

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2020

PRONOUNCED ON : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.494 of 2011

and

M.P.No.1 of 2011

Ayyanar
S/o. Chinnathambi

Appellant

Vs.

Santhi
W/o. Selvam

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 19.11.2010 made in A.S.No.53 of 2010 on the file of the Principal District Court, Villupuram District, Villupuram confirming the Judgment and Decree dated 30.03.2010 made in O.S.No.61 of 2009 on the file of the Principal Subordinate Judge's Court, Villupuram.

For Appellant : Mr.R.Venkata Subban
for M/s. Sarvabhauman Associates

For Respondent : Mr. P.Gunaraj

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 19.11.2010, passed in A.S.No.53 of 2010, on the file of the Principal District Court, Villupuram, confirming the Judgment and Decree dated 30.03.2010, passed in O.S.No.61 of 2009, on the file of the Principal Subordinate Court, Villupuram.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for compensation.

4. Briefly stated, according to the case of the plaintiff, the plaintiff has laid a suit against the defendant in O.S.No.349 of 2003, on the file of the Ist Additional District Munsif Court, Thirukovilur, for declaration and other reliefs and the Court in the abovesaid suit had upheld the title of the plaintiff in respect of the suit property but without granting the other reliefs prayed for by her and further held that the plaintiff is entitled only to the market value of the suit property as on date of the suit from the defendant as compensation and

despite the abovesaid decree passed in O.S.No. 349 of 2003, the defendant has not paid the compensation due to the plaintiff and on the other hand, enjoying the suit property unlawfully without complying with the directions passed in O.S.No.349 of 2003 and in this connection, the plaintiff has issued a legal notice on 02.05.2006, calling upon the defendant to pay the compensation. The defendant sent a reply containing false allegations and the contention of the defendant that the market value of the suit property is only Rs.20,000/- is false. Hence, according to the plaintiff, she has been necessitated to lay the suit against the defendant for compensation.

5. The defendant resisted the plaintiff's suit contending that eventhough the plaintiff has been granted a decree in O.S.No.349 of 2003 directing the defendant to pay the compensation in respect of the suit property as on date of the suit, the claim of the plaintiff that the value of the suit property during April 2003 at Rs.1,34,400/- is false and the same is arrived at without any basis and the plaintiff herself has purchased the suit property on 26.05.1989 showing the market price at Rs.21,840/- mentioning the sale price at Rs.7,000/- and therefore, the claim of the plaintiff that the suit property is valued at Rs.1,34,400/- is without any basis and furthermore, the plaintiff has valued the suit in O.S. No.349 of 2003 at Rs.22,840/- and contrary to the same, has

enhanced the value of the suit property for claiming unjust compensation. Considering the true value of the suit property, the suit should have been laid by the plaintiff only in the lowest grade Court and hence, the suit laid by the plaintiff before this Court is not maintainable. The plaintiff has not placed any materials evidencing that the suit property is valued at Rs.1,34,400/- and hence, the suit laid by the plaintiff is liable to be dismissed with compensatory costs.

6. In support of the plaintiff's case, PWs 1 to 3 were examined and Exs.A1 to A5 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced in the matter and the submissions made and on an appreciation of the same, the Courts below were pleased to decree the suit in favour of the plaintiff directing the defendant to pay a sum of Rs.1,34,400/- as compensation with interest at 9% per annum from the date of the plaint till the date of decree and thereafter at 6% per annum till the entire amount of compensation is paid. Aggrieved over the same, the present second appeal has been laid by the defendant.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

“Whether the judgment and decree of the Courts below granting compensation in favour of the respondent/plaintiff is based on the proper appreciation of the oral and documentary evidence adduced in the matter and the principles of law governing the grant of compensation”

9. The parties are not at issue that the plaintiff's title to the suit property had been upheld in the suit laid by the plaintiff in O.S.No.349 of 2003, on the file of the Ist Additional District Munsif Court, Thirukovilur. Though the abovesaid suit had been laid against the defendant for declaration, recovery of possession and mandatory injunction alleging that the defendant had unlawfully trespassed into the suit property and put up unlawful structure and thereby denied the title of the plaintiff, in the abovesaid suit, the plaintiff's title to the suit property has been upheld. However, the Court in the abovesaid suit has declined to grant the other reliefs prayed for by the plaintiff, but held that the plaintiff is entitled only to the market value of the suit property as on date of the suit from the defendant as compensation for the same. As against the

judgment and decree passed in O.S. No.349 of 2003, neither the plaintiff nor the defendant has preferred any challenge. It is thus found that the judgment and decree passed in O.S. No.349 of 2003 has become final.

10. In the light of the judgment and decree passed in O.S.No.349 of 2003, it is evident that the defendant is liable to pay the compensation to the plaintiff based on the market value of the suit property as on date of the suit in O.S. No.349 of 2003. Even the defendant's counsel has fairly admitted that he is liable to pay compensation to the plaintiff in respect of the suit property, but, according to the defendant's counsel, the amount of compensation claimed by the plaintiff is on the higher side.

11. Now, according to the plaintiff, the market value of the suit property during April 2003 is Rs.1,34,400/-. The same is seriously disputed by the defendant. It is put forth by the defendant that even the plaintiff herself had valued the suit property at Rs.22,840/- in O.S.No.349 of 2003 and therefore, according to the defendant, the claim of the plaintiff that the market value of the suit property during April 2003 is Rs.1,34,400/- is without any basis or material.

12. The plaintiff, in support of her case, has projected the decree passed in O.S.No.349 of 2003 as Ex.A1. With reference to the same, as above stated, there is no dispute between the parties. The plaintiff has also marked the legal notice and the reply notice send by her and the defendants, which are exhibited as Exs.A2 and A3. The copy of the judgment passed in O.S.No.349 of 2003 has been marked as Ex.A4. The abovesaid documents are not *per se* helpful to decide the issues involved in the matter, particularly, to determine the compensation to which the plaintiff is entitled to as per the decree passed in O.S.No.349 of 2003.

13. Apart from Exs.A1 to A4, the plaintiff has also marked the copy of the sale deed of the property purchased by one Vinoliya ammal from one Sampath in the adjacent area on 26.11.2003, which is exhibited as Ex.A5. From the evidence adduced by the defendant examined as DW1, it is noted that he has clearly admitted that the property of Vinoliya ammal is situated on the western side of his property and therefore, it is noted that the property comprised in Ex.A5 is lying adjacent to the suit property and the market value of the property comprised in Ex.A5 has been shown as Rs.1,06,082/-.

14. The plaintiff would claim that the market value of the suit property at the relevant time is Rs.80 per sq.ft. In this connection, he would place reliance upon the evidence of PW2, who is the Sub-Registrar of Thirukovilur Sub Registrar Office. However, as regards the same, other than the oral assertion of PW2, there is no convincing material pointing to the abovesaid version given by PW2. In this connection, PW2 has not placed any material to hold that during the relevant point of time, the market value of the suit property was Rs.80 per sq.ft. From the contentions put forth by the respective parties, it is evident that the market value of the property is the price which the willing buyer wants to pay to the willing seller and the price agreed to and accepted by them. It is further seen that the guideline value is fixed for the locality and not for any particular survey number. It is thus noted that the market value for a particular survey number is the result of bargain between the parties concerned.

15. Considering the abovesaid factors in toto, particularly, when the plaintiff has placed the copy of the sale deed marked as Ex.A5, evidencing the market value of the adjacent property to the suit property and as above noted, when the defendant has clearly admitted that the property comprised in Ex.A5 is situated on the western side adjacent to the suit property and furthermore, the defendant having also not placed any material to show that the market value of

the suit property as on the date of O.S. No.349 of 2003 is only Rs.22,840/- and considering the date of the sale deed marked as Ex.A5 and the locality of the property comprised in Ex.A5, it is seen that the market value of the suit property can be safely fixed based on the value mentioned in Ex.A5 and accordingly, it is noted that the plaintiff herself has only for that purpose projected Ex.A5 for arriving at the market value of the suit property to receive the compensation to which she is entitled to.

16. As above noted, when there is no valid material placed on the part of the plaintiff to hold that the market value of the suit property was Rs.80/- per sq.ft. particularly, during the relevant point of time, in such view of the matter, the Courts below are found to have erred in holding that the market value of the suit property at the relevant point of time is Rs.1,34,400/-. Considering the available materials on record, particularly, Ex.A5 sale deed and the factum of the property comprised in Ex.A5 lying adjacent to the suit property and considering the contemporaneous period of Ex.A5 with the date of filing of the suit in O.S.No.349 of 2003, in all, it would be expedient in the interest of justice to fix the market value of the suit property at Rs.1,06,082/- with interest as determined by the Courts below. The substantial question of law formulated in the second appeal is accordingly answered.

17. In the light of the abovesaid discussions, the Judgment and Decree dated 30.03.2010, passed in O.S.No.61 of 2009, on the file of the Principal Subordinate Court, Villupuram as affirmed in A.S.No.53 of 2010, dated 19.11.2010, on the file of the Principal District Court, Villupuram directing the defendant to pay a sum of Rs.1,34,400/- to the plaintiff as compensation are modified and instead, there shall be a decree in favour of the plaintiff directing the defendant to pay a sum of Rs.1,06,082/- as compensation with interest at 9% per annum from the date of the suit till the date of the decree passed in O.S.No.61 of 2009 and with subsequent interest at 6% per annum till realisation.

18. Accordingly, the second appeal is partly allowed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition is also closed.

17.09.2020

Index : Yes / No

Internet : Yes / No

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To

1. The Principal District Court, Villupuram.

2. The Principal Subordinate Court, Villupuram.

Copy to

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

T.RAVINDRAN, J.

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**Pre-delivery Judgment made
in S.A.No.494 of 2011
and
M.P.No.1 of 2011**

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