

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.02.2019

PRONOUNCED ON:22.02.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1282 of 2005

Rajamanickam ... Appellant/Defendant

Vs.

Arulmighu Rajagopalaswami Temple
Pudupalayam,
Cuddalore - 1,
Through its Executive Officer,
Temple complex,
Pudupalayam,
Cuddalore -1.

... Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.06.2005 in A.S.No.4 of 2005 on the file of the I Additional Sub Court, Cuddalore reversing the judgment and decree dated 03.12.2004 in O.S.No.329 of 2001 before the Principal District Munsif's Court, Cuddalore.

For Appellant : Mrs.Hema Sampath, SC
for M/s.R.Meenal

For Respondent : Mr.K.Chandrasekaran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 30.06.2005 passed in A.S.No.4 of 2005 on the file of the I Additional Subordinate Court, Cuddalore reversing the judgment and decree dated 03.12.2004 passed in O.S.No.329 of 2001 on the file of the Principal District Munsif Court, Cuddalore.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of possession and mandatory injunction.

4. The case of the plaintiff in brief is that the suit property and the remaining extent on the south, north, east, west belong to the plaintiff's temple and the portion marked as "JKLM" in the plaint plan was leased out to the defendant by the plaintiff's temple by way of a lease deed dated 01.06.1989 and the defendant has committed encroachment in the portion marked as "KAHL" in the plaint plan and has put up unauthorized construction and in connection with the same, the plaintiff had filed a suit in O.S.No.88 of 1998 against the defendant in respect of the portion marked as "JKAHLM" in the plaint plan for appropriate reliefs. To the north of "AH" line, there is a strip of lane, which belong to the plaintiff's temple, which portion has been shown as "ABCDEFGH" measuring north-south 10 ft and east-west about 83 ft and still north of it, the portion belonging to the plaintiff's temple has been leased out to one Venkatesan and in the abovesaid portion shown as "ABCDEFGH", the defendant has got no right whatsoever, on the other hand, on 22.09.2001 the defendant has high handedly committed encroachment in the portion marked as "ABIFGH" in the plaint plan and put up a drainage channel in the portion high handedly marked as "IFGH" and on coming to know of the same, the plaintiff objected to the same and on the other hand, the defendant proceeded with the construction unlawfully and hence according to the plaintiff, he has been necessitated to lay the suit for recovery of the portion in which the defendant has high handedly and unlawfully put up the drainage channel and for other allied reliefs.

5. The defendant resisted the plaintiff's suit contending that the plaint plan is not correct and the defendant has not encroached the portion "KAHL" as claimed in the plaint. The defendant has been leased out the portion measuring east-west 23 ft, north-south 200 ft and the defendant is running a hotel therein. There are two channels running east-west. The two channels are lying in "PQ" portion and "RS" portion as detailed in the plan appended to the written statement. Water coming from north-south channel and falling in the tub shown in the point "P" and the water falling in the tub in the point "Q" is being drained out through the cement channel and the north-south channel as well as the east-west channels, which had been constructed long back and the abovesaid channels had been constructed as per the advice of the Municipality and if the channels are not constructed as abovestated, it could have resulted in health hazard and the plaintiff has come forward with the suit only at the instigation of the rival hotelier and there is no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 has been examined. Exs.A1 and A2 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 and B2 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and thereby decreed the suit as prayed for. Aggrieved over the same, the defendant has come forward with the second appeal.

8. The second appeal has been admitted on the following substantial questions of law.

1. Whether in law the lower appellate Court was right in misconstruing the facts and the evidence, and in arriving at perverse findings of fact, thus inviting interference under Section 100 CPC vide AIR 2001 SC 1273?
2. Whether in law the lower appellate court was not wrong in granting a decree for mandatory injunction when the landlord/respondent had not provided the necessary amenities and the tenant had to put up a drainage channel pursuant to Ex.B2 notice from the Municipality under the Public Health Act?

9. The materials placed on record go to show that the suit property belonging to the plaintiff's temple. The defendant has not disputed the same and it is found that the defendant is a lessee of the plaintiff's temple in respect of the portion measuring an extent of east-west 23 ft and north-south 190 ft totally measuring an extent of 4370 ft and the same could be gathered from the lease deed marked in the suit as Ex.A1. Thus, it is found that the defendant has been leased out the portion shown as "JKLM" in the plaint plan and according to the plaintiff, the defendant has encroached the portion shown as "KAHL" shown in the plaint plan and in connection with the same, it is found that the suit is pending between the parties in O.S.No.88 of 1998. The portion in respect of which the present suit has been laid is lying to the north of "AH" line

shown as "ABCDEFGH" and in the abovesaid portion it is found that the plaintiff has put up a drainage channel in the portion shown as "IFGH" in the plaint plan and only with reference to the abovesaid portion, it is found that the suit has come to be laid by the plaintiff against the defendant. As rightly determined by the first appellate court, it is found that the "IFGH" portion shown in the plaint plan is not leased out to the defendant as per Ex.A1 lease deed. Furthermore, there is no material placed on the part of the defendant evidencing that he has been leased out the portion shown as "IFGH" in the plaint plan. As rightly determined by the first appellate court, the defendant has failed to establish that the "IFGH" portion forms part of the demised portion covered under Ex.A1. Furthermore, the defendant during the course of cross examination has clearly admitted that the portion shown as 'ABCDEFGH' in the plaint plan belong to the plaintiff's temple. Thus, it is seen that the portion "IFGH" where the drainage channel had been constructed by the defendant belongs only to the plaintiff's temple and not leased out to the defendant under Ex.A1. The defendant has further clearly admitted that the portion shown as "IFGH" in the plaint plan has not been leased out to him. In such view of the matter, as rightly determined by the first appellate court, the trial court is found to have erroneously determined that the portion shown as "IFGH" in the plaint plan has been leased out to the defendant by the plaintiff's temple.

10. As could be seen from the Commissioner's report and plan, there are two channels running east-west in the portion belonging to the plaintiff's temple and of them the channel shown as "WZ" is found to have been constructed much earlier in point of time and the channel shown as "XY" is found to be of a recent origin. It has been admitted by the defendant that it is he, who has put up the channel shown as "XY" and furthermore, it has also been admitted by the defendant that for putting up the abovesaid channel "XY" in the abovesaid area, he has not obtained the prior permission of the plaintiff. The portion shown as "IFGH", where the "XY" drainage channel has been constructed or put up by the defendant is not leased out to the defendant by way of Ex.A1 and when the abovesaid portion is found to be belonging to the plaintiff's temple, before endeavoring to put up the drainage channel in the abovesaid portion, as rightly determined by the first appellate court, the defendant should have obtained the permission or approval of the plaintiff's temple and on the other hand, it is found that the defendant had encroached into the abovesaid portion without any authority and put up the "XY" channel in the area high handedly and accordingly it is found that the plaintiff on coming to know of the same, had come forward with the suit seeking the removal of the construction put up by the defendant in the abovesaid area.

11. Resisting the plaintiff's action, the defendant would put forth the defence that only as per the notice issued by the plaintiff's temple and the Municipality marked as Exs.B1 and B2, he had been necessitated to put up the drainage channel in the "IFGH" portion for the purpose of draining out the sludge water and as by way of the abovesaid notices he had been directed to remove the stagnation of the sludge water, he had put up the drainage channel in the abovesaid portion shown as "XY" in Exs.C1 and C2 and therefore according to him, when the abovesaid channel had been put up him only for avoiding the stagnation of the sludge water and the discharge of the drainage water. According to him, no serious prejudice would be caused to the plaintiff's temple by way of putting up the abovesaid channel in the disputed portion and therefore the plaintiff is not entitled to obtain the reliefs as prayed for. Further, according to the defendant only at the instigation of the rival hotelier, the plaintiff has come forward with the false case against the defendant.

12. However, as rightly determined by the first appellate court, when the "IFGH" portion in which the drainage channel had been put up by the defendant belongs to the plaintiff's temple and when the same had not been leased out to the defendant under Ex.A1 lease deed, it is found that the defendant cannot be allowed to justify the construction of the drainage channel in the abovesaid area, by encroaching the same and also without obtaining the necessary consent of the plaintiff's temple. As rightly determined by the first appellate court, the notices marked as in Exs.B1 and B2 had only directed the defendant to remove the stagnation of water in the area leased out to him and not empowered him to put up a new drainage channel in the portion belonging to the plaintiff's temple and in such view of the matter, the defendant cannot be allowed to justify the encroachment made by him in the plaintiff's portion and the putting up of the drainage channel in the same without the prior permission of the plaintiff's temple. As rightly determined by the first appellate court, the encroachment made by the defendant in the "IFGH" portion and the construction of the drainage channel in the abovesaid area by the defendant without the plaintiff's consent are found to be unlawful and accordingly it is seen that the plaintiff would be entitled to seek the reliefs sought for against the defendant. As rightly determined by the first appellate court, the reasonings of the trial court that by giving a direction to the defendant to remove the drainage channel put up by him at the time of vacating the property, no prejudice would be caused to the plaintiff's temple as such, cannot be accepted, when the portion in which the

drainage channel has been put up by the defendant had not been leased out to him by the plaintiff's temple. As regards the contention put forth by the defendant that the the suit had come to be laid by the plaintiff at the instigation of the rival hotelier, as rightly put forth by the plaintiff's counsel, when the defendant is found to have encroached into the portion belonging to the plaintiff's temple and put up the unlawful drainage channel construction, with reference to the same, as the title holder, when it is found that the plaintiff is fully justified in seeking the removal of the same as above determined, the motive suggested by the defendant for the plaintiff's lis as such cannot be readily countenanced.

13. In the light of the above discussions, when it is found that the first appellate court has appreciated the materials placed on record in the right perspective by giving acceptable and reliable reasons for accepting the plaintiff's case and for setting aside the erroneous judgment of the trial court, it is found that the contention put forth by the plaintiff's counsel that the first appellate court has misconceived the facts and evidence and arrived at the perverse findings as such cannot be accepted in any manner and in such view of the matter, it is seen that there is no substantial question of law involved in the second appeal. Furthermore, when the portion in which the drainage channel had been put up by the defendant belongs to the plaintiff's temple and when the same had not been leased out to the defendant and when the notices marked as Exs.B1 and B2 do not entitle the defendant to encroach into the plaintiff's portion and put up the drainage channel and when the defendant has not come forward with the clear case as to the nature of the right which he seeks to enforce in respect of the disputed area and when it is found that the defendant had been all along draining the sludge water through the existing and available machineries, the contention that the defendant had been necessitated to put up the additional drainage channel "XY" in the disputed area only to prevent the stagnation of sludge water and to avoid health hazard as such cannot be readily accepted, when it is found that the defendant is not legally entitled to encroach into the property belonging to the plaintiff and put up the unlawful construction and in such view of the matter, the first appellate court is found to be wholly justified in accepting the plaintiff's case and rejecting the defence version.

14. For the reasons aforesaid, the substantial questions law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendant.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Subordinate Judge,
I Additional Sub Court,
Cuddalore.

2.The Principal District Munsif,
Principal District Munsif's Court,
Cuddalore.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.R.Subramanian, Advocate Sr.16869
+1cc to Mr.K.Chandrasekaran, Advocate Sr.17320

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srg 10/06/2019