

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2010

PRONOUNCED ON: 24.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A.No.1026 of 2007
& MP.No.1 of 2007

1.Saroja Bashyam
2.Krishnan

... Appellants/Respondents/Plaintiffs

Vs.

Vridhachalam Municipality,
rep. by its Commissioner ... Respondent/Appellant/Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.11.2005 passed in A.S.No.70 of 2005 on the file of the Principal Sub Judge, Vridachalam reversing the judgment and decree dated 30.07.2004 passed in O.S.No.335 of 2004 (Sub Court O.S.No.310 of 2000) on the file of the learned First Additional District Munsif, Vridhachalam.

For Appellants : Mr.S.Udaya Kumar
For Respondent : Mr.P.Jagadeesan

JUDGMENT

This Second Appeal has been filed against the Judgment and decree dated 29.11.2005 passed in A.S.No.70 of 2005 on the file of the Principal Sub Judge, Vridachalam reversing the judgment and decree dated 30.07.2004 passed in O.S.No.335 of 2004 on the file of the learned First Additional District Munsif, Vridhachalam.

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

The appellants herein are the plaintiffs and the respondent herein is the defendant before the trial Court. The plaintiffs approached the trial Court in O.S.No.335 of 2004, for declaration that they were entitled to ingress and egress to the first item of the suit property from the second item of the suit property and for consequential injunction restraining the respondent Municipality from constructing the building over the second item of the suit property and also for mandatory injunction removing the construction put put by the respondent/defendant.

3. The trial Court after hearing the parties and after advertng to the various materials and evidence placed on record, has found that although there was a construction of toilet in the subject property, during the pendency of trial, the toilet was demolished and accordingly, held that the declaration as sought for in the suit, did not survive for consideration at the time of disposal of suit proceedings, and the toilet which was constructed obstructing the plaintiffs' to ingress and egress to the first item of the suit schedule mentioned property was demolished on 18.08.2000. As regards the relief of mandatory injunction sought for by the plaintiffs is concerned, since the construction had already been removed, the question of granting mandatory injunction did not arise, concluded by the trial Court. Therefore, answering the Issues in favour of the plaintiffs in respect of the relief of declaration, the trial Court decreed the suit on 30.07.2004. As against that, an appeal was preferred by the respondent Municipality in A.S.No.70 of 2005 on the file of learned Principal Subordinate Judge, Vridhachalam.

4. The lower Appellate Court, has allowed the appeal in favour of the defendant/respondent on the ground that the construction of the toilet was in the public interest and therefore, the plaintiffs had no right to challenge the same and accordingly, reversed the findings of the trial Court. As against that, the present Second Appeal has been preferred by the plaintiffs.

5. When the Second Appeal was taken up for final consideration by this Court, Mr.S.Udaya Kumar, learned counsel appearing for the appellants/plaintiffs would submit that already the only construction which was put up in the second item of the suit schedule property obstructing the plaintiffs/appellants' ingress and egress to the first item of the suit schedule property was removed even during pendency of the suit before the trial Court and in that consideration of facts, the trial Court answered the issue in favour of the appellants/plaintiffs. Unfortunately, the lower Appellate Court which considered the appeal, did not appreciate the fact that the toilet construction was removed and still the lower Appellate Court reversed the findings. Therefore, the learned counsel would submit that the lower Appellate Court has completely erred in reversing the findings of the trial Court.

6. On behalf of the respondent Municipality Mr.P.Jagadeesan, learned counsel appeared and as regards the submission of the removal of toilet construction has not been disputed by the learned counsel. Therefore, the fact of the matter as on date that there is no construction obstructing the pathway to the first item of the suit schedule property but unfortunately, the lower Appellate Court has not taken into consideration the said crucial factor before deciding the appeal.

7. Once the only obstruction namely the toilet construction has been demolished as early as during the pendency of the suit proceedings, there was no scope for the lower Appellate Court to reverse the findings of the trial Court. Even as on date, it is represented that there is no other construction put up in the second item of the suit schedule property, which means, as on date the plaintiffs/appellants have free access i.e., ingress and egress to the first item of suit schedule property belonging to them, in which event, no issue is surviving for consideration in this Second Appeal.

8. In the above said circumstances, the Second Appeal is closed recording the fact that the only construction which was the subject matter of dispute between the parties namely, the toilet has been factually demolished and removed. Therefore, the issues are no more surviving for consideration. Hence, the Second Appeal is closed. It is also made clear that in case, should there be any future development affecting the rights of the parties, it is always open to the parties to work out their remedy in the manner known to law. Both parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sub Judge, Vridachalam
- 2.The First Additional District Munsif, Vridhachalam.

Copy to:

- 1.The Section Officer, V.R.Section,
High Court, Madras.

- 2.The Commissioner,(for Information)
Vridhachalam,

+1 cc to Mr.S.Udayakumar,advocate,sr5122.

Rsk(co)
krd 25/6

S.A.No.1026 of 2007