

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1477 of 2005
and
C.M.P.No.19227 of 2005

1.Ponnusamy Udayar (Died)

2. B.Senguttevan
(2nd Appellant brought on record
as legal representative of the
deceased sole appellant vide
order of Court dated 05.04.2019
made in CMP No.8621/2019
in SA.No.1477/2005(TRNJ)

... Appellants/1st Respondent/Plaintiff

versus

1.Kesavaperumal

2. Sriramulu Chettiar ... Respondents/Appellant/Ind
Respondent/Defendants 1 and 2

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 31.08.2005 passed in A.S.No.91 of 2004 on the file of the Principal District Court, Cuddalore, reversing the judgment and decree dated 10.03.2003 passed in O.S.No.17 of 1992 before the Additional Subordinate Court, Vriddhachalam.

For Appellants : Mr.T.Sezhian

For Respondents : No Appearance[R1]
Given Up [R2]

JUDGMENT

The plaintiff in a suit for declaration of title, recovery of possession and for mandatory injunction, has come forward with this appeal. The parties would be referred to by their ranks before the trial court.

2. The entire scope of the case falls within a narrow compass:
The suit property is described as a vacant site, where the

defendants alleged to have encroached and put up a construction. The trial court has decreed the suit as prayed for. Challenging the same, the defendants have preferred the First Appeal and the First Appellate Court concurred with the findings of the trial court as to the plaintiff's title and his entitlement to have the property recovered after demolishing the construction put up by the defendants. However, while granting a decree, in lieu of the decree granting recovery of possession and for mandatory injunction it directed the defendants to pay Rs.34,000/- towards the value of the property encroached.

3. This modification portion of the First Appellate Court is now in challenge by way of Second Appeal.

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

'1. Whether in law the lower appellate Court was right in refusing a decree for recovery of possession after declaring the appellant's title and on holding that the first respondent was a trespasser who had put up an illegal construction?

2. Whether in law the lower appellate Court was right in protecting the possession of the trespasser against the true owner and awarding a low monetary compensation, that too without interest?

3. Whether in law the Courts below are not wrong in recording that the appellant's lawyer made a concession overlooking that even if it was a fact, the Counsel's concession against the interest of his client is not binding on the party?'

5. The defendants did not appear through any counsel. Their names are printed in the cause list, yet none appeared.

6. The learned counsel for the appellant/plaintiff submitted that the power of the Court to mould the relief does not extend to the extent of converting a civil right into some sort of land acquisition proceedings and to pass a decree. When once the plaintiff is found to be the title holder, and the moment the Court finds the defendants are the trespassers of the plaintiff's property, then it is duty bound to grant a decree for possession.

7.1 This Court perused the records and is in absolute concurrence with the submissions made. As regards the findings by the Courts below on title to the property, the defendants have not preferred any cross-objection / appeal. Therefore, the title of the plaintiff necessarily stands confirmed as has been done by the Courts below. This will necessarily imply that the plaintiff shall get the property.

7.2 Here the First Appellate Court's approach is not in conformity with settled legal principles. So far as granting relief is concerned, the Courts have power to mould the relief on the basis of facts proved, but that cannot be extended to the extent of granting powers to the Court to substitute the relief of its choice on an unwilling plaintiff. The plaintiff has not sought payment of the value of property trespassed by the defendant as an alternate relief. Secondly, the Court has fixed the value of the suit property based on the suit valuation by the plaintiff, but then, as indicated above, it resorted to a unilateral choice in fashioning the relief. It is not so much about what the Court feels as just under a given circumstance, but it is all about what authority has it to convert a relief on an unwilling plaintiff in a manner that it considers just. If at all, it intends to decide the case the way it has decided, the minimum which this court expects the first appellate court to do is to hear the plaintiff on its intended course of action. That too was not seen done.

8. In conclusion, this Court allows the appeal and setting aside the judgment and decree dated 31.08.2005 passed in A.S.No.91 of 2004 on the file of the Principal District Court, Cuddalore and restore the judgment and decree dated 10.03.2003 passed in O.S.No.17 of 1992 on the Additional Subordinate Court, Vridhachalam, in full. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Court,
Cuddalore.
2. The Additional Subordinate Court,
Vridhachalam.
3. The Record Keeper,
VR Section, High Court, Madras.

+1cc to M/s.R.Subramanian, Advocate Sr.46378

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srg 21/11/2019