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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2021
PRONOUNCED ON : 09.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1474 of 2008
and
M.P.No.1 of 2008

Golden Hills Estates Pvt. Ltd.,
A Private Limited Company
having its registered office
at Visalakshi Nagar
Madurai District 625 401
rep. by Power of Attorney
Holder and Manager of
Erinkadu Estate M.K. Maniah
Erinkadu Estate, Karumpalam,
Nilgiris District 643 102

...Appellant/Respondent/Plaintiff

Vs.

1. Ponnan (deceased) ... 1st Defendant

2. Palaniswamy
S/o. Ponnan ... Respondent/Appellant/2nd Defendant

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 21.01.2008 in A.S.No.56 of 2007 of the learned subordinate judge of Udhagamandalam, reversing the judgment and decree of the trial court dated 22.08.2007 in O.S.No.36/90 on the file of the District Munsif Court, Coonoor.

For Appellant : Mr. S. Jayaraman
For Respondents : Ms. Mythili Suresh
for M/s. Sarvabhauman Associates

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.01.2008 passed in A.S.No.56 of 2007 on the file of the subordinate Court, Udhagamandalam, reversing the judgment



and decree dated 22.08.2007 passed in O.S.No.36/90 on the file of the District Munsif Court, Coonoor.

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

3. The plaintiff in O.S.No.36 of 1990 is the appellant in the Second Appeal.

4. Suit for possession, arrears of licence fee and damages.

5. The case of the plaintiff, in brief, is that the plaintiff is the owner of Erinkadu estate, Karumpalam P.O., Nilgiris, and the estate is the pattadar and owner in possession of Survey Nos.746/2, 746/3 and 746/4 of Adhigaratty village and on 01.07.1959, the first defendant had applied to the plaintiff seeking permission to construct a small shop in the abovesaid Survey numbers abutting the Highways road and the plaintiff had granted permission to construct the said shop on a monthly licence fee of Rs.5/- and the deceased first defendant had been paying the licence fee upto November 1985 and on 05.06.1982 the deceased first defendant sought permission of the plaintiff to add a small room to the said shop and the said permission was also granted and the first defendant had been occupying the abovesaid portions under the conditions of the original licence and from November 1985, in spite of several repeated reminders, the deceased first defendant has not paid the licence fee and as the plaintiff also required the land for some other purpose, it had requested the first defendant to vacate the schedule land after removing the shop there on and the deceased first defendant refused to pay the arrears of licence fee and also to vacate the land and hence the plaintiff sent a legal notice on 25.07.1989 terminating the licence of the first defendant and giving time to vacate till 31.08.1989 and the first defendant sent a reply containing untenable allegations. After the institution of the suit, the first defendant died and his son, the second defendant has been added as the defendant and hence, according to the plaintiff, it has been necessitated to lay the suit against the defendant for appropriate reliefs.

6. The defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts and put forth the case that at the time when the defendant applied to the plaintiff to permit him to construct a small shop in the plaint schedule land, he was under the bonafide belief that the same belongs to the plaintiff and accordingly was paying a sum of Rs.5/- per month till November 1985 as ground rent and according to the defendant, he has come to know that the ground on which the small tea shop and room is lying does not belong to the plaintiff and belongs to the Highways and accordingly



informing the same to the plaintiff and also apprising the plaintiff that he is not liable to pay the fees for the occupation of the land and also stopped paying the ground rent to the plaintiff. The defendant's son Palaniswamy is in the actual possession and enjoyment of the suit property and his son Palaniswamy is the temporary worker under the plaintiff for several years and he had applied to the Labour Officer, Coonoor to confirm his employment under the plaintiff and after serving a notice to the plaintiff, a settlement was reached between the defendant's son and the plaintiff on 23.05.1988 whereunder it was agreed that on survey of the suit property in case the suit property is in the land belonging to the plaintiff, Palaniswamy should vacate and hand over the vacant possession to the plaintiff and on the contrary, if the suit property is in the Highways land, than the plaintiff should not disturb the possession of Palaniswamy qua the suit property and accordingly, the RDO has deputed the district surveyor to survey the suit property to find out in which survey number the suit property is situated and in that survey it was found that the suit property is situated in R.S.No.746/1 belonging to the Highways department and not to the plaintiff and therefore, the plaintiff has no right, title or interest over the suit property and the defendant is not liable to pay any licence fee for the occupation of the same and the suit has been falsely laid by the plaintiff and hence, the plaintiff's suit is liable to be dismissed.

7. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B16 were marked.

8. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the trial court was pleased to decree the suit directing the defendant to hand over the vacant possession of the suit property by removing the superstructure bearing door No.10/126 lying in survey Nos.746/3 and 4 to an extent of 0.001/4 acre to the plaintiff within two months and accordingly granted the relief in favour of the plaintiff partially. Impugning the judgment and decree of the trial court, the first appeal has been preferred by the second defendant and the first appellate court, on a consideration of the materials placed on record and the submission put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way allowing the appeal preferred by the second defendant, resultantly dismissed the plaintiff's suit. Impugning the same, the second appeal has been preferred by the plaintiff.



9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) "Whether the lower appellate court is right in placing reliance on Exs.B13 and B14, namely the report of the village Administrative Officer?
- 2) Whether the lower appellate court is right in brushing aside the A4 to A6 proceedings of the Revenue Divisional Officer who has categorically found the disputed property is situated in portion of land comprised in S.No.746/1 and 746/3 and 4?
- 3) Whether the lower appellate court is right in coming to the conclusion that the plaintiff appellant has not chosen to challenge the rejection of objection made by the plaintiff-appellant to commissioner's report?
- 4) Whether the lower appellate court is right in holding that disputed property is situated only in S.No.746/1 belonging to National Highway?

10. The suit property measuring an extent of 3 cents of land is stated to be lying in Survey Nos.746/2, 746/3 and 746/4 with shop and room bearing door No.10/126 of Adhigaratty village, Coonoor Taluk. Now according to the plaintiff, the abovesaid suit property belongs to it and the deceased first defendant, after seeking permission of the plaintiff put up the shop in the same agreeing to pay the licence fee of Rs.5/- per month and further after seeking permission of the plaintiff put up the room in the abovesaid survey numbers and contending that the deceased first defendant had paid the licence fee only upto November 1985 and thereafter, defaulted in the payment of licence fee and as the suit property is also required by the plaintiff for some other purpose, accordingly, the plaintiff directed the deceased first defendant to vacate the shop and the room and hand over the possession of the suit property and as the deceased first defendant had failed to comply with the abovesaid direction even after the issuance of the legal notice and instead sent a reply containing false allegations, hence, according to the plaintiff, it has been necessitated to lay the suit against the defendant for appropriate reliefs.

11. The deceased first defendant contended that that no doubt he had sought permission of the plaintiff to put up the shop in the suit property and agreed to pay the licence fee of Rs.5/- on the premise that the suit property belongs to the plaintiff, however, subsequently, came to know that the shop and the room bearing door No.10/126 actually lies on the ground belonging to the Highways department and hence stopped paying the licence fee and also informed the same to the plaintiff and



further put forth that in the settlement arrived at between the plaintiff and his son Palaniswamy before the labour officer, Coonoor, it has been agreed that if the suit property is lying in the plaintiff's land, on survey, the first defendant's son Palaniswamy, who is actually in the occupation of the suit property should vacate and hand over the possession to the plaintiff and in the event of the abovesaid shop and room is lying on the ground not belonging to the plaintiff, the plaintiff should not disturb his possession and enjoyment and according to the defendant, on survey, it was noted that the shop and the room bearing door No.10/126 is lying only in Survey No.746/1 belonging to Highways department and therefore, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

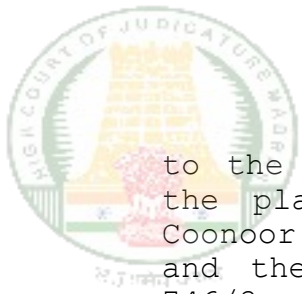
12. Therefore, the only point that arises for consideration in this matter is whether the shop and the room bearing Door No.10/126 is lying in the plaintiff's land or in the land belonging to the Highways department. There is no material placed on record on the part of the plaintiff worth acceptance to show that the shop and the room bearing No.10/126 actually lies in the Survey numbers belonging to the plaintiff. The shop and the room bearing door No.10/126 is found to be actually in the occupation of Palaniswamy, the son of the first defendant. As at present, it is only Palaniswamy, who is contesting the plaintiff's case as the first defendant had died pending the suit. The settlement arrived at between the plaintiff and Palaniswamy before the labour officer, Coonoor, has been marked as Ex.B1. Now according to the defendant, following the abovesaid settlement deed, on survey, it was noted that the shop and the room bearing door No.10/126 is lying only in R.S.No.746/1 belonging to the Highways department. In this connection, the defendant would rely upon the certificates issued by the VAO dated 10.10.1989 and 09.11.1989 whereunder the VAO has certified that the shop bearing door No.10/126 is lying only in Survey No.746/1 belonging to the Highways department and following the same, it is noted that the District Collector had also directed the defendant vide letter dated 19.06.1991 to approach the Highways department with reference to his requisition for granting the house site and the same has been marked as Ex.B15. A similar letter has also been issued to the defendant by the District Collector's office on 14.06.1993, which has been marked as Ex.B16. Considering Exs. B13 and B14, the abovesaid certificates are found to be issued prior to the institution of the suit.

13. Insofar as this case is concerned, it is seen that the advocate commissioner had been appointed to inspect the suit property with the help of the surveyor to ascertain as to where actually the shop and the room bearing door No.10/126 is lying.



It is found that the advocate commissioner had inspected the suit property with the help of the surveyor and filed his report and informed that the shop and the room bearing door No.10/126 lies only in Survey No.746/1 of the suit village. The plaintiff has filed the objection to the commissioner's report marked as Ex.A7, whereunder he would contend that prior to the survey by the advocate commissioner, the surveyor had inspected the ground and put up the marks on the ground with the help of the defendant's men and therefore, according to the plaintiff, the commissioner's report should not be relied upon. However, the abovesaid objection having not been substantiated by the plaintiff with acceptable and reliable materials, the objection put forth by the plaintiff had been rejected and the first appellate court had rightly placed reliance upon the commissioner's report and plan. In fact, it is seen that the plaintiff's endeavour of seeking for the appointment of another commissioner by way of an application in I.A.No.75/95 has come to be dismissed by the trial court and as against the dismissal, no challenge has been made by the plaintiff to the higher forum.

14. Considering the abovesaid factors in toto, it is found that even the plaintiff is not sure as to where actually the shop and the room bearing door No.10/126 is lying and accordingly proceeded to go for the settlement before the labour officer, Coonoor, as above noted, whose proceedings has been marked as Ex.B1. As to what further action had been taken pursuant to the agreement entered into between the parties before the labour officer, Coonoor, there is no clear cut evidence adduced in the matter either by the plaintiff or by the defendant. On the other hand, the plaintiff seems to have relied upon the communication dated 27.04.1990 of the RDO whereunder the RDO would state that, relying upon the report of the Tahsildar, a portion of the shop and building bearing door No.10/126 measuring 0.001/4 acre is lying in survey Nos. 746/3 and 746/4. The abovesaid communication of the RDO is dated 27.04.1990. The suit has been laid by the plaintiff on 01.12.1989. According to the plaintiff, the cause of action for the suit arose on 31.08.1989. In such view of the matter, when Ex.A3 communication, the letter of the RDO, is found to have been issued after the institution of the suit and when the RDO had, only based on the so called report of the Tahsildar, proceeded to hold that a portion of the shop and room bearing door No.10/126 is lying in Survey No.746/3 and 4 belonging to the plaintiff to an extent of 0.001/4 acre and when it is not clear as to how come or on what basis the abovesaid order had come to be passed by the RDO and at whose instance the said order has been passed and on a perusal of Ex.A3 order passed by the RDO, the only reference of the defendant's petition and the report of the Tahsildar, Coonoor are mentioned and when the plaintiff has not endeavoured to summon the records pertaining



to the order passed by the RDO dated 27.04.1990 and also when the plaintiff has not endeavoured to examine the Tahsildar, Coonoor as to how come he had submitted the report that the shop and the room bearing door No.10/126 is lying in Survey Nos. 746/3 and 4 and when there is no clear indication in Ex.A3 communication of the RDO as to when the Tahsildar had inspected the suit property, whether he had inspected and measured the suit property with the help of any surveyor and whether any notice had been issued to the defendant and the plaintiff prior to the same qua the date of inspection and whether the plaintiff and the defendant had been invited to file any objection to the report of Tahsildar, Coonoor and when with reference to the abovesaid factors there is no clear picture particularly, as above noted, the plaintiff having failed to summon the necessary files from the RDO and also not examined the Tahsildar, who is said to have submitted the report to the RDO, in such view of the matter, no safe reliance could be placed on EX.A3 to conclude that the portion of the shop and the room bearing No.10/126 is lying in survey No.746/3 and 4, particularly, when as above pointed out, the advocate commissioner, on inspection of the suit property with the help of the surveyor, had come to the conclusion that the shop and room bearing No.10/126 is lying only in Survey No.746/1 and not in the survey numbers belonging to the plaintiff. In such view of the matter, when the plaintiff has come forward with the suit seeking for necessary reliefs on the footing that the defendant has occupied only the survey numbers belonging to the plaintiff and when the same is controverted by the defendant, it is for the plaintiff to establish its case by placing the best evidence to conclude that the defendant is occupying the survey numbers belonging to the plaintiff. When with reference to the same other than Ex.A3 order of the RDO, there is nothing forthcoming on the part of the plaintiff to sustain its case, when as above discussed, no safe reliance could be attached to the RDO communication Ex.A3, particularly when the commissioner's report totally belies the plaintiff's case and when the plaintiff has also not substantiated the objections put forth by it to the commissioner's report by adducing acceptable and reliable evidence and when the evidence of P.W.2, examined on behalf of the plaintiff, cannot be relied upon, particularly, when it is seen that he had been in the services of the plaintiff's estate for several years and when P.W.2 has clearly admitted that no strangers could enter into the plaintiff's estate without the permission of the plaintiff and measure the suit property, therefore, the case of the plaintiff that prior to the inspection of the suit property by the advocate commissioner, the surveyor has already inspected the suit property and put up the marks with the help of the defendant's men, as such, cannot be accepted in any manner and it is thus found that accordingly, the plaintiff is unable to substantiate its objections by



placing reliable and convincing materials.

15. When the plaintiff has come forward with the case that the defendant is occupying an extent of 3 cents in the suit survey numbers and despite the determination of the trial court that the defendant is found to be in the occupation of only the survey Nos.746/2 and 3, that too, an extent of 0.00 1/4 cents, if really the plaintiff has come forward with the suit on a proper cause of action, particularly, that the defendant is in the occupation of the suit property in entirety, the plaintiff would have preferred an appeal or cross objection challenging the judgment and decree of the trial court. However, the plaintiff has not resorted to any such action. Be that as it may, when to sustain its case, the plaintiff is only relying upon Ex.A3 letter by the RDO and when, as above pointed out, in the absence of materials to hold as to how come the abovesaid order has come to be passed by the RDO particularly when the file relating to the said order had not been summoned by the plaintiff and produced before the court and the concerned Tahsildar, who is said to have inspected the property, has not been summoned and examined by the plaintiff in respect of its case, considering the documents projected by the defendant as well as the commissioner's report and plan filed in the matter, all put together, it is seen that the first appellate court is wholly justified in non suiting the plaintiff by determining that the plaintiff has failed to establish that the shop and the room bearing door No.10/126 is lying in survey numbers belonging to the plaintiff.

16. The reasonings and conclusions of the first appellate court for non suiting the plaintiff being based on the proper appreciation of the materials placed on record, both oral and documentary, both on factual matrix as well as on the point of law and when they are not shown to be, in any manner, perverse, illogical and irrational and, as above pointed out, the plaintiff having miserably failed to establish that the shop and the room bearing door No.10/126 is lying in the survey numbers belonging to the plaintiff and not lying in survey No.746/1 and on the other hand, when the materials projected in the matter go to disclose that it is only lying in survey No.746/1, in such view of the matter, it has to be held that, as determined by the first appellate court, the plaintiff is not entitled to obtain the reliefs prayed for in the suit. I do not find any valid reason to interfere with the reasonings and conclusions of the first appellate court for non suiting the plaintiff. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of defendant.



17. For the reasons aforestated, the judgment and decree dated 21.01.2008 passed in A.S.No.56 of 2007 on the file of the subordinate Court, Udhagamandalam, reversing the judgment and decree dated 22.08.2007 passed in O.S.No.36/90 on the file of the District Munsif Court, Coonoor, are confirmed and accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Udhagamandalam
2. The District Munsif Court,
Coonoor
3. Section Officer,
VR Section, High Court, Madras

+1CC to M/s.Sarvabhauman Associates, Advocate, Sr.No.14665

S.A.No.1474 of 2008

SPD (CO)
K.RK. (09.09.2021)