

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.2141 of 2004
and CMP.No.18303 of 2004

Rasu Padayachi ... Appellant/ 1st respondent / 1st defendant
Vs

1.Shanmugam Pillai ... 1st Respondent / Appellant / Plaintiff
2.Narayanasamy ... 2nd Respondent/2nd respondent / 2nd defendant

Prayer :- Second Appeal filed under Section 100 of CPC, against the judgment and decree passed in A.S.No.107 of 2003 dated 20.01.2004 on the file of Principal Subordinate Judge, Mayiladuthurai, reversing the judgment and decree passed in O.S.No.112 of 1997 dated 13.06.2002 on the file of Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.R.Shivakumar
For Respondents : Mr.V.Raghavachari [R1]

JUDGMENT

The first defendant in a suit for bare injunction having succeeded in defending the suit before the trial Court, but lost the advantage before the first Appellate Court, had come before this Court in this second appeal. Parties would be referred to by their rank below the trial Court.

2.1 The facts necessary for deciding the case are, but few : Both the plaintiff and the defendants are lessees of separate plots of lands under Tiruvaduthurai Aadhinam. The suit property is stated to be bounded on the north by the first defendant's property and on the west by the second defendant's property. According to the plaintiff, he had purchased the lease hold right of Narayanasamy, the second defendant, and has come to be in occupation of the same. Thereafter, he had put up a residential building and also a septic tank in his property. Some six months thereafter he began to face interference to his peaceful enjoyment of the suit property, more particularly the septic tank, from the first defendant and apprehend damages to his property. Hence, he instituted a suit for injunction.

2.2 The first defendant alone contested the suit and according to him, the septic tank was constructed in his plot and that he had put up a fence separating his plot from the plaintiff's plot, but that was damaged in the process.

3. Two sets of Commissioners have visited the property and filed their separate plans and reports. The first Commissioner's plan and report are marked as Ext.C1 and Ext.C2 and that of the second Commissioners are marked as Ext.C3 and Ext.C4. The trial Court relied heavily on Ext.C1 and C2 to come to the conclusion that the plaintiff alone appeared to have attempted to construct a septic tank in the property belonging to the first defendant and it is he who has attempted to disturb the peaceful enjoyment of the first defendant of his plot. In the process, it also relied the testimony of P.W.3, one of the personnel attached to Tiruvaduthurai Aathinam, the lessor of both the parties.

4. This judgment when challenged before the first appellate Court by the plaintiff, and it came to be reversed. In its judgment, the first appellate Court has indicated that Exts.C1 and C2 came to be replaced by Exts.C3 and C4 and the reliance placed by the trial Court on Exts.C1 and C2 might not be appropriate. On evaluating the evidence, the first appellate Court proceeded to hold that while the plaintiff claim lease right over a plot of 9 $\frac{2}{3}$ cents, based on the Commissioner's report the plaintiff could well be only in possession of 6.5 cents and not more. It also relied on the evidence of D.W.1 to come to the conclusion that the septic tank indeed was constructed in the plot of the plaintiff and going by Exts.C3 and C4, this is about 1 mtr. away from the plot of the first defendant. Accordingly, it set aside the decree of the trial Court and allowed the first appeal. Aggrieved by the decree of the first appellate Court, the first defendant is before this Court in the second appeal.

5. The second appeal was admitted on the following substantial question of law :

Whether the Courts below is justified in taking into account irrelevant factors other than the legal position of the plaintiff?

6.1 Heard both sides. To start with, while the plaintiff claim right over 9 $\frac{2}{3}$ cents, and based on the appreciation of evidence, the trial Court has come to the conclusion that he could well be in possession of only 6.5 cents. On evidence, it has also found that the septic tank of the plaintiff was constructed only in his plot. Essentially, these two findings are one on facts and unless perversity in appreciation of the evidence by the trial Court is demonstrated before this Court, this Court may not be encouraged to interfere with the said findings.

6.2. The learned counsel for the plaintiff/appellant made a valiant effort here to convince the Court that the first appellate Court ought to have relied on Exts.C1 and C2, and in case of contradiction between two reports, it ought to have appointed another Commissioner to verify this fact. So far as existence of evidence is concerned, even according to Ext.C4, which the first Appellate Court has relied, the evidence is not a conclusive one, but then it is a proved fact that the septic tank came to be damaged and there was some kind of settlement between the parties.

7. This Court carefully went through the relevant papers to appreciate the submissions of the counsel for the appellant, and is satisfied with the approach of the first appellate Court, and consequently, the judgment of the first appellate Court cannot be construed as perverse. At the end of the day, this is only a suit for bare injunction and if at all something beyond the scope of the litigation has to be decided, it can be done only in a suit for declaration with Tiruvaduthurai Aadhinam, the title-holder of the property of who the parties are the lessees, in the party array.

8. For the present, this Court does not find any merit in this appeal and the same is dismissed and the judgment and decree passed in A.S.No.107 of 2003 dated 20.01.2004 on the file of Principal Subordinate Judge, Mayiladuthurai, reversing the judgment and decree passed in O.S.No.112 of 1997 dated 13.06.2002 on the file of Additional District Munsif, Mayiladuthurai is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1.The Principal Subordinate Judge
Mayiladuthurai.

2.The Additional District Munsif
Mayiladuthurai

3.The Section Officer
VR Section, High Court, Madras.

S.A.No.2141 of 2004

A.SK(29/01/2020)