

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.991 of 2019
and CMP.No.21240 of 2019

Anandavalli

.. Appellant /
Appellant/Plaintiff

Versus

1.The Thasildar,
Taluk Office,
Cuddalore.

2.Arumugam

... Respondents/Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.04.2019 passed in A.S.No.77 of 2017 on the file of the learned Principal Subordinate Judge at Cuddalore, confirming the judgment and decree dated 16.08.2017 passed in O.S.No.58 of 2012 on the file of the learned Additional District Munsif Court, Cuddalore.

For Appellant : Mr.S.Kingston Jerold

For Respondent : Ms.A.Madhumathi, AGP (CS), for R1

JUDGMENT

The unsuccessful plaintiff is the appellant before this Court. O.S.No.58 of 2012 was instituted for declaration of title over the suit property and for permanent injunction.

2. The case of the plaintiff is that one Dayalraj and Natarajan formed a lay out to an extent of 95386 sq.ft. and the local body approved the lay out. One Shanmugam purchased a plot, vide sale deed dated 28.07.1992 and the plaintiff purchased the said property through his power agent Mahalakshmi, through sale deed dated 12.01.2000. It is further stated that on the eastern side of the property, there was a vacant land to an extent of 294 sq.ft. The promoters of the lay out sold the said vacant land by oral sale. As such, he has been in possession and

enjoyment of the property. It is also alleged that on the complaint given by the neighbour of the plaintiff / second defendant, the first defendant issued a notice for removal of the encroachment. Hence, he filed a Writ Petition No.30370 of 2011 and as per the direction of this Court, he made a representation and thereafter, filed the present suit.

3. In the written statement filed by the first defendant, it has been stated that the suit property to an extent of 0.0070 sq.mt. has been classified as street in the revenue records and hence, it cannot be used for the personal use of any body including the plaintiff.

4. The second defendant filed a detailed written statement stating that the plaintiff is not entitled for the relief in the suit. It is further stated that the promoters Dayalraj and Natarajan have no right in the property since it has been allotted for the purpose of road. The plaintiff is an encroacher in the public road and hence, he prayed for dismissal of the suit.

5. Based on the pleadings, the Trial Court framed necessary issues and permitted the parties to lead evidence. On the side of the plaintiff, PWs.1 to 3 were examined and Exs.A1 to A11 were marked. The defendants have examined 5 witnesses as DWs.1 to 5 and produced Exs.B1 to 4 and Ex.X1. After analysing both the oral and documentary evidence, the Trial Court dismissed the suit. On appeal, the Appellate Court confirmed the judgment of the Trial Court. Challenging the same, the present appeal.

6. Mr.S.Kingston Jerold, learned counsel for the appellant would submit that both the Courts below have not properly appreciated the oral and documentary evidence in this case, hence, the judgments are perverse. It is further contended that the suit schedule property is a patta land, which cannot be classified as a road in the revenue records.

7. Per contra, Mrs.A.Madhumathi, learned Additional Government Pleader (CS) appearing for the first respondent would submit that the suit property was allotted as a road in the approved lay out and the appellant is an encroacher. It is further submitted that PW2, who is the father of the appellant himself has admitted in his evidence that the suit property is a road and hence, the findings on fact arrived at by the Courts below need not be disturbed.

8. Heard both sides and perused the materials available on record.

9. In the case on hand, it is not in dispute that the appellant purchased the property through a sale deed dated 12.01.2000. It is the case of the appellant that on the eastern side of his property, he encroached and constructed a compound wall and thereafter, the promoters have sold the said property by an oral sale.

10. It is relevant to point out that one of the promoters viz., Dayalraj was examined as PW3 and in the cross-examination, he sated that the suit property was sold to the appellant for a sale consideration of Rs.20,000/-. It is a settled law that insofar as immovable property of value more than Rs.100/-, the sale could be effected only through a registered document. Admittedly, in the case on hand, no sale was effected through a registered document.

11. The issue that arises for consideration in this case is whether the suit property is a private property or public road. It is to be seen that in the sale deed, Ex.A1, the suit property has been described as street. Adangal Register, Ex.B2 also shows that the property as street. As rightly pointed out by the learned Additional Government Pleader that during cross-examination, PW2 has admitted that the suit property is a street. The Trial Court and the Appellate Court, on proper appreciation of evidence came to the conclusion that the property in dispute is a street.

12. In my considered opinion, the factual findings reached by the Courts below on proper appreciation of evidence do not warrant interference by this Court. No question of law, much less, substantial question of law arise for consideration in this appeal. In such view of the matter, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. In the light of the above findings, the first respondent is directed to remove the encroachment in accordance with law forthwith.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

pvs

To

1.The Subordinate Judge
Principal Subordinate Court,
Cuddalore.

2.The District Munsif
The Additional District Munsif Court,
Cuddalore.

3.The Thasildar,
Taluk Office,
Cuddalore.

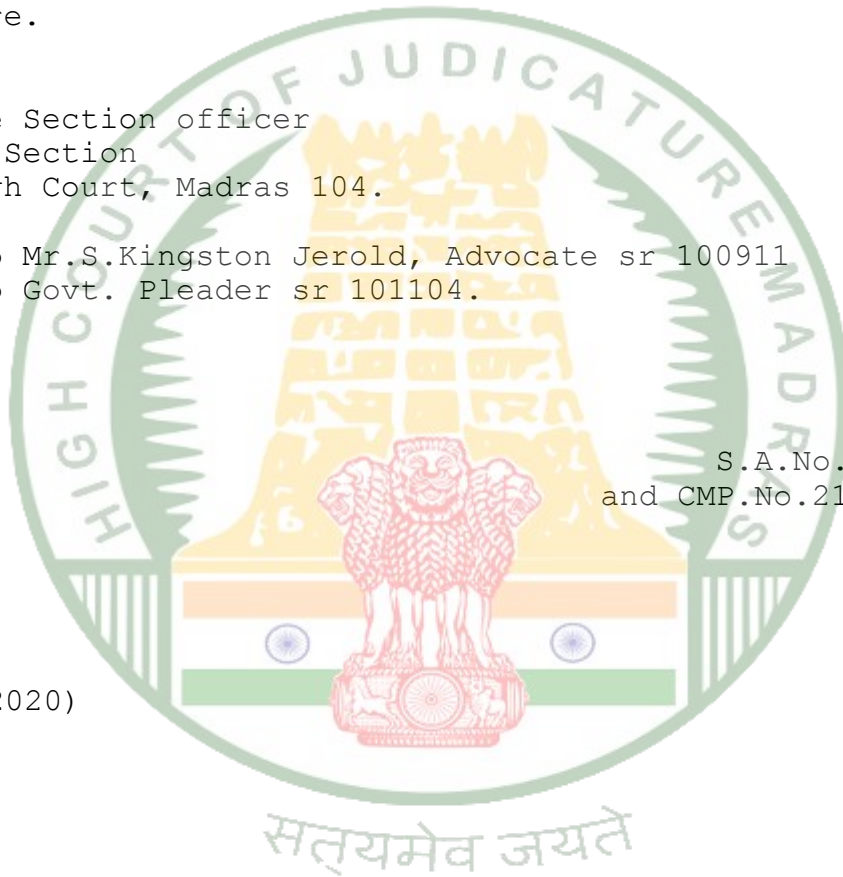
Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Kingston Jerold, Advocate sr 100911

+1 CC to Govt. Pleader sr 101104.

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VGI (CO)
SP (09/06/2020)



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