the finding of the trial court. In the appeal judgement, the learned judge has pointed out that the tax receipts, water connection charges and the electricity bills all indicate that the house bearing door number 127 stands in the name of the first plaintiff and the house bearing door No.134 stands in the name of the second plaintiff. None of the document proves the possession of the vacant land lying between their house and the Salem Mettur Road. Considering the commissioner's report, the First Appellate Court has pointed out that the plaintiffs have 2 x 50 feet lane access to their house from the main road. The suit property is a Government prombokku. The plaintiffs have not impleaded the Government as a party to the suit. The identity of the area, for which, injunction relief sought, not properly described with the correct boundaries and specification. Therefore, the relief

of injunction was restricted to the area where the superstructure put up by the plaintiffs in the suit schedule property and dismissed the suit for rest of the portion which is vacant land adjacent to the plaintiffs house.

6. Aggrieved by the judgement of the First Appellate Court, the present second appeal is filed. This Court, at the time of admission, has formulated the following substantial question of law:

"When the documentary evidence, namely, the approved plan as well as the report and plan of the Commissioner coupled with the oral evidence, established the possession of the plaintiffs with reference to the vacant site adjoining their house, still is the learned Subordinate Judge right in rejecting their claim in respect of vacant land? "

The plaintiffs have described the suit properties as below:

"Item 1: Salem RD., Mettur Sub RD., in Mettur Taluk, in P.N.Patty Village in Thottle-Patty, Salem Camp, Mettur Dam-6, The houses bearing Door No.6-4-127, 6/55. 6/127 belonging to the 1st plaintiff.

Item 2: Salem RD., Mettur Sub RD., in Mettur Taluk, in P.N.Patty Village in Thottle-Patty, Salem Camp, Mettur Dam-6, The houses bearing Door No.6-4-134 and 6 belonging to the 2nd plaintiff.

Both the 1st and 2nd item are within the following boundaries:

West of Salem Camp to Thermal Main Road;
East of MALCO Krishnan, Goundappan's son Raju,
Sellammal, Govinda Raju and
Nellikundukarai lands;
South of Tholkara Subru's land and

North of Panchayat Road;
and all easement rights thereon."

7.The trial court, while rightly indentified the nucleus of the dispute is in respect of the vacant land lying between the plaintiffs house and the Mettur-Salem Road, erred in holding that the tax receipts, water charge receipts and electricity bills will prove the possession of the plaintiffs in respect of vacant land. The commissioner report has also been relied by the trial court to lend support of his conclusion. The First Appellate Court has pointed out that the trial court erred in factual assessment of the evidence and the law governing relief of injunction based on possession and restricted the relief of injunction in respect of the superstructure put up by the plaintiffs.

8.Admittedly, the suit property is a Government prombokku. From the plaintiffs, for occupying the Government land and enjoying it by putting up super structure, kist is collected. It is only in respect of the building and not in respect of the vacant land. The commissioner who has inspected the suit property and noted the physical feature has pointed out that the plaintiffs houses are independent to each other. The entire suit property is classified as grama Natham. PW-3 the Village Administrative Officer of the concern village along with the surveyor PW-4 has inspected the suit property along with the Advocate Commissioner. Except saying that the suit property falls under Block No.55 T.S.No. 1/99 to 1/103, they have not deposed about the measurements of the suit property. Neither the plaintiffs have given the measurement of the suit property in the plaint schedule. The plaintiffs who have examined as PW-1 and PW-2 admits that they don't know the measurement of their respective houses.

9.This Court, while considering the substantial question of law formulated at the time of admission of this second appeal, which is extracted above, finds that the plaintiffs have not furnished any document to show that the vacant land between their houses and the Mettur power plant- Salem Road, is in their possession and enjoyment. It is incorrect to say that the plaintiffs furnished documentary evidence namely, the approved plan to show their possession. Likewise, the commissioner report and sketch does not indicate that the vacant land is in the plaintiffs possession or enjoyment. In fact, the commissioner has noted some plants, trees, a small diety under a neem tree and a 2 feet pathway connecting the respective houses of the plaintiffs to the main road. Except these physical features,

nothing significant found on the disputed land to hold that the vacant space is in exclusive enjoyment of the plaintiffs. No doubt, the defendants who have made counter claim upon the vacant disputed land through one Govindan has not produced documents to substantiate their claim. But their failure will not automatically give right to the plaintiffs to the get the relief sought. The plaintiffs have to stand on the strength of their own documents and not on the lacunae or weakness in the defendants case.

10.In the above circumstances, this Court holds that the First Appellate Court judgment is in consonance to the facts on record and the law governing injunction based on possession. The judgment of the First Appellate Court is therefore, confirmed.

11.In the result, the Second Appeal is dismissed. Judgment and decree passed by the First Appellate Court in A.S.No.2 of 2004 dated 18.08.2004 is confirmed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Mettur.

2.The District Munsif,
Mettur.

+1cc to Mr.T.R.Rajaraman, Advocate sr.no.4311

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