

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1287 of 2014  
and MP.No.1 of 2014

- 1.The District Collector,  
Tiruvannamalai District.
- 2.The Divisional Engineer,  
Tamil Nadu Highways Department,  
Tiruvannamalai District.
- 3.The Assistant Divisional Engineer,  
Tamil Nadu Highways Department,  
Polur.
- 4.The Assistant Engineer,  
Tamil Nadu Highways Department,  
Polur, Thiruvannamalai District. .. Appellants/Defendants

Versus

Selvaraj .. Respondent/Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.07.2014 passed by the Subordinate Judge, Arni, Tiruvannamalai District in A.S.No.26 of 2013 confirming the judgment and decree dated 26.09.2012 passed by the learned District Munsif Court, Polur in O.S.No.434 of 2005.

For Appellants : Mr.Aravind Gosh, G.A.

For Respondent : Mrs.D.Chitra Maragatham

JUDGMENT

This appeal is directed against the judgment and decree of the Sub Judge, Arni, Tiruvannamalai District made in A.S.No.26 of 2013 confirming the judgment and decree passed in O.S.No.434 of 2005 by the District Munsif, Polur.

2. The suit in O.S.No.434 of 2005 was filed by the respondent herein for permanent injunction restraining the defendants, their men, subordinates in any manner interfering

with the plaintiff's peaceful possession and enjoyment of the suit property on the premises that the suit schedule property is the absolute property belongs to him by virtue of registered sale deed dated 27.11.2000. In pursuance of the same, he put up construction and residing therein and also carrying on business. An electricity service connection was obtained in S.C.Nos.1342 and 1257 and he has been paying property tax to the Village Panchayat. The grievance of the plaintiff is that the defendants 3 and 4 along with the Revenue Officials measured the suit property, notwithstanding the resistance of the plaintiff and attempted to demolish the building.

3. In the written statement filed by the defendants, the averments contained in the plaint were denied and disputed. It is stated that the Highways Department measured N.C.Veeralur Road with the help of Revenue Officials to remove the encroachment. Accordingly, the entire Highways Road was measured and encroachments were marked. The Highways Department has taken steps to remove the encroachment in accordance with law and hence, prayed for dismissal of the suit.

4. On the basis of the the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiff, PW1 was examined and Exs.A1 to A7 were marked and on the side of the Defendants, DW1 was examined and Exs.B1 to B3 were produced. The Court's Witness was examined as CW1 and through him Exs.C1 and C2 were marked. After considering the evidence adduced by the parties, the Trial Court decreed the suit and the finding of the Trial Court was confirmed by the Appellate Court in A.S.No.26 of 2013. Assailing the concurrent findings, the present appeal has been filed.

5. It is the submission of Mr.Aravind Gosh, learned Government Advocate that though the Courts below have found that the respondent / plaintiff has encroached the Highways Property in Survey No.175, but granted order against the appellants / defendants on the sole ground that the defendants failed to establish the exact encroachment made by the respondent herein. He further added that the Courts below have wrongly placed burden of proof on the appellants / defendants. Moreover, in view of Section 14 of the Land Encroachment Act, the suit itself is not maintainable. Hence, the judgment and decree are liable to be dismissed.

6. Per contra, Mrs.D.Chitra Maragatham, learned counsel for the respondent made submissions in support of the findings of the Courts below.

7. In the case on hand, it is the case of the plaintiff that he became the absolute owner of the property through a registered sale deed dated 27.11.2000 measuring an extent of 900 sq.ft. in Survey No.144/A1 at Adamangalam Pudur Village, Natham and the defendants have attempted to demolish a portion of the suit property contending that the plaintiff encroached the property in Survey No.175.

8. According to the defendants, about 128 persons, encroached the Highways property in Survey No.175 and after conducting survey, the entire encroachers except the plaintiff and few others, who have filed a suit, have been removed. It is to be seen that the Advocate Commissioner appointed by the Trial Court has filed his report. The report and the plan were marked as Exs.C1 and Ex.C2.

9. The Advocate Commissioner gave evidence as CW1 and deposed that in the survey conducted by the Town Surveyor there are some discrepancies and the exact encroachment made by the plaintiff could not be identified. Referring the evidence of the Advocate Commissioner and his report, the Courts below granted decree of permanent injunction in favour of the plaintiff.

10. In the instant case, it is an admitted fact that encroachments in Survey No.175 had already been removed based on the survey conducted by the Taluk Surveyor. The main grievance of the respondent / plaintiff appears to be that survey by the District Surveyor was not conducted and in his absence the earlier survey was made.

11. In the light of the above facts, this Court is of the opinion that this Second Appeal can be disposed of directing the appellants to conduct fresh survey in the disputed area with the help of the District Surveyor. If any encroachment is found out, it shall be removed forthwith.

12. Accordingly, the Second Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs

To

1.The Subordinate Judge,  
Arni, Tiruvannamalai

2.The District Munsif  
Polur

+1 CC to Mr.C.V. Vijaya Kumar, advocate sr 9674  
+1 CC to The Govt. Pleader sr 9466.

S.A.No.1287 of 2014

VD(CO)  
SP(24/11/2020)



WEB COPY