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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1887 of 2000

Rasappan

.. Appellant/Plaintiff

/versus/

Salem Municipal Corporation, Salem, Rep. by
its Commissioner,
Municipal Building,
Salem - 1, Salem Town.

.. Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgement and decree dated 18.08.1999 and made in A.S.No.13 of 1999 on the file of Additional Sub Court, Salem, confirming the judgement and decree dated 25.09.1998 and made in O.S.No.40 of 1990 on the file of II Additional District Munsif Court, Salem.

For Appellant : Mr.V.R.Rajasekaran

For Respondents : No appearance

JUDGMENT

An unsuccessful plaintiff is the appellant herein. The plaintiff filed the suit in O.S.No.40 of 1990 before the learned District Munsif, Salem, for the relief of permanent injunction restraining the defendant/Salem City Corporation from interfering with the plaintiff's absolute possession and enjoyment of the suit property. The plaint proceeds on the basis that in an unapproved lay out, the plaintiff has purchased the house plot and he apprehended that the defendant/Salem City Corporation may take over the land for laying out the road and the written statement has been filed and Paragraph Nos.6 & 7 of the written statement are extracted here under;

" 6. This defendant has not taken any steps to widen the road as alleged. This defendant's staffs have never attempted to



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remove any portion of the building of the plaintiff. The alleged building of the plaintiff is itself an unauthorised one.

7. The plaintiff has come forward with this suit on imaginary allegations. The plaintiff has filed this suit with intention to encroach the land left for road with an order of injunction."

2. Based upon the EX.C1 and EX.C2 filed before the trial Court, the learned District Munsif was pleased to dismiss the suit and the same was confirmed in A.S.No.13 of 1999, Additional Sub-Court, Salem. Hence, the Second Appeal.

3. Heard the counsel for the appellant.

4. Second Appeal was admitted. Though notice was served, none appeared for the respondents. After hearing the counsel Mr.V.R.Rajasekaran and also after perusing the Judgment passed by both Courts below, I find that on mere apprehension, the plaintiff appears to have filed the suit. Since the relief sought for permanent injunction on the alleged cause of action, it is to be stated that the lawful possession by the plaintiff in the suit property under the cause of action, which necessitate the filing of the suit has not been proved for the grant of permanent injunction.

5. However, in view of the stand taken by the defendant in the written statement, as extracted supra, as there was no proposal for taking the land of the plaintiff, I find that the stand of the respondent/defendant in the written statement as extracted supra is correct. Since there was no proposal, there cannot be any injunction against the appellant.

6. In this view of the above, Second Appeal is dismissed with the above observations. No costs. Thus, it is hereby made clear that plaintiff can file any appropriate legal proceedings in the event of the defendant/respondent taking steps to evict the plaintiff.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kmm



To

1. The Additional Sub Judge,
Salem.

2. The II Additional District Munsif,
Salem.

Copy to:

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

S.A.No.1887 of 2000

CNR(CO)
SU(28/09/2021)