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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED :21.07.2020

DATE ON WHICH PRONOUNCED :12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A(MD)No.468 of 2005

A.Sheik Dawood

... Appellant /Plaintiff

Vs.

1. Executive Officer,
Town Panchayat.
North Valliyoor
Radhapuram Taluk,
Tirunelveli District.

2.Muthaiah Thevar for himself and
on behalf of the people of
North Valliyoor Village.

... Respondents /Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.123 of 2003 dated 10.08.2004 on the file of the 1st Additional Sub Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.139 of 1994, dated 04.11.2003 on the file of the Principal District Munsif Court, Valliyoor.

For Appellants : Mr.S.Meenakshi Sundaram
for Mr.D.Nallathambi

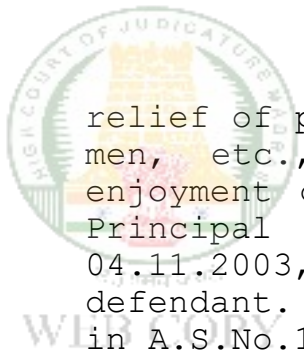
For Respondent : Mr.Ayiram K.Selvakumar
Additional Govt. Pleader for R-1
R-2 dismissed for default
vide court order dated 22.01.2019

JUDGMENT

(Judgment of the Court was made by **P.RAJAMANICKAM, J.**)

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the First Additional Sub Judge, Tirunelveli in A.S.No.123 of 2003 dated 10.08.2004, confirming the judgment and decree passed by the Principal District Munsif, Valliyoor in O.S.No.139 of 1994, dated 04.11.2003.

2.The appellant herein had filed a suit in O.S.No.139 of 1994 on the file of the Principal District Munsif, Valliyoor for the



relief of permanent injunction, restraining the first defendant, his men, etc., from interfering with his peaceful possession and enjoyment of the 2nd schedule of the suit properties. The learned Principal District Munsif, Valliyoor, by the judgment dated 04.11.2003, had dismissed the said suit with costs of the first defendant. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.123 of 2003 on the file of the First Additional Sub Judge, Tirunelveli. The learned First Additional Sub Judge, Tirunelveli, by the judgment dated 10.08.2004, had dismissed the said appeal with costs and thereby, confirmed the judgment and decree passed by the trial court. Feeling aggrieved, the plaintiff had filed the present second appeal.

3.For the sake of convenience, the parties are referred to as described before the trial court.

4.The averments made in the plaint are in brief as follows:-

The plaintiff is conducting a hotel in Valliyoor National Highway in the name and style of 'Hotel Mohideen'. Originally, he was conducting a hotel in the new Bus Stand, which belonged to him by purchase from one Valliyammal through a sale deed dated 25.03.1982. Later, Valliyoor Town Panchayat wanted to construct a Shopping Complex in the bus-stand, so, insisted the plaintiff to vacate the property. The plaintiff refused for the same and filed a suit in O.S.No.1360/1988 on the file of the District Munsif, Valliyoor and obtained an injunction order. Thereafter, a compromise was entered between the plaintiff and the said Town Panchayat in the presence of the Sub-Collector, Cheranmahadevi. As per the said compromise, the plaintiff has to be given the first schedule of the suit properties in lieu of his property. Accordingly, on 02.12.1988, a registered exchange deed was executed. Since there was a mistake in classification of the land in the exchange deed, a rectification deed was executed on 09.02.1984. Thereafter, patta was also granted in favour of the plaintiff in respect of first schedule of the suit properties. The plaintiff constructed a hotel in the suit schedule property after obtaining proper permission by submitting approval of plan. There is an odai in the southern side of the schedule property and the Sub Collector, Cheranmahadevi granted permission to the plaintiff to use the Odai poromboke land i.e 2nd schedule of the suit properties, because the plaintiff was given a small portion of the land, for exchange of a big portion of the land to the Town Panchayat. Since the plaintiff was in possession and enjoyment of the suit property as an absolute owner, he is entitled to suit second schedule property by adverse possession also. The plaintiff was issued BMA notice and he has been paying BMA charges. In 1993, the plaintiff wanted to extend his building and hence, he submitted a proper plan and obtained permission for making construction in the 2nd schedule property. The plan for construction was approved by the first defendant. The plaintiff is also conducting a petty shop in the 2nd schedule



property. The plaintiff is making construction in his land, as per the approved plan and there is no deviation or anything. But on the ill-advice of the enemies of the plaintiff, the first defendant had sent a notice asking the plaintiff to produce the documents regarding 2nd schedule of the suit properties. The plaintiff produced all the documents, but the first defendant is not ready to accept it, but, he said that he would cancel the permission, which was granted already. The plaintiff spent more than Rs.50,000/- for making construction, which is already over. If the building is demolished on wrong notice, it would affect the plaintiff and he would be put to irreparable loss and damages. Hence, he was constrained to file the suit for permanent injunction.

5.The averments made in the written statement filed by the first defendant are in brief as follows:-

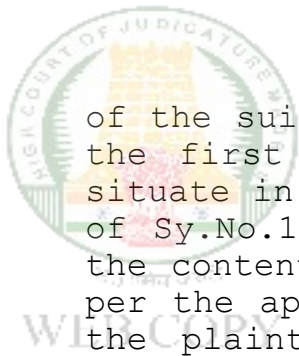
The second schedule of the suit properties is a Government vaikkal poromboke, in which the plaintiff has no right. It is false to say that the plaintiff was permitted to use the 2nd schedule of the suit properties by the Sub-Collector, Cheranmahadevi. Since the plaintiff is not having any right over the second schedule of the suit properties, the first defendant refused to grant permission. When the plaintiff commenced to put up a construction, the public raised objection and hence, the said construction was stopped. Since the said property is a Government poromboke land, the plaintiff is not entitled to seek any relief. Therefore, the first defendant prayed to dismiss the suit.

6.The averments made in written statement filed by the 2nd defendant are in brief as follows:-

The 2nd schedule of the suit property is an odai poromboke, in which, the plaintiff has no right. The plaintiff obtained approval for the building plan by playing fraud. Hence, he is not entitled to construct any building on the 2nd schedule of the suit properties. Therefore, the second defendant prayed to dismiss the suit.

7.Based on the aforesaid pleadings, the learned Principal District Munsif, Valliyoor framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.5 as exhibits. On the side of the defendants, three witnesses were examined as D.Ws.1 to 3; two exhibits were marked as Exs.B.1 and B.2. The report and plan filed by the Advocate Commissioner have been marked as Exs.C.1 and C.2 respectively.

8.The learned Principal District Munsif, Valliyoor, after considering the materials placed before him, found that the plaintiff claimed that he constructed a building in second schedule



of the suit properties only after getting approval of the plan from the first defendant, but the 2nd schedule of the suit properties situate in Sy.No.1261/2, whereas Ex.A.1/plan was obtained in respect of Sy.No.1261/1 (first schedule of the suit properties) and hence, the contention of the plaintiff that he put up construction only as per the approved plan is not correct. He further found that since the plaintiff has not obtained any permission for putting up a construction in 2nd schedule of the suit properties, the first defendant is entitled to issue a direction to remove the said unauthorised construction. He further found that the plaintiff has not come to the Court with clean hands and hence, he is not entitled to seek the relief of permanent injunction. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.123 of 2003 on the file of the First Additional Sub Judge, Tirunelveli. The learned Additional Sub Judge, Tirunelveli had dismissed the said appeal and thereby, confirmed the judgment and decree passed by the trial court. Feeling aggrieved, the plaintiff has filed the present second appeal.

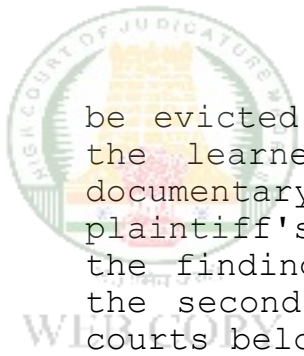
9.This Court, at the time of admitting the second appeal, has formulated the following substantial question of law:-

"Whether the Courts below are correct in refusing to grant permanent injunction on the ground that the Panchayat has not vested with the power of demolishing the building constructed on the disputed property under the Tamil Nadu Panchayats Act?"

10.Heard Mr.V.Meenakshi Sundaram for Mr.D.Nallathambi, learned counsel for the appellant and Mr.Ayiram K.Selvakumar, learned Additional Government Pleader appearing for the first respondent/first defendant.

11.Substantial Question of Law:

The learned counsel for the appellant/plaintiff has submitted that the Courts below failed to consider that the appellant/plaintiff had constructed a building only as per the plan approved by the first respondent/first defendant. He further submitted that the Courts below failed to consider that the appellant/plaintiff has been in possession and enjoyment of the second schedule of the suit properties for more than 15 years by paying kist. He further submitted that even assuming that the appellant/plaintiff is an encroacher or trespasser, since he is in possession of the said property for more than 15 years openly, continuously and to the knowledge of the first defendant, he perfected title by adverse possession also. He further submitted that the courts below failed to consider that the Sub-Collector of Cheranmahadevi had orally permitted the plaintiff to use the second schedule of the suit properties. He further submitted that even assuming that the plaintiff is an encroacher or trespasser, he can



be evicted only by due process of law. He further submitted that the learned District Munsif failed to appreciate the oral and documentary evidence in a proper perspective and dismissed the plaintiff's suit and the appellate court also mechanically confirmed the findings of the trial court and therefore, he prayed to allow the second appeal and set aside the judgments and decrees of the courts below and decree the suit as prayed for.

12.Per contra, the learned Additional Government Pleader, who is appearing for the first respondent/first defendant has submitted that the appellant/plaintiff had submitted the plan for approval of construction of a building in the first schedule of the suit properties, but he constructed a building in second schedule also. He further submitted that the second schedule of the suit properties is admittedly an odai poromboke and that the plaintiff had encroached the same and put up a construction unauthorisedly. He further submitted that since the plaintiff made unauthorised construction in the second schedule of the suit properties, as per the Tamil Nadu Panchayats Act, 1994, the first defendant is entitled to issue a direction to remove the said unauthorised construction and hence he issued directions to remove the unauthorised construction. He further submitted that the plaintiff has not come to the Court with clean hands. He suppressed the material facts and tried to obtain the relief of permanent injunction by misleading the Court, as if he obtained sanction from the first defendant for putting up construction in the second schedule of the suit property. He further submitted that since the plaintiff has not come to the court with clean hands, he is not entitled to seek the equitable relief of permanent injunction. He further submitted that taking into consideration of the aforesaid facts, the trial court had rightly dismissed the suit and the same has been confirmed by the first appellate court and in the said factual concurrent findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

13.This Court has carefully considered the rival submissions and perused the records carefully.

14.Though the plaintiff has filed the above suit in respect of two schedule of properties, the dispute is only with regard to the second schedule. Admittedly, the second schedule of the suit properties is an odai poromboke. According to the plaintiff, the Sub-Collector, Cheranmahadevi granted permission to him to use the second schedule of the said property, because, he was given a small portion of the land by way of exchange for a big portion to the Town Panchayat. But, to substantiate the said plea, he has not produced any material. Further, the Sub Collector, Cheranmahadevi, has no power to grant oral permission to any one for using odai poromboke land. Hence, the contention of the plaintiff that the Sub-Collector, Cheranmahadevi gave permission to him to use the odai poromboke land in the second schedule of the suit properties cannot be accepted.



15.The next contention put forth by the plaintiff is that since he is in possession and enjoyment of the second schedule of the suit properties, from the year 1989, he perfected title by adverse possession also. It is well-settled that a plea of adverse possession can be taken by a person, who is in hostile, continuous and open possession to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. In this case, the plaintiff has averred in paragraph No.5 of the plaint that since 1989, he is in possession and enjoyment of the second schedule of the suit properties, but he filed the suit in the year 1994 itself i.e within 5 years. Therefore, he cannot claim that he perfected title by adverse possession.

16.In paragraph No.8 of the plaint, the plaintiff has stated that he is making construction in his land, as per the approved plan and there is no deviation or anything. He further stated that on the ill-advice of his enemies, on 25.03.1994, the first defendant had sent a notice asking him to produce the documents regarding the constructions put up by him in the second schedule of the suit properties. He further stated that he has produced relevant documents before the first defendant, but he did not convince and said that he is going to cancel the permission already granted.

17. Under Section 131 of the Tamil Nadu Panchayats Act, 1994, a duty is cast upon the Executive Authority of the Panchayat to institute proceedings with regard to the encroachments and secure the removal of the encroachments. The said Act was came into force on 22.04.1994, whereas, the first defendant had issued Ex.A.4/notice dated 25.03.1994, directing the plaintiff to produce the documents within 3 days from the date of receipt of the said notice, with regard to the construction being made in the second schedule of the suit properties, failing which, further proceedings will be taken for removing the encroachment. At that time, the Madras Panchayats Act, 1958 was in force. Section 82 of the Madras Panchayats Act, 1958 corresponds to Section 131 of the Tamil Nadu Panchayats Act, 1994 which reads thus:

" 82: (1) No person shall, except as permitted by rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such rules -

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road;

b)make any hole or deposit any matter in or upon any public road;

c)work a quarry in or remove stone, earth or other material from any place within twenty yards of a public road or of other immovable property vesting in



or belonging to a panchayat or a panchayat union council, provided that nothing in this clause shall be deemed to apply to any work which, in the opinion of the Inspector, is done in connexion with a *bona fide* agricultural operation;

d)erect any building over any sewer or drain or any part thereof;

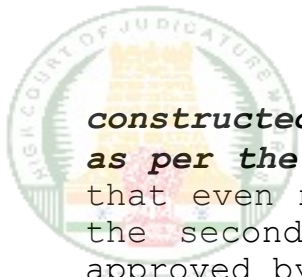
e)plant any tree on any public road or other property vesting in or belonging to a panchayat or a panchayat union council; or

f)fell, remove, destroy, lop or strip bark, leaves or fruits from, or otherwise damage, any tree which is growing on any such public road or other property or on any poramboke or land, the use of which is regulated by a panchayat under Section 86 or Section 87 and the right to which has not been established by such person as vesting in or belonging to him.

(2)It shall be the duty of the Karnam of every revenue village to report on encroachments on properties vested in panchayats or panchayat union councils, to the executive authority or the commissioner concerned and to the officers of the Revenue Department, and it shall be the duty of the executive authority or the commissioner concerned to institute proceedings under this Act and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Madras Land Encroachment Act, 1995 (Madras Act III of 1905), and secure such removal."

18.From the aforesaid provision of law, it is clear that if any person erects any building over any sewer or drain or any part thereof or on any property vested in Panchayat, whether permanent or temporary, it shall be duty of the Executive Authority of a Panchayat to institute the proceedings under the said Act and secure the removal of the encroachment. Therefore, the first respondent/first defendant is empowered to take action for removing the encroachment.

19.It is also to be pointed out that in the plaint, the plaintiff has stated in so many places that he put up constructions in the second schedule of the suit properties only as per the plan approved by the first defendant. In the appeal memorandum filed in the second appeal also in ground No.2, it is stated that **"the courts below have failed to appreciate the fact that the appellant**



constructed a building on the disputed property (second schedule), as per the approved plan by the first respondent". So, it is clear that even now, the plaintiff claims that he put up constructions on the second schedule of the suit properties only as per the plan approved by the first defendant.

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20.The plaintiff has filed the alleged approved plan and marked as Ex.A.1. A perusal of Ex.A.1 shows that the said plan was obtained in respect of Sy.No.1261/1. The property situated in Sy.No.1261/1 has been shown as first schedule of the suit properties, whereas second schedule of the suit properties situated in Sy.No.1261/2. So, it is clear that the plaintiff has obtained plan approval for putting up construction only on the first schedule of the suit properties, but he tried to get the relief for permanent injunction by saying that he obtained plan approval for construction in respect of second schedule of the suit properties also. The averments made in the plaint and also in the appeal memorandum filed in the second appeal are totally misleading. The relief of permanent injunction is an equitable relief. A person, who seeks equity should keep equity and he should come to the Court with clean hands. In this case, the plaintiff as already pointed out that he tried to get the relief of permanent injunction by saying that he obtained approved plan for construction in respect of second schedule of the suit properties also. So, it is clear that the plaintiff has not come to the Court with clean hands. Therefore, he is not entitled to get any relief from the Court. The Trial Court, taking into consideration of the aforesaid facts, has rightly dismissed the suit and the same has been confirmed by the first appellate court. In the said factual concurrent findings, this Court cannot interfere. Accordingly, the substantial question of law is answered against the appellant/plaintiff.

21.In the result, this second appeal is dismissed confirming the judgment and decree passed in O.S.No.139 of 1994, dated 04.11.2003 by the Principal District Munsif Court, Valliyoor, as upheld in the judgment and decree passed in A.S.No.123 of 2003 dated 10.08.2004 by the 1st Additional Sub Court, Tirunelveli. There is no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vs



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The First Additional Sub Judge, Tirunelveli.

2.The Principal District Munsif, Valliyoor.

COPY TO

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.D. NALLATHAMBI, Advocate (SR-14042[F] dated
13/08/2020)

judgment made in
S.A(MD)No.468 of 2005
12.08.2020

VB (21.08.2020) 9P 6C