



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

S.A.NO.516 OF 2007

AND

M.P.NO.1 OF 2007

1.Mohan

S/o.Duraisamy

2.Rajaraman

S/o.R.S.Sastri

... Appellants/Appellants/
Defendants 1 & 2

.vs.

1. Mahalingam

... 1st Respondent/2nd Respondent/
Plaintiff

2. The Executive Engineer

and Administrative Officer Special Division - 1,
TNHB Colony - Anna Nagar West Extention,
Ambattur Taluk, Chennai - 600 101.

... 2nd Respondent/2nd Respondent/
3rd Defendant

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree dated 28.11.2006, made in A.S.No.13 of 2006 on the file of the Sub Court, Poonamallee, confirming the judgment and decree dated 21.02.06 made in O.S.No.216 of 2000 on the file of the District Munsif cum Judicial Magistrate Court at Ambattur.

For Appellants : Mr.T.K.Bhaskar

For Respondents : Mr.P.Prem Kumar for R1
Mr.Jayaseelan Ramachandran for R2



JUDGMENT
(Heard through Video Conferencing)

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The Appellants are the Defendants 1 and 2 in the suit O.S.No.216 of 2000 on the file of the District Munsif cum Judicial Magistrate Court at Ambattur. The first respondent is the plaintiff who had sought for the following reliefs against the appellants:

(a) permanent injunction restraining the Appellants/ Defendants 1 and 2 from putting up any further constructions around the Flat No.L.18/3 and in the common areas.

(b) passed the mandatory injunction directing the Appellants/Defendants 1 and 2 to remove the constructions which they have so far made in the Northern, Southern and Western sides of Flat No. L.18/3 and in the common areas. They were certain boundary disputes between the first respondent/plaintiff and the Appellants/Defendants 1 and 2 who were allotted flats by the Tamil Nadu Housing Board and in view of the disputes, the first respondent/plaintiff filed a suit against the Defendants seeking aforementioned reliefs.

2.The Trial Court disbelieved the consent letters alleged to have been given by the plaintiff in favour of the Defendants which were marked as exhibits B3 and B10 and dismissed the suit by its Judgment and Decree dated 21.02.2006 in O.S.No.216 of 2000.

3.Aggrieved by the same, the Appellants who are the Defendants 1 and 2 in the suit preferred a First Appeal before the Sub Court, Poonamallee in A.S.No.13 of 2006. The Lower Appellate Court based on the materials and evidence available on record and after giving due consideration to the Judgment and Decree passed by the Trial Court in O.S.No.216 of 2000 confirming the findings of the Trial Court and dismissed the appeal by its Judgment and Decree dated 28.11.2006.

4.Aggrieved by the same, this Second Appeal has been filed by the Defendants 1 and 2 in the suit.

5.The Second Appeal was admitted by this Court on 14.08.2007 on the following substantial questions of law:

(a) Whether the plaintiff is not barred by laches from approaching the court for the relief of mandatory injunction?



(b) Whether the plaintiff, having consented for the additional construction under Ex.B3 can seek injunction?

(c) Whether the plaintiff, having shifted out the suit property, can still seek the relief of mandatory injunction, since, he no longer has no personal interest in the subject matter?

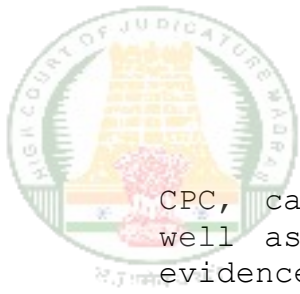
(d) Whether the Courts below did not err in ignoring the admissions by P.W.1 in his Cross Examination?

6.A consistent stand has been taken by the plaintiff as seen from the pleadings as well as from his deposition that he never executed exhibits B3 and B10 in favour of the Appellants who are the Defendants 1 and 2. According to the plaintiff, the Appellants/Defendants 1 and 2 are were also allottees from the Tamil Nadu Housing Board has put up construction in the common areas in violation of the covenants contained in their respective sale deeds executed by the Tamil Nadu Housing Board and therefore, the constructions put up by them are illegal and will have to be demolished.

7.The Trial Court after giving due consideration to exhibits B3 and B10 as well as after taking note of the fact that the evidence placed on record by the Appellants/Defendants 1 and 2 as well as by the first respondent/plaintiff does not reveal the exhibits B3 and B10, the consent letters were infact given by the plaintiff came to the conclusion that the said consent letters exhibits B3 and B10 will have to be disbelieved and dismissed the suit.

8.The Lower Appellate Court after giving due consideration to the materials and evidence available on record also confirmed the findings of the Trial Court in its Judgment and Decree dated 28.11.2006.

9.Second Appeal under Section 100 CPC can be entertained by this Court only when there is a substantial questions of law involved. As seen from the findings of the Courts below, the Trial Court as well as the Lower Appellate Court has appreciated the materials and evidence available on record properly and only thereafter has disbelieved exhibits B3 and B10 which the Appellants/Defendants claim where issued by the first respondent/plaintiff giving consent for the Appellants to put up constructions in the common areas.



10.This Court while exercising powers under Section 100 CPC, cannot reappreciate the evidence when the Trial Court as well as the Lower Appellate Court has rightly appreciated the evidence available on record and only thereafter held that the first respondent/plaintiff is entitled for the relief sought for in the plaint.

11.There are no debatable issues involved in the Second Appeal as the Trial Court as well as the Lower Appellate Court has held the case rightly in favour of the first respondent/plaintiff.

12.For the foregoing reasons, this Court is of the considered view that the substantial questions of law formulated by this Court on 14.08.2007 at the time of admission of the Second Appeal are answered against the Appellants/Defendants 1 and 2 and hence there is no merit.

13.Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Court, Poonamallee.

2.The District Munsif cum Judicial Magistrate Court at Ambattur.

3.The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.P.Prem Kumar, Advocate, S.R.No.28181

+1cc to Mr.T.K.Bhaskar, Advocate, S.R.No.27908

S.A.No.516 of 2007

PP(CO)
CS/23/11/2021