



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A. (MD) No.530 of 2016

and

CMP(MD) Nos.6519 of 2016 and 6485 of 2019

S.Esakki

... Appellant/Appellant/
Plaintiff

Vs.

1.M.Mohan

2.Inspector of Police,
Perumalpuram Police Station,
Perumalpuram.

3.The Commissioner of Police,
Tirunelveli City Police,
Kokkirakulam, Tirunelveli-9.

4.State Through its
District Collector,
Tirunelveli District,
Kokkirakulam,
Tirunelveli-9,
Tirunelveli District.

... Respondents/Respondents/
Defendants

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the learned Additional Subordinate Judge, Tirunelveli in A.S.No.104 of 2014 dated 10.07.2015 confirming the Judgment and Decree of the learned Second Additional District Munsif, Tirunelveli in O.S.No.257 of 2009 dated 29.08.2013.

For Appellant	: Mr.V.Kannan
For R-1	: Mr.H.Arumugam

JUDGMENT

The unsuccessful plaintiff in both the Courts below, is the appellant before this Court. The second appeal has been filed challenging the judgment and decree dated 10.07.2015 passed in A.S.No.104 of 2014 on the file of the learned Additional Subordinate Judge, Tirunelveli.



2.The parties are referred to in the same array as in the trial Court.

3.The plaintiff had filed a suit in O.S.No.257 of 2009 on the file of the learned Second Additional District Munsif, Tirunelveli, for the relief of permanent injunction restraining the defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property has been described as the piece and parcel of the land situated in Palayamkottai Registration District, Melapalyam Sub Registration District, Palayamkottai Taluk, Door No.#L295, Anbu Nager Quarters, Maharaja Nager Post, Tirunelveli-11.

4.The case of the plaintiff, in short, is that he had purchased the suit property from the Tamil Nadu Housing Board, Tirunelveli, in the year 1990. In the year 2002, he had constructed an additional room in the plaint schedule property. The first defendant had purchased the house on the rear of the plaintiff in the year 2007. On February 2008, the plaintiff had constructed a small shed adjoining the plaint schedule property, with asbestos roof on the rear side of the house with the consent of the first defendant. On 10.01.2009, the first defendant had come to the plaintiff's house and demanded that the shed be demolished forthwith as the construction had been put up on the wall belonging to the first defendant. The police complaint was lodged and the police authorities have been arrayed as defendants 2 to 4, who were compelling the plaintiff to demolish the shed, which has been constructed by him. Therefore, left with no other alternative, the plaintiff had filed a suit.

5.The first defendant had filed a written statement in which he contented that the shed in question has been constructed on the wall belonging to the first defendant and that there was no consent whatsoever sought for or given by the first defendant or his wife. The first defendant, therefore, contented that the plaintiff is not entitled to any relief of permanent injunction and he has filed a counter-claim demanding the removal of the offending structure.

6.The learned Second Additional District Munsif, Tirunelveli, after hearing both the parties had returned the finding dismissing the suit filed by the plaintiff and allowing the counter-claim filed by the first defendant.

7.The plaintiff had challenged the judgment and decree in O.S.No.257 of 2009 and reading of the grounds of appeal would indicate that challenge is primarily only to the decree dismissing the suit for permanent injunction and there is no challenge to the judgment allowing the counter-claim. The first appellate Court also



the appeal in A.S.No.104 of 2014 filed by the plaintiff. Challenging the said judgment and decree, the appellant/plaintiff is before this Court.

8.Mr.V.Kannan, learned counsel counsel for the appellant would argue that the counter-claim is not maintainable, since the property does not belong to the first defendant and it is only his wife, who is the owner of the property and therefore, the decree in counter-claim has to be rejected.

9.On the other hand, Mr.H.Arumugam, learned counsel appearing on behalf of the first respondent would contend that the plaintiff has chosen to file the suit against the husband and has not impleaded the wife and further as the representative of his wife, who has been authorised by wife, it is well open to the first defendant to file the counter-claim.

10.Heard the learned counsel on either side and perused the papers.

11.From the perusal of the Judgments passed by the Courts below, it is clear that the plaintiff has constructed the shed on the disputed wall. The plaintiff would contend that he had obtained consent of the adjacent owner namely, wife of the first defendant. However, there is no proof let in on the side of the plaintiff to prove such consent and it has been found so by the both the Courts below. The Courts below have also negatived the plea of acquiescence that had been put forward by the plaintiff against the first defendant.

12.Records would reveal that as soon as the construction has taken place, the first defendant had lodged his protest by filing the complaint before the police authority. It is also observed by the Courts below that the plaintiff had originally given an undertaking that he would remove the offending structure. However, instead of honouring the undertaking, he has only observed the same in the breach. The conduct of the plaintiff has also been deprecated by the Courts below. The trial Court has also observed that the plaintiff's shed is not resting on the wall as stated by the plaintiff, but on the contrary he has extended the wall to the height of two feet and constructed the shed thereon. Both the Courts below have considered the evidence in detail both oral as well as documentary. This Court exercising its jurisdiction under Section 100 of Code of Civil Procedure, is not re-appreciating the evidence once again.

13.Hence, I do not find any infirmity in the judgments and decrees of the Courts below. There is no question of law muchless the substantial question of law warranting interference of this Court.



14.In the result, this Second Appeal stands dismissed by confirming the Judgment and Decree dated 10.07.2015 passed in A.S.No.104 of 2014 by the learned Additional Subordinate Judge, Tirunelveli. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

cp

To

1.The Additional Subordinate Judge,
Tirunelveli.

2.The Second Additional District Munsif,
Tirunelveli.

COPY TO:

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-87311[F] dated 18/09/2019)

Judgment Made in
S.A. (MD) No.530 of 2016
and
CMP(MD) Nos.6519 of 2016 and
6485 of 2019
17.09.2019

JM/15.10.2019/4P/6C