

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.586 of 2007
and M.P.No.1 of 2007

Last Grade Government Servant's
Co-operative House Building Society
rep.by its Special Officer,
having office at No.6-A, First Street,
Gandhi Nagar, Opposite to Collectorate,
Kancheepuram. ...Respondent/ Defendant

Vs.

1.D.Shanmugam
2.J.Dhakshinamoorthy
3.K.Sampath
4.T. Venkatesan
5.R.Pughazhendi
6.S.Palani
7.N. Mani
8.R. Ramamoorthy
9.K. Kumaresan

...Respondents/Appellants/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 15.11.2006 made in A.S.No.9 of 2006 on the file of the Court of Subordinate Judge, Kancheepuram, reversing the Judgment and Decree dated 05.10.2005 made in O.S.No.8 of 1999 on the file of the Court of the Additional District Munsif, Kancheepuram.

For Appellant : Mr.P. Anbarasan

For Respondents : Mr.V. Chandrakanthan
for R1 to R4 and 7 to 9

No appearance for R5

R6 - abated

JUDGMENT

The unsuccessful defendant before the Appellate Court is the appellant before this Court. The Second Appeal is filed challenging the Judgment and Decree of the learned Subordinate Judge, Kancheepuram, in A.S.No.9 of 2006 in and by which the learned Judge reversed the Judgment and Decree of the learned Additional District Munsif, Kancheepuram in O.S.No.8 of 1999.

2.The facts in brief which are necessary for disposal of the above appeal are as follows:

The respondents/plaintiffs herein had filed a suit for bare injunction restraining the appellant Society from selling or converting the ABCD Plaint plan schedule open space as Plots and thereby preventing ingress and egress to the respondents/plaintiffs' properties. It is the case of the respondent that the properties have been assigned to the Government. In the year 1981, the defendants had formed a layout of house sites each measuring three cents. The respondents had also constructed houses in the said lands. They would contend that they are residing at 3rd Street, Gandhi Nagar, Kancheepuram and the 3rd Street runs East - West and opposite to the plaintiffs houses on the Northern Side. Some of the members of the appellant Society had formed themselves into a House Building Society in the year 1997 and promoted a layout and 80 plots were approved by the Deputy Director of Town Planning Chennai and Chengalpattu as per the Layout No.13/72. As per the layout Plan, 30 feet road and certain portion is to be kept vacant for playground, school building, shops and open space, etc.

3.The respondents/plaintiffs herein would submit that 80 plots were sold to the members of the appellant Society and they have also occupied their respective plots. The plaintiffs were residing to the South of the layout promoted by the appellant Society. The respondents would submit that to reach their house from the 30 feet road, they have to cross the open space which is the subject matter of the suit. The respondents would further submit that they came to learn that the appellant Society was planning to form a layout of house sites to sell it and it would cause inconvenience to the respondents as they will not have any access to the said property. Therefore, left with no other alternative they have filed the suit for bare injunction.

4.The appellant Society had filed a detailed Written Statement in which they would contend that the respondents have no right or title to the property in question and that the appellant Society had also obtained necessary permission from

the Authorities for plotting out the suit properties into house sites. They would further state that even in the approved layout the Southern side extreme end of property purchased by the Society is provided as an open space in which the property was plotted out by the appellant Society. Thereafter, the appellant had made necessary applications to convert the open space into the house sites and the said permission has been granted. The respondents had no rights and they are now trying to claim rights over the property in the guise of the suit for injunction. Therefore, the appellant Society has submitted that the suit is liable to be dismissed.

5. Further, the respondents herein have to look out the remedy in their place and not in the suit property which belongs to the appellant Society. The respondents/plaintiffs can reach the property through the space available near the Superintendent of Police Quarters. Further, the suit is bad for non-joinder of necessary parties. The appellant would further contend that the suit property has been surveyed and only thereafter, permission for conversion and plotting out has been granted by the Authorities.

6. The learned Additional District Munsif, Kancheepuram, by its order dated 05.10.2020 in O.S.No.8 of 1999 was pleased to dismiss the suit filed for injunction. The learned District Munsif had observed that the respondents had another access to reach the property and the open space was being used only for the ease of enjoyment and not by way of necessity. The Commissioner who has visited the properties as well as PW1 during the cross examination clearly admitted that the plaintiffs/respondents herein had the access from Vandavasi Main Road directly into the property and therefore, the respondents cannot prevent the appellant Society from plotting out the property and selling it, especially, when they have obtained necessary permission from the Authorities concerned.

7. Challenging the said Judgment and Decree, the respondent herein filed A.S.No.9 of 2006 on the file of the learned Subordinate Judge, Kancheepuram. The learned Judge has taken note of the fact that the plaintiffs cannot claim the right on the ground of necessity the right of way of the suit properties since they have an other access. However, the learned Judge had decreed the suit on the ground that the properties in question had been reserved for open space and cannot be converted into house sites. Ultimately, the Judgment and Decree of the learned District Munsif was reversed and the Appeal Suit was allowed. Challenging the said Judgment and Decree, the appellant Society is before this Court.

8. In the above Appeal, notice has been ordered. The Substantial Questions of Law arise for consideration in the Second Appeal are (1) Whether the plaintiffs are entitled to an easement of necessity over the suit property? (b) Whether the Lower Court is correct in Law holding that the open space cannot be converted, especially, when the appellant Society had already got necessary orders for converting the open space into the house sites?.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the material on record.

10. A perusal of the records and the Judgment would clearly indicate that the open space is a part of the approved layout of the appellant Society. Thereafter, they have sought permission of the Authorities to convert the open space. The trial Court had considered the Advocate Commissioner's Report which shows that the plaintiffs had sufficient space in the front of their respective houses and this is the access to their property, apart from the access from Vandavasi main road. The trial Court had rightly held that the plaintiffs/respondents herein have not established the easement of necessity to the said lands and further, it is not their case for enjoyment of the same for over 20 years. Considering the fact that the plaintiffs had not sought for declaration that they are entitled to the suit properties and the same has to be maintained as an open space but simply asked for bare injunction, the suit is liable to be dismissed. The Substantial Questions of Law are answered as against the plaintiffs.

Hence, this Second Appeal is allowed. The Judgment and Decree of the Lower Appellate Court is set aside and the Judgment and Decree of the learned Additional District Munsif, Kancheepuram is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Kancheepuram.

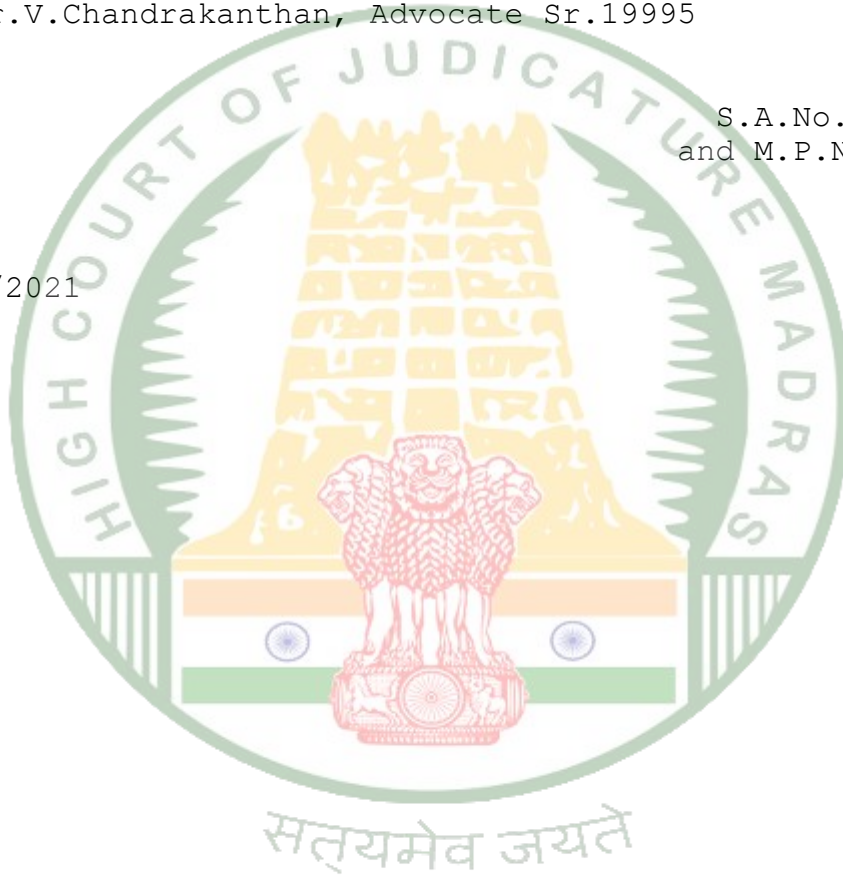
2.The Additional District Munsif,
Kancheepuram.

+lcc to Mr.P.Anbarasan, Advocate Sr.19592

+lcc to Mr.V.Chandrakanthan, Advocate Sr.19995

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