

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2019

PRONOUNCED ON : 14.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.886 of 2018

and

CMP No.23592 of 2018

R. Babu ...Appellant/Appellant/Defendant
Vs.

1. K. Balathandapani ... 1st Respondent/1st Respondent/
Plaintiff

2. The District Collector,
Vellore District, Vellore

3. The Tahsildar,
Arcot, Vellore District

4. The Commissioner,
Arcot Municipality,
Arcot, Vellore District.

...Respondents 2 to 4/Respondents 2 to 4
/Respondents 2 to 4

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed by the subordinate judge, Ranipet at Vellore District in A.S.No.34 of 2015 on 09.03.2018 confirming the judgment and decree passed by the District Munsif Court cum Judicial Magistrate Court, Arcot, Vellore District in O.S.No.43 of 2008 dated 27.03.2014.

For Appellant : Mr.A. Chandrasekar

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 09.03.2018 passed in A.S.No.34 of 2015 on the file of the subordinate Court, Ranipet at Vellore District, confirming the judgment and decree dated 27.03.2014 passed in O.S.No.43 of 2008 on the file of the District Munsif Court cum Judicial Magistrate Court, Arcot, Vellore District.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for Mandatory injunction and Permanent Injunction.

4. Briefly stated, according to the plaintiff, he has purchased the first item of the suit properties by way of the sale deed dated 17.06.2002 as a vacant site and after obtaining necessary permission and plan from the municipality, put up the construction thereon and stated that on the eastern side of the said property Jagannathansamy street is lying and the first defendant, without any approval from the municipality, had built up the house in the public street by encroaching into the same and thereby prevented the plaintiff from having access through the street portion and as the abovesaid street is a public street and the plaintiff is entitled to have access from his property through the abovesaid street in all aspects, the first defendant having put up the unlawful construction in the same, accordingly seeking the removal of the unlawful construction and other necessary reliefs, the plaintiff has come forward with the suit.

5. The first defendant who is the appellant has contested the plaintiff's suit by putting forth the case that the property where he had put up the construction, i.e., the second item of the suit properties is not the public street and it is only the piece of poromboke land abutting the street and one Mallika was in the possession and enjoyment of the same for a long time by putting up a hut and thereafter she had handed over the same to the first defendant and since then it is only the first defendant who has been in the possession and enjoyment of the said property and the first defendant is also paying the tax in respect of the said property. The plaintiff is having access to his property through the other street and hence according to the first defendant, the plaintiff is not entitled to seek the reliefs as prayed for and hence the same is liable to be dismissed.

6. The fourth defendant put forth his case that the plaintiff is having ingress and egress to his property and further stated that if the first defendant had encroached the street portion, the defendant would take appropriate action against him as per law and the plaintiff is not the authority to compel the fourth defendant to take action against the first defendant and therefore, it is stated that the plaintiff has no cause of action and the suit is liable to be dismissed.

7. On the basis of the materials available on record and the submissions made, the courts below were pleased to grant the relief of mandadoty injunction in favour of the plaintiff as prayed for. As regards the relief of permanent injunction sought for by the plaintiff, the same had been declined. Aggrieved over the same, the present second appeal has been

preferred by the first defendant.

8. The first defendant mainly contested the plaintiff's suit by stating that the disputed portion is only a poromboke land and not forming part of the public street and it is stated that the same was in the possession and enjoyment of one Mallika and thereafter with the first defendant and accordingly it is only the first defendant who has been enjoying the said property by paying necessary tax, etc., and the plaintiff is having other access to his property and therefore, the plaintiff's suit is liable to be dismissed.

9. It is seen that the plaintiff has acquired his property by way of the sale deed dated 17.06.2002 and after obtaining the necessary permission and plan from the municipality concerned, had put up the construction in his property. The same could be evidenced from the documents marked on the side of the plaintiff. It is further seen from the commissioner's report and plan as well as the evidence of the advocate commissioner examined as P.W.2 that the Jagannathasamy street is lying in the eastern side of the plaintiff's property and furthermore, it could also be seen that the first defendant had put up the construction in the battai portion and the same has not been controverted by the first defendant. However, according to the first defendant, the portion in dispute is only a poromboke land and not forming part of the street and further would state that the same was in the possession of one Mallika and that she had handed over the same to the first defendant and since then it is only the first defendant who is in the possession and enjoyment of the said property. However, as regards the abovesaid claim of the first defendant, there is no material worth acceptance on his side and as rightly determined by the courts below, the tax receipts and the electricity bill receipts projected by the first defendant would go to disclose that the same pertains to some other property and not the property in dispute. Therefore, the claim of the first defendant that the property in dispute is the poromboke land and not forming part of the public street, as such, cannot be accepted in any manner.

10. As rightly found and determined by the courts below, considering the street portion abutting the said property and as per the decisions relied upon by the courts below, when the plaintiff is entitled to have access through the street portion and the same could not be objected to by the first defendant and when the first defendant has put up the construction by encroaching into the property forming part of the street, in such view of the matter, as rightly found, the plaintiff's access to his property having been restricted and in such view of the matter, the plaintiff is found to be entitled for seeking the removal of the unlawful construction put up by the first

defendant in the street portion and the first defendant having also not established that the construction put up by him is lawful, i.e., after obtaining necessary approval and plan from the municipality concerned, in all, it is found that the courts below, on the appreciation of the factual matrix, had rightly confirmed that the plaintiff is entitled to seek the relief of mandatory injunction as prayed for.

11. Considering the scope of the suit as well as the factual matrix involved and the failure of the first defendant to establish his lawful claim of possession and enjoyment of the property in dispute and on the other hand, when the plaintiff has established that the disputed area is only abutting the portion forming part of the street, in such view of the matter, the failure of the plaintiff to seek the relief of declaration, as such, do not affect his case as determined by the courts below.

12. In the light of the abovesaid discussions, when it is seen that the issues involved between the parties are centering on factual matrix and when the courts below on proper reasonings and conclusions had appreciated the same by assessing the materials available on record in the right perspective and the judgment and decree of the courts below not suffering from any perversity or irrationality, in such view of the matter, there is no reason to interfere with the same.

13. In the light of the above discussions, no substantial question of law is found to be involved in this second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bga

Copy to

1. Subordinate Court,
Ranipet at Vellore District
2. District Munsif Court cum Judicial Magistrate Court,
Arcot, Vellore District.

WEB COPY

3. The District Collector,
Vellore District, Vellore.

4. The Tahsildar,
Arcot, Vellore District.

5. The Commissioner,
Arcot Municipality,
Arcot, Vellore District.

+lcc to Mr.Chandrasekar, Advocate, S.R.No. 69519

S.A.No.886 of 2018

BS (CO)
GN (27/05/2020)



WEB COPY