

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A.No. 266 of 2019

A.V.Radhakrishnan

... Appellant

Vs.

1.The Regional Deputy Commissioner
(Central), Greater Chennai Corporation,
Second Cross Street (East),
Pulla Avenue, Anna Nagar,
Chennai - 600 030.

2.The Executive Engineer
Ward No.X, Corporation of Chennai,
Chennai - 600 024.

3.The Zonal Officer,
Ward No.X, Corporation of Chennai,
Chennai - 600 024.

4.The Tahsildar,
Aminjikai Taluk,
Chennai District.

5.G.Paul Pandian

... Respondents

PRAYER : Appeal filed under Order XXXVI Rule 9 of O.S. rules r/w under Clause 15 of Letters Patent Act against the fair and decretal order dated 27.08.2019 made in Application No.1993 of 2019 in Original Application No.124 of 2019 in C.S.No.117 of 2019.

For Appellant : Mr.K.V.Babu

For Respondent Ms.Karthikaa Ashok for R1 to R3
Mr.Dev Narendran,
: Government Advocate for R4
Mr.Mohan for
Mr. M.Murali for R5

JUDGMENT

(Delivered by M.M.SUNDRESH, J)

The appellant is the plaintiff in the suit. The suit has been filed for declaration and for permanent injunction on the premise that the said pathway/road belongs exclusively to the appellant to be enjoyed in common with only the persons mentioned in the Document No.4743/1981 dated 27.08.1981 and not beyond.

2. The learned Single Judge dismissed the application for interim injunction by taking into consideration the sale deed dated 31.03.1982, in which, the appellant himself is a party. From this document, the fifth respondent traced his right.

3. The learned counsel appearing for the appellant submitted that the learned Single Judge committed an error in dismissing the application for injunction. The learned Single Judge ought to have considered the sale deed dated 27.08.1981 and the fact that the patta stands in the name of the appellant. A subsequent report filed before this Court and the order passed in the Cont.P.No.654 of 2000 ought to have been considered in the correct perspective. Therefore, while setting aside the order passed by the learned Single Judge, there should be an order of injunction.

4. The learned counsel appearing for respondents 1 to 3 submitted that on the action taken by the respondent/Corporation against the very same land, this Court dismissed the writ petition filed by the appellant and, therefore, the principle of res judicata would apply apart from the issue estoppel. The learned Single Judge on fact found that the sale deed, in which the appellant himself was a party, clearly speaks the reference to the common pathway/road. In such view of the matter, no interference is required.

5. We have perused the order passed by the learned Single Judge. The learned Single Judge took into consideration the relevant materials while declining the order of injunction. Therefore, we cannot substitute the same with a contra view in the case on hand. The fact that the appellant was a party to the document dated 31.03.1982 is not in dispute when this document clearly indicates the existence of the common pathway. The respondent Corporation has also initiated action by treating the same as one of public common road. This was put under challenge by the appellant. The following is the finding rendered by the Division Bench in W.P.No.13373 of 2019 dated 08.01.2019. The relevant paragraphs read thus:-

"27. In the said circumstances, the Petitioner cannot claim that the encroached portion is not measured properly. Further on going through the Sale Deed dated 31.03.1982, which was a document included by the First Respondent in favour of one R.Panneerselvam that S.No.141/1 (land in dispute) is a "Common Road". So the particulars of his own document are also against him. Further, a Report submitted by the Revenue Divisional Officer in C.A.No.654 of 2000, he had specifically mentioned that T.S.No.17, Block No.33 of Koyambedu Village is classified as a "Government Poramboke" and it stands registered in the name of the Corporation of Chennai. Further, in the notification dated 12.07.2020 issued by the Highways Department, New Delhi, it was mentioned that the property now claimed by the Petitioner was already classified as "Road".

28. Thereafter, on culling out the details available in the above said documents will clearly prove that the Petitioner is not having any title over S.No.141/1, Koyambedu Village. Apart from that only after affording an opportunity to the Petitioner, the orders were passed by this Court in the various writ petitions. The property now in question was demarcated and the encroached property alone is identified by the Revenue authorities. In the said circumstances, without any relevant document, the Petitioner prayed for the relief of injunction and for quashing the impugned order. The said relief are not substantiated with necessary materials."

6. Though the learned counsel appearing for the appellant seeks to contend that the suit does not pertain to S.No.141/1, we do not think so. If that is the case, the appellant would not

have even filed the writ petition. A finding has been given in the said writ petition about the nature of the land over which the appellant claimed exclusive right which was rejected. Therefore, in the light of the above coupled with the discussion made by the learned Single Judge on the construction of the document dated 31.3.1982, we do not find any reason to reverse the order passed by the learned Single Judge. After all, there is no bar for the appellant to enjoy the suit property as a whole along with the others.

7. Accordingly, the Original Side Appeal stands dismissed. Taking into consideration the facts and the circumstances of the case, we request the learned Single Judge dealing with the suit to expedite the hearing. No costs. Consequently, connected C.M.P.Nos.21976 and 21978 of 2019 are closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

ssm

To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+lcc to Ms.Karthikaa Ashok, Advocate, SR.No.13308.
+lcc to Mr.M.Murali, Advocate, SR.No.14052.
+lcc to SPL. Government Pleader, SR.No.13237.

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O.S.A.No. 266 of 2019

GP (CO)
CSR: 17.03.2020

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