



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2020

Pronounced on: 20.11.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.1449 of 2010
and
M.P.No.1 of 2010

M.Rajeswari (Deceased)
M.Neminathan

.. Appellant/2nd plaintiff

/versus/

1.Idhayathullah
2.Muthuramalingam
3.Ganapathy

..Respondents 1 to 3 /
Plaintiffs 3 to 5

4.The Corporation of Chennai
Rep.by its Commissioner,
Rippon Buildings,
Chennai 600 003.

5.S.Rajagopal
6.R.Mani

..Respondents 4 to 6/
Defendants 1 to 3

7.D.Mangayakarasi
8.M.Janarthanan
9.S.Suryabai

..Respondents 7 to 9/Third parties/
Appellants 3 to 5

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 28.10.2009 made in A.S.No.321 of 2005 by the Hon'ble Judge, Fast Track Court IV, Chennai confirming the judgement and decree dated 15.10.2004 of the XI Assistant City Civil Judge, Chennai in O.S.No.2859 of 1998.

For Appellants : Mr.K.Ashok Kumar

For Respondents: Mr.Abishek Jenasenan for
Mr.Jenasenan for R6
R4-No appearance
R1,R2,R3,R5,R7 to R9-Exparte



JUDGMENT

(The case has been heard through video conference)

This Second Appeal is preferred by the plaintiffs against the concurrent finding of the Courts below.

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2.The case of the appellant as pleaded in his plaint is as under:-

The suit mentioned property ad-measuring 1160 sqft on the west of Velacherry Main Road, Chennai was part of a larger extent of land measuring 1 acre 35 cents comprised in survey No.236 in Velacherry Village. One Mr. Azhagusinga Mudaliar the father-in-law of the first plaintiff purchased this property from one Vengatasubba Iyer under a sale deed dated 06/09/1910. His two sons Padmanaba Mudaliar and Madhava Mudaliar inherited the property from Azhagusinga Mudaliar.

3.Padmanaba Mudaliar remained bachelor and bequeathed his half share to his brother Madhava Mudaliar. On the death of Madhava Mudaliar in the year 1962, the entire extent of 1 acre 35 cents of land inherited by his wife, two sons and two daughters. The daughters of Madhava Mudaliar released their right in favour the plaintiffs 1 and 2. In the suit portion, three shops were constructed by plaintiffs 1 and 2. One shop is let out to the 3rd plaintiff, one shop to the 4th and 5th plaintiff. The third shop is let out to the second defendant. The property is duly assessed to tax and provided with electricity and water connection.

4.In the year 1992, the second defendant stopped paying rent denying the title of plaintiffs 1 and 2. Hence, eviction proceedings before Rent Control Tribunal in R.C.O.P.No.3399/1992 on the file of XIII Small Causes Court, Chennai and a suit for permanent injunction to restrain the second defendant (Rajagopal) from demolishing and reconstructing the superstructure let out to him was filed by the first plaintiff in O.S.No.6254/1992 on the file of VII Assistant Judge, City Civil Court, Chennai.

5.The suit culminated in favour of the first plaintiff in A.S.No.88 of 1994 dated 14/12/1994 upholding the title of the first plaintiff. Under the said circumstances alleging the plaintiffs have encroached upon the road, the Officials of the first defendant had pasted three notices all dated 02/04/1998 addressed to plaintiffs 1 to 3 respectively to remove the encroachment within 7 days failing which the first defendant will forcible remove the encroachment. The said notice is allegedly issued under Section 222 of the Madras City Municipal Corporation Act, 1919 (in short "MCMC Act").

6.The said notice is legally untenable. Without giving an



opportunity to the owner/occupier against the provision of law under Section 222(2) of the MCMC Act which envisages affording opportunity to the owner/occupier and against the principle of natural justice, the impugned notices had been pasted at the instigation of the 3rd defendant/the owner of the property adjacent to the suit property. He had given a false representation to the first defendant with intention to gain access to Velacherry Main Road from west and use the suit schedule property as parking space.

7.The request through telegram seeking opportunity to explain the suit property is the absolute property of plaintiffs 1 and 2, not heeded by the first defendant. The first defendant and its officials without affording opportunity frequenting the suit premises and threatening demolition of the superstructure. Hence, the suit to declare the impugned notice dated 02/04/1998 issued by the first defendant as illegal, null and void and consequently permanent injunction restraining the first defendant and his officials from resorting to any demolition, dispossession or removal of effects and belongings.

8.Gist of the written statement filed by the first defendant:

The averments and allegations set out in the plaint are denied. The suit land belongs to the Corporation of Chennai and it is a public road as per the approved layout vide, 103/1974. The four shops on the suit land are identified as encroachment in the public road. The impugned notice is issued since the portion of the public road as per the approved plan has been encroached by plaintiffs 1 to 3. The notice is issued under Section 222 of the MCMC Act, pursuant to the order passed by the High Court in W.M.P.No.23885/1997 in W.P.No.14939/1997. The action has been initiated to ensure free flow of traffic to the public. The impugned notice is legal and in accordance with the provisions of law.

9.Gist of the written statement filed by the second defendant:

This defendant admits the title of the plaintiffs in respect of the suit property. However, claims that the super structure in his possession was put up by him. In the portion of the land in his possession he is running a Tea stall under the name and style " Thevar Tea Stall". The electricity service connection to the shop is in his name. The tax is assessed in his name. When the first defendant caused notice dated 02/04/1998 to him under Section 222 of MCMC Act, he challenged the notice in W.P.No.5412/1998. In the said writ petition the High Court directed the first defendant to afford opportunity causing notice before passing any order of eviction. The first and second plaintiffs are the paramount title holder but the first



defendant after notice for personal hearing on 21/09/1998 issued notice under section 222 of MCMC Act on 06/10/1998. He has challenged the said notice before the City Civil Court in O.S.No.6954/1998. Despite pendency of suit challenging the eviction notice and order of interim injunction, the first defendant with the help of local police and 20 Corporation Servants came to the suit premises on 20/10/1998 and demolished his Tea Stall lying on the north of the suit property, the first of the three shops. The relief sought in this suit already granted by the High Court in W.P.No.5412/1998. Therefore, the suit as far as the second defendant is concerned has become infructuous. Hence, the suit has to be dismissed against him.

10. Gist of the written statement filed by the third defendant:

The first defendant is the absolute owner of the suit property. The plaintiffs 1,2 and the 2nd defendant are encroachers of the corporation land earmarked for the purpose of road. The litigation between the intra parties encroachers without impleading the first defendant the true owner of the suit land will not bind this defendant. Being encroachers on the public road, the plaintiffs are bound to be evicted. They cannot claim adverse possession over the Government land. The suit is false , baseless and vexation and hence, it is liable to be dismissed.

11. Based on the pleadings the trial Court framed the following issues:-

1. Whether the impugned notice dated 02.04.1998 issued by the 1st defendant and its subordinate officers is to be declared as illegal and void?

2. Whether the plaintiffs are entitled for relief of permanent injunction as prayed for?

3. Any other relief?

12. On the side of the plaintiffs one witness was examined. 24 exhibits marked. On the side of the first defendant two witnesses were examined and 10 exhibits were marked.

13. The trial Court, considering the approved lay out plan marked as Ex.B-1 held that the suit property is reserved for road and it should be reserved as road for ever and cannot be encroached. Relying upon the judgment of this Court in Villupuram Municipality -vs- M.Subramanian reported in [2002 (3) MLJ 375], held that once the lay out is sanctioned, the owner loses his individual right over the portion earmarked for common use. The contention of the plaintiffs Counsel that the suit portion was not specifically mentioned as road and they still retain the ownership over the suit land was negative by the trial Court. The trial Court after scrutinising the lay out had



observed that even though the suit portion is not specifically mentioned as road or left for road purpose and left as open space, the promoter of the layout cannot claim right over this portion since the plot owners will not have access to the Velacherry main road, if it is retained by the promoter of the layout.

14.The trial Court referring the judgment of the Hon'ble Supreme Court rendered in Pt.Chetram Vahit (dead) by his LRs - vs- Municipal Corporation of Delhi [1995 (1) SCC 47], held that the space reserved for public purpose in the layout plan is to be held by the legal owner for the benefit of the society or the public in general. The legal owner, who holds the land earmarked for common purpose cannot claim adverse possession. For the contention raised by the plaintiffs counsel that the suit land was never transferred to the first defendant, the trial Court referring the decision of the High Court Madras in Gopalakrishnan -vs- Special Officer, Corporation of Tiruchy reported in 1996 Writ Law Reporter 185 held that even if the title is not transferred to the first defendant, the first defendant as a manager of the land, which is subject matter of the layout, is to see the conditions imposed in the layout and shall take appropriate action in case of violation. The impugned notice under Section 222 of MCMC Act is in consonance to the statute and hence, no illegality in it.

15.The aggrieved first and second plaintiffs went on appeal before the first appellate Court. The first appellate Court confirmed the judgment and decree of the trial Court. The first appellate Court ,while confirming the trial Court judgment concluded its judgment stating that, the suit property shown as 20 ft width running North to South, vacant place in the middle of the the said plan, 20 feet area running East to West shown as Road. In fact, for the plots numbers given has 1 to 10. On the West of plot No.1 and 10 in the plan, there is no mentioning as road. The appellants claim the 20 feet width stretch running East to West is the access road to the plot owners 1 to 10 and the 20 feet stretch running parallel to the Vellacheri North to South is exclusive and absolute property owned by the appellants. There cannot be two different stand in respect of the 20 feet width stretch running East to West and North to South. Once the area earmarked for road it has to be kept as road and cannot be altered either by the original owner or by the plot owners adjacent to the road.

16.In the second appeal, the learned counsel for the appellants submitted that the Courts below completely misread the judgments of the Hon'ble Supreme Court and the High Court referred as precedent. The first appellate Court failed to adverse inference from the failure of the first defendant



Chennai Corporation not producing the larger map of the Vellacherry Division inspite of its order to produce in C.M.P.No.74/2005. In the absence of proving the exact width of Vellacherry main road and in view of specific description of the western boundary of the plot No.1 as land of the vendor (plaintiffs), the Court below felt in error in appreciating the evidence properly. It was also contended that the first appellate Court failed to formulate the point for consideration properly and missed to note that the suit property is in fact now used by the 3rd defendant the adjacent plot number 1 and not by the first defendant corporation.

17.The learned counsel appearing for the 3rd defendant/6th respondent submitted that in the approved lay out, the stretch running North South parallel to the Vellacherry main road is reserved as open space. If it is retained by the promoter of the layout, then the owners of the plots number 1 to 10 will have no access to the Vellacherry Main Road. The plaintiffs being the encroachers of the public road, writ petition was filed to remove the encroachment and the impugned notice was issued pursuant to the High Court direction. The Courts below have rightly appreciated the facts and law and dismissed the suit. There is no substantial question of law involved in this case. Hence the second appeal has to be dismissed.

18.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the 6th respondent. Records perused.

19.The case of plaintiffs 1 and 2 is that the larger extent of property comprising the suit property belongs to their ancestors. In the year they promoted a layout consisting of 10 plots. The layout approval is Ex.A-6. The road for the plots 1 to 10 run East to West. 20 x 58 feet running on North to South falling West of plot numbers 1 and 10 retained by them and not given to the first defendant at any point of time. In that portion, they have constructed 3 shops and let out to plaintiffs 3 to 5 and defendant 2. The first defendant without any right had issued the eviction notice under Section 222 of MCMC Act.

20.The perusal of the lay out, the only access to the Vellacherry Main Road from the plots 1 to 10 is the suit property which runs North to South parallel to the Vellacherry Main Road. The road running East to West shown as Road in the layout is the entry access to the respective plots. The first defendant had issued the impugned notice after the High Court order to remove the encroachment. From the written statement of the 2nd defendant, it could be seen that he had approached the High Court challenging notice, which is impugned in this suit



and pursuant to the High Court order, he was heard and the space encroached by him removed. As held by the Courts below, the land shown as open space in the layout plan cannot be converted or used for any other purpose but for the purpose for which it was earmarked. This legal proposition is settled long back by the Hon'ble Supreme Court in Bangalore Medical Trust vs B.S. Muddappa And Ors reported in 1991 AIR 1902.

21. Whether the open space earmarked in the layout settled to the Corporation or not, the space is meant for general public for usage as open space. Neither the owner of the adjacent plot or the promoter can claim right over it. If any superstructure put up in the said open space, it is bound to be removed. Who ever in occupation of the said space in what ever manner, they are only encroachers. The lower appellate Court has rightly held that none can encroach the public space. From the layout plan Ex.A-6, it is clear as crystal that without passing through the suit land, the plot owners cannot reach the Vellacherry Main Road. The promoters after getting plan approval earmarking the suit land as open space, cannot alter the physical feature of the open space by putting super structure and let it out to the third parties. Since the suit property runs parallel to Velacherry Main Road, the open space will be any time required for expansion of the road. Therefore, as held by the lower appellate Court, none, can encroach the suit property which is deemed to vest with the first defendant/ 4th respondent - The Corporation of Chennai.

22. Therefore this Court holds that the dismissal of the suit by the trial Court and confirmation of the same by the first appellate Court does not carry any infirmity either on law or on facts. Hence, there is no substantial question of law involved in this case for the High Court to exercise its jurisdiction under Section 100 of CPC and interfere with the concurrent finding of the Courts below.

23. As a result, the Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To:-

1.The Additional District and Sessions Judge,
Fast Track Court IV, Chennai.

2.The XI Assistant City Civil Court, Chennai.

3.The Section Officer,
V.R.Section, High Court, Madras.

+2cc to Mr.K.Ashok Kumar, Advocate, S.R.No.37442

+2cc to Mr.A.Jenasenan, Advocate, S.R.No.37424

S.A.No.1449 of 2010
and
M.P.No.1 of 2010

CNR(CO)
CB(24/08/2021)