

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.153 of 2020 and
CMP No.3340 of 2020

1. T.Sundarambal
2. T.Harikrishnan

..Appellants/Plaintiffs

Vs.

Vadalur Town Panchayat,
Represented by Executive Officer,
Having office at
Office premises of town panchayat
Vadalur, Kurinjipadi Taluk,
Cuddalore District.

.. Respondent/ Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned 1st Additional Sub Judge, Cuddalore dated 28.08.2019 in A.S.No.20 of 2017, confirming the judgment and decree of the Principal District Munsif's Court, Cuddalore dated 06.02.2017 in O.S.No.63 of 2015.

For Appellants : Mrs.R.Meenal

J U D G M E N T

The plaintiffs in O.S.No.63 of 2015 are the appellants. The said suit was filed by the plaintiffs seeking a peculiar prayer, to grant a decree for mandatory injunction, against the defendant from cancelling the permission granted to the plaintiffs on 01.10.2014 and for permanent injunction restraining the defendant and its men from causing obstruction to the plaintiffs from putting up construction of a terraced house in the suit property. The suit was impelled by a notice issued by the Municipality.

2. A Show Cause notice was issued by the Town Panchayat, requiring the plaintiffs to show cause as to why the planning permission granted to them should not be cancelled in view of the fact that the land that has been purchased by them forms a part of the area which is classified as a Park in the original lay out sanctioned by the Town Panchayat. After the receipt of such notice, after submission of the explanation, the plaintiffs

have come up with the suit, without waiting for the defendant to decide on the issue.

3. It is the claim of the plaintiffs that they have purchased an extent of about 4,000 Sq.ft of land in Survey Nos.142/10, 142/10B on 24.02.1997 for proper and valid consideration. It is also claimed that the Patta was granted to them in Patta Number 534. The plaintiffs are regularly paying the house tax for the thatched house put up by them. They had also obtained water connection and electricity service connection. They have been in enjoyment of the suit property since 1997.

4. It is also stated that one Sundaramurthy and others filed a suit in O.S.No.204 of 1997 against the plaintiffs and one Suddha Sanmarga Nilayam, Vadalur for the relief of declaration that the suit property has been classified as a park. However, the said suit was allowed to be dismissed for default by the plaintiffs therein. It is also claimed that the plaintiffs have sold an extent of about 1,000 Sq.ft to one Pazhani Ammal in the year 1997 itself. The said Pazhani Ammal in turn sold the property to another person and later one Faritha Banu, the purchaser had put up a construction after obtaining the planning permission. On the above contentions, the plaintiffs sought for the above said relief.

5. The suit was resisted by the defendant by contending that the suit property is situated in the land in Survey No.389 of Vadalur Village. Suddha Sanmarga Nilayam, Vadalur formed a layout in the land Survey Nos.389/5 and 399/B2C as per the approval granted by the Town Planning Authority, Salem and in the said lay out, land in Survey No. 389/5 was earmarked for children's play area and park. The plan approved by the Town Planning Authority specifically shows that S.No.389/5 is Children's Play area. The layout plan was approved only on the basis of earmarking 10% of the total area of the layout for children's play area which is about 15740 Sq.ft. The approval was given in the year 1981. Thereafter, the plots were sold to various persons and the area set apart for children's play ground remain unoccupied. However, the plaintiffs claimed that they purchased the land in the year 1997 and obtained approval for construction. After granting approval, it was found that the property is set apart for children play ground and it vested in the Town Panchayat. Therefore, the Panchayat issued a notice to cancel the planning permission granted to the plaintiffs. Hence, the plaintiffs have come forward with the suit seeking the relief of mandatory injunction and permanent injunction.

6. The defendant would further contend that in view of the fact that the property is classified as a children's play area, it vests with the Municipality and therefore the Sale Deed in favour of the plaintiffs even if true, would not confer any title on them.

7. At trial, the 2nd plaintiff was examined as PW1 and Exs.A1 to A24 were marked. One Saravanavel, Junior Assistant of the defendant Town Panchayat was examined as DW1 and Exs.B1 to B5 were marked.

8. The trial Court upon consideration of the evidence on record concluded that the property in question was a Children's Play area and as per the provisions of the Tamil Nadu Town and Country Planning Act, the same vests in the local authority namely the Town Panchayat / defendant. Therefore, the plaintiffs cannot claim any right over the property on the basis of their purchase. On the said finding, the trial Court concluded that the plaintiffs are not entitled to the relief as sought for. The trial Court also recorded the fact that the counsel for the plaintiff before the trial Court conceded that the suit property was classified as Children's Play area. On the said conclusion, the trial Court dismissed the suit. Aggrieved, the plaintiffs preferred an appeal in A.S.No.20 of 2017.

9. On a reappreciation of evidence on record, the lower appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Aggrieved, the plaintiffs have come forward with the second appeal.

10. I have heard Mrs.R.Meenal, learned counsel appearing for the appellants.

11. Mrs.R.Meenal, learned counsel for the appellants would vehemently contend that though the lay out was formed in 1981, till 1997, there was no development carried out in the area which is reserved for children's play area. It is further contended that the original lay out plan was not produced by the Town Panchayat. Therefore, the Courts below were not right in concluding that the land in question actually forms a part of the land that set apart for children's play area in the lay out plan. The

learned counsel would further contend that the very fact that the plaintiffs were in possession ever since the date of purchase and the patta has also been issued to them would show that this land did not form a part of children's play area as found in the original lay out.

12. I am unable to accept the contentions of the learned counsel for the appellants. In fact, the counsel for the plaintiff/appellant herein has conceded before the trial Court that the suit property was infact classified as children's play area in the lay out plan. Once such concession has been made by the counsel for the plaintiffs, they cannot contend that the defendant has not proved that the land in question did form a part of Children's Play area as per the original lay-out. The law relating to reservation of land for public purposes while forming a lay out viz., the provisions of Tamil Nadu Town Country Planning Act makes it clear that every person who develops land into a lay out should reserve atleast 10 % of the area as open space for park or play field. Once such reservation is made, the property vests in the local authority concerned and it becomes the property of the local authority. There cannot be any construction put up in such area reserved for public purpose namely park and children play ground.

13. This Court as well as the Hon'ble Supreme Court have repeatedly reiterated that such open spaces are reserved for public purpose and there cannot be any construction in those places. The trial Court has referred several judgments of this Court as well as the Hon'ble Supreme Court with regard to the land reserved for public purposes particularly the park and children's play field .

14. In the light of the law declared by the Hon'ble Supreme Court regarding the construction in the area, which is reserved for public purposes, I do not see any error in the findings of the Courts below. The suit filed by the plaintiffs in which they seek an indirect prohibitory injunction restraining the local authority from preventing the plaintiffs from putting up construction in the area which is classified as Children's Play ground is not maintainable.

15. I therefore do not see any question of law much less substantial question of law, to enable me to entertain this second appeal. The appeal fails and it is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional Sub Judge,
Cuddalore.

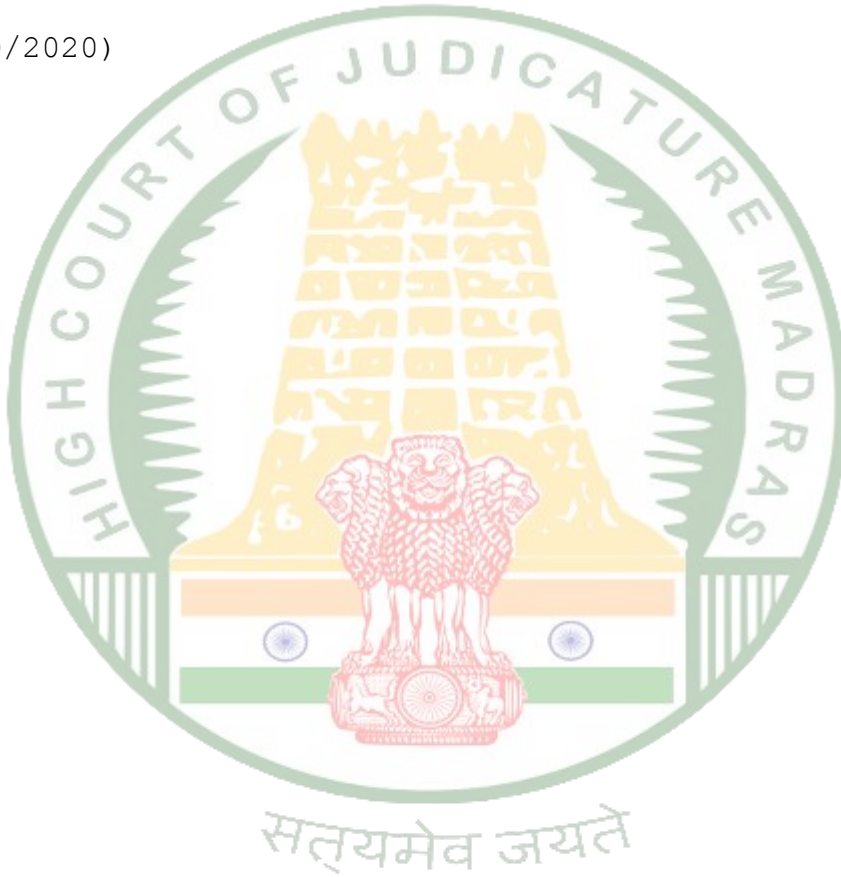
2. The Principal District Munsif's Court,
Cuddalore

+lcc to M/s.R.Meenal , Advocate SR.No. 20012

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A.SK(02/09/2020)



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