

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2020

PRONOUNCED ON: 30 .01.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A.No.1136 of 2008
& MP.No.1 of 2008

1.Pathipooranammal
2.Ramesh
3.Selvakumar
4.Chandrika
5.Mahalakshmi
6.Sundaresan

... Appellants/2nd Plaintiffs

Vs.

Ranipet Municipality,
rep. by its Commissioner,
Ranipet.

.... Respondent/Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.08.2007 passed in A.S.No.3 of 2006 on the file of the Additional District and Sessions Court, Ranipet (Fast Track Court No.2, Ranipet) confirming the judgment and decree dated 19.03.2004 made in O.S.No.42 of 2002 on the file of learned District Munsif, Ranipet, Vellore District.

For Appellants : Mr.T.Dhanyakumar

For Respondent : No Appearance

JUDGMENT

This Second Appeal has been filed against the Judgment and decree dated 29.08.2007 passed in A.S.No.3 of 2006 on the file of the Additional District and Sessions Court, Ranipet (Fast Track Court No.2, Ranipet) confirming the judgment and decree dated 19.03.2004 made in O.S.No.42 of 2002 on the file of learned District Munsif, Ranipet, Vellore District.

2. The facts which gave raise to the filing of the present Second Appeal are stated hereunder:

The first appellant was the plaintiff and the respondent was the defendant in the suit. The plaintiff has approached the trial Court seeking for bare injunction, restraining the defendant from interfering with the plaintiff's peaceful

possession and enjoyment of the suit property in any manner. According to the plaintiff, the defendant Municipality was attempting to cut the trees located in the property owned by her and therefore, the plaintiff sought for injunction from interfering with his peaceful possession and enjoyment of the property.

3. The suit was resisted by the defendant Municipality stating that the locality in which the plaintiff was living, there were 500 residential houses and there is a public lane used by all the residents in the locality. According to the Written Statement, more than 100 persons had given a petition to the Chairman of the Municipality on 11.12.2001 stating that the residents could use the pathway lane only to the certain extent and the trees grown up in certain area was obstructing their pathway and therefore, the same should be removed. Thereafter, the petition was placed before the Council Meeting and the Council passed a resolution No.2133 on 31.12.2001, that the obstructing trees may be cut and sold in public auction after getting permission from the Revenue Divisional Officer, Ranipet. The Revenue Divisional Officer, Ranipet on receipt of the request, which was based on the resolution passed by the Council, has granted permission vide his letter dated 26.02.2002 to cut the trees which were obstructing the public places. Thereafter, the records were verified and found that the plaintiff was living in T.S.No.51 whereas, the trees were located at T.S.No.61 and the plaintiff had no right to transfer or right of title over the said survey number. In the circumstances, the trees were cut, to discharge their duties in public interest.

4. The trial Court, after appreciating the stand taken by both the plaintiff as well as the defendant and after perusing the records of the Municipality, concurred with the contentions of the Municipality and dismissed the suit. The trial Court, has clearly held that the trees were located in the common pathway used by the public and the plaintiff has nothing to do with that survey number. As against that, an appeal was preferred by the plaintiff before the lower Appellate Court.

5. The lower Appellate Court, after dealing with the appeal, has also held in favour of the defendant. The lower Appellate Court has found that the plaintiff had no cause of action at all as the action initiated by the respondent Municipality was in furtherance of public interest and accordingly, concurred with the factual findings of the trial Court that the trees which were cut by the Municipality were located in public place and such trees were cut only after following the proper procedure by passing a resolution in the Council and after obtaining permission from the competent authority, namely, the Revenue Divisional Officer concerned. In the said circumstances, the lower appellate Court has dismissed the appeal. As against that, the present Second

Appeal has been preferred.

6. The learned counsel appearing for the appellants would submit that both the Courts below have committed error in not appreciating the claim of the plaintiff. According to him, that certain factual aspects were not appreciated by both the Courts below and therefore, the judgments and decrees of both the Courts below need to be interfered with. However, when this Court's attention was drawn to various materials placed on record, it is found that the findings of fact by both the Courts below in regard to the location of the trees was borne out by public records and therefore, there is reason to reverse such findings at all. In fact, the very basis of cause of action for the plaintiff is questionable for the reason that as per the revenue records, the trees were located in different survey number than the survey number belonging to the plaintiff. In fact, only on verification of the records and the Council's resolution, the permission was granted by the Revenue Divisional Officer and thereafter, the trees were cut in order to protect the public interest. Therefore, the plaintiff cannot have any cause to complain as if the respondent Municipality was attempting to disturb and interfere with their peaceful possession and enjoyment of their property. Since the very basis of claim of the plaintiff is contrary to revenue records, the suit was rightly dismissed by the trial Court and the same was rightly confirmed by the lower Appellate Court.

7. In the above circumstances, this Court is of the view that the Second Appeal is completely devoid of merit and substance and no worthy questions of law framed for this Court to entertain the Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Court,
Ranipet (Fast Track Court No.2, Ranipet).

2.District Munsif, Ranipet, Vellore District.

S.A.No.1136 of 2008

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