



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.861 of 2008
and
M.P.No.1 of 2008

1. S.S.Palaniswamy (Deceased),
S/o, Subbiah
2. P.Anbarasi,
W/o, Late S.S.Palaniswamy
3. T.Vetriselvi,
D/o, Late S.S.Palaniswamy
4. P.Selvabharathi
D/o, Late S.S.Palaniswamy
5. P.Ganesa Sundara Pandian
S/o, Late S.S.Palaniswamy

Appellants 2 to 5 are at
No.8/23, Singara Garden 2nd Lane,
Old Washermanpet,
Chennai - 600 021.

[Appellants 2 to 5 brought on record
as Lrs of the deceased sole appellant
vide order of Court dated 25.02.2014
made in M.P.Nos.1 & 2 of 2010]

... Appellants / Appellants / Plaintiff

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.



2. S.S.Arumugaswamy,
S/o, Subbiah,
No.19, T.H.Road,
Old Washermanpet,
Chennai 600 021.

[2nd defendant given up in second appeal]

...Respondents / Respondents / Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.523 of 2006 dated 28.01.2008 passed by the 1st Additional Judge, City Civil Court at Chennai, confirming the judgment and decree dated 06.03.2006 passed in O.S.No.2682 of 2000 by the XI Assistant Judge, City Civil Court at Chennai.

For Appellants : Mr.Ashok Menon

For Respondents : No appearance

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 28.01.2008 passed in A.S.No.523 of 2006 on the file of the 1st Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 06.03.2006 passed in O.S.No.2682 of 2000 on the file of the XI Assistant Judge, City Civil Court at Chennai.

2. The unsuccessful plaintiff is the appellant in the second appeal.

3. The suit has been laid by the plaintiff for permanent injunction.

4. The plaintiff would put forth the case that he is the owner of the premises bearing Door No.3107 G.A.Road, Old Washermanpet, Chennai-21 on the basis of the sale deed dated 10.04.1996 and further would state that following the partition deed dated 28.11.1997 effected with his brothers, the suit property had been allotted to the plaintiff and his brother Arumugaswamy and since then, it is only the plaintiff who has been in the possession and enjoyment of the same. According to



the plaintiff, the abovesaid building had been in existence in the suit property even before the date of purchase. The plaintiff did not insist for the sanction plan from his vendor and the plaintiff applied for regularisation plan with the Corporation of Chennai on 18.04.2000. While so, the Corporation of Chennai issued a notice under section 256(2) and (3) of the MCMC Act on 24.04.2000 for demolition. According to the Corporation, the plaintiff has put up the construction without any sanctioned plan. The abovesaid claim of the Corporation is untenable and the plaintiff also explained and informed that the building had been available and been in the possession and enjoyment of the owners even prior to his purchase and the same had been assessed by the Corporation and inasmuch as the Corporation is endeavoring to carry out the demolition pursuant to the notice as abovestated, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The Corporation who has been arrayed as the first defendant resisted the plaintiff's suit contending that the plaintiff has constructed a new building in the premises without the sanction plan and hence the notice had been issued by the Corporation and despite the same, the plaintiff has failed to stop the further construction and hence further action is contemplated following the notice issued under the MCMC Act and the plaintiff without obtaining the sanction plan, he is not entitled to proceed with the construction and the plaintiff is not entitled to injunct/prevent the authority from taking action under the Act and hence the suit is liable to be dismissed.

6. The second defendant resisted the plaintiff's suit contending that the second defendant and his brothers entered into a family partition dated 28.11.1997 under which various items were allotted to the respective sharers and in view of the allotment of the various shares, according to him, the plaintiff and the second defendant were unable to carry on the business jointly due to the difference of opinion and therefore the plaintiff and the second defendant entered into an arrangement in the presence of Panchayathars on 02.01.1998 by which the hotel business at No.527, T.H.Road, Old Washermenpet, Chennai was allotted exclusively to the second defendant and the Provision store business at No.20 Jandar Pillaiyar Koil Street, New Washermenpet, Chennai were allotted to the plaintiff and with reference to the hotel business abovestated, the plaintiff also



filed O.S.No.6406 of 1999 and sought for injunction and the I.A preferred by the plaintiff for temporary injunction was negatived and thereafter the parties endeavored to settle the matter and further it is putforth that the plaintiff endeavored to put up the illegal construction in the premises without any basis and when the same has been rightly questioned by the Corporation, the suit has come to be laid by the plaintiff without any foundation, the plaintiff acting in collusion with the politicians, is trying to grab the property belonging to the defendant and hence the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 6 were examined. Exs.A1 to A26 were marked. On the side of the defendants, no oral evidence has been adduced. Exs.B1 to B22 were marked.

8. On a consideration of the oral and documentary evidence adduced and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

9. From the pleas putforth by the respective parties, it is seen that the suit property was purchased by way of a sale deed dated 10.04.1996. The plaintiff would claim that even at the time of purchase, the building was available in the suit property however in a dilapidated condition and thereafter the plaintiff effected certain repairs and alterations. Per contra, the defendant contended that there was no superstructure in the suit property. The notice has been issued to the plaintiff by the Corporation, on account of the illegal construction put up by the plaintiff. From the pleas putforth by the plaintiff and the second defendant, it is found that the plaintiff is not the absolute owner of the suit property and the second defendant is also not having equal share in the same. It is further noted that the second defendant being the co-owner of the suit property has not objected to the demolition proposed by the Chennai Corporation. Now according to the second defendant, the plaintiff with a view to grab the second defendant's property has put up the construction in the suit property illegally.

10. Considering the abovesaid case projected by the respective parties, it is found that the plaintiff has not sought for any declaration that the notice issued by the Corporation



under section 256(2) and (3) of the MCMC Act is null and void. Therefore the Courts below are found to be justified that the suit laid by the plaintiff for the relief of permanent injunction without the relief of declaration is unacceptable in the eyes of law. In addition to that, the Courts below are found to be justified in not interfering with the statutory duties carried on by the Chennai Corporation.

11. The plaintiff would claim that the building was in existence even at the time of purchase, however to substantiate the same, the plaintiff was failed to produce the original sale deed and for the same, the plaintiff would claim that the same is not available however as concluded by the Courts below, nothing prevented the plaintiff from producing the certified copy of the sale deed. From the partition deed Ex.A1 dated 28.09.1997, it is found that there was no building in the suit property and the suit property has been described only a vacant site. This has also been admitted by the plaintiff during the course of his evidence. Furthermore, the plaintiff is also found to have leased out the property to A.T.Rajan as a vacant site. All the abovesaid factors go to disclose that there had been no existence of building in the suit property as claimed by the plaintiff. In such view of the matter, the plaintiff having endeavored to put up new construction without the sanction plan, the authorities had proceeded to take action against the plaintiff. As above pointed out, the second defendant also is the co-owner of the property. In the light of the abovesaid factors, the Courts below are found to be justified in not accepting the plaintiff's claim for the relief of permanent injunction particularly, when the suit laid by the plaintiff is found to be not sustainable legally and furthermore, the statutory duties required to be performed by the first defendant cannot be prevented by way of injunction.

12. In view of the above, the reasonings and conclusions of the Courts below for non suiting the plaintiff are found to be based on the proper appreciation of the materials available on record, both on factual matrix and in the eyes of law. I do not find any valid reason to interfere with the same. No substantial question of law is found to be involved in the second appeal.

13. In conclusion, the judgment and decree dated 28.01.2008 passed in A.S.No.523 of 2006 on the file of the 1st



Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 06.03.2006 passed in O.S.No.2682 of 2000 on the file of the XI Assistant Judge, City Civil Court at Chennai are confirmed. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The I Additional Judge,
City Civil Court at Chennai.

2.The XI Assistant Judge,
City Civil Court at Chennai.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.Ashok Menon, Advocate, S.R.No.7542

S.A.No.861 of 2008
and
M.P.No.1 of 2008

NRL(CO)
SB(08/09/2021)