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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.733 of 2009

&

M.P.No.1 of 2009

Kapali (deceased)

1.Nithya (deceased)

2.Vijaya @ Vijayalakshmi

3.K.Saradha

4.P.K.Ramesh

5.P.K.Suresh

6.P.K.Sathish

7.N.Santhakumar

8.N.Vijayan

9.N.Niraimathi

10.N.Nimanakumar

11.N.Dhanalakshmi

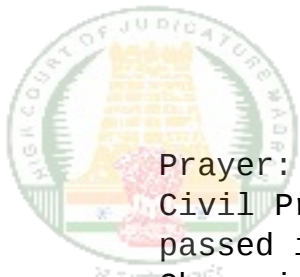
... Appellants

(Appellants 7 to 11 brought on record and 2nd appellant recorded as LR of the deceased 1st appellant vide order of Court dated 30.01.2014 made in M.P.Nos.2 and 3 of 2014 in S.A.No.733 of 2009.)

Vs

G.Mani

... Respondent



Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 07.12.2007 passed in A.S.No.157 of 1997 on the file of Fast Track Court - I, Chennai, reversing the Judgement and Decree made in O.S.No.4386 of 1994 on the file of the 1st Asst. Judge, City Civil Court, Madras dated 13.06.1996.

For Appellants : Mr.R.Thiyagarajan

For Respondent : Mr.K.P.Gopalakrishnan

J U D G E M E N T

The defendants are the appellants before this Court. They seek to challenge the Judgement and Decree passed by the learned Additional District and Sessions Judge, Fast Tract Court - I, Chennai in A.S.No.157 of 1997, in and by which the learned Judge has set aside the Judgement and Decree passed in O.S.No.4386 of 1994 by the I Assistant Judge, City Civil Court, Chennai.

2. The facts in brief preeceding the filing of the above Second Appeal are as follows:

3. The parties are referred to in the same array as in the suit. The plaintiff was the owner of the property described in suit schedule property. It is his case that the property had been allotted to him under a registered partition in the year 1986 dated 10.02.1986 registered as Doc.No.353 on the file of the Sub Registrar, Adyar. After the property had been allotted to him he had constructed a house in the said plot and was in possession and enjoyment of the same without any disturbance.

4. Thereafter, he had obtained necessary permission for putting up construction and for laying drainage line from his house to the main drainage system. The plaintiff would submit that the defendants who have no right whatsoever objected to the laying of the drainage from the plaintiffs house to the main drainage system and a Police complaint in this regard was given on 23.05.1994. The defendants were warned by the Police Authorities and they were informed that in case they have any grievance they have to approach the concerned authorities. Once again the defendants were attempting to disrupt the laying of the



drainage channel thereby constraining the plaintiff to file the suit.

5. The defendants on entering appearance have submitted a written statement denying the title of the plaintiff to the property and contending that the plaintiff and his family are encroachers who had encroached the land 50 years ago. They also denied the fact that the construction had been carried out after obtaining permission / approval from the concerned authorities.

6. The defendants would contend that the plaintiff was laying a pipe through the defendants land. Interlocutory application seeking an interim injunction was also disposed taking note of the endorsement made by the defendants that they had no objection to the laying of the pipe provided it was done from the main line taken through plaintiff's land. This was the sum and substance of the defense.

7. The Trial Court had framed the following issues:

“(i)Whether the plaintiff has cause of action for filing the suit?

(ii)Whether the plaintiff is entitled to the relief sought for?”

8. The learned Trial Judge dismissed the suit on the ground that the plaintiff had not proved his title to the suit property and further that the Advocate Commissioner had submitted a report that he was unable to ascertain whether the pipe line has been laid within the property of the plaintiff. On the above basis the suit was dismissed.

9. Challenging the said Judgement and Decree, the plaintiff had filed A.S.No.157 of 1997 on the file of the Additional District and Sessions Judge (FTC I), Chennai. The learned Appellate Court Judge considering the no objection given by the defendants to the laying of the drainage system and also relying upon Ex.A.1 held that the suit property belonged to the plaintiff since the drainage was being laid in the road which did not belong to the defendants. The Appellate Court had held that the defendants have no right to object to the same.

10. That apart, since the plaintiff was laying the drainage only after getting necessary permission, the appellate



Court was therefore of the opinion that the plaintiff was entitled to a decree for permanent injunction. As against the said Judgement, the defendants have filed the above Second Appeal.

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11. The defendants have once again questioned the plaintiff's right, title and interest to the suit schedule property and also there is no proof about the remittance of money to the Chennai Metro Water Supply and Sewerage (CMWSS) Board. This Court while admitting the Second Appeal had framed the following substantial Questions of law:

“(i)Whether the appellate Court is right in decreeing the suit despite the respondent failing to establish his right to claim title over the property as stated by the appellants?

(ii)Whether the appellate Court is right in relying on Ex.A.6 which does not confer any right to lay water, sewer pipe lines in the defendants / appellants' property as stated by the appellants?”

12. Heard the counsel and perused the records.

13. A perusal of the Advocate Commissioner's report would show that between the property of the plaintiff and the defendants there is a passage, which in the suit schedule has been described as the road. That apart, after the disposal of the interlocutory applications the pipe line has also been laid and the defendants have not filed any suit challenging the same. The suit in question is one for bare injunction and therefore the endeavour to examine the title to the suit property pales into insignificance.

14. It is an admitted fact that the plaintiff is in possession of the property and that he has constructed a building therein. On the Commissioner's report particularly the sketch would show the same. In fact, the Advocate Commissioner has observed that the drainage pipe which is marked as C and B in his sketch lies in the road mentioned in the plan attached to the partition deed and north of the plaintiff's property.

15. Further, considering the fact that the pipe line has already been laid and the same has not been questioned to date the appeal deserves to be rejected. The 1st substantial question of law is answered against the appellants / defendants since the



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suit is one for bare injunction and not for declaration of title. The drainage pipe has been laid from the plaintiff's property to the main drainage system which is situate to the north of the plaintiff's property.

16. Considering the fact that the drainage pipe has already been laid, the second substantial question of law becomes redundant.

17. In the light of the above said reasons, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Tract Court - I,
Chennai.

2.The I Assistant Judge,
City Civil Court,
Chennai.

Copy To:

The Section Officer,
V.R.Section,
High Court, Madras-104.

S.A.No.733 of 2009

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