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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Second Appeal No.176 of 2010
MP.No.1 of 2010

1.M.Manoharan
2.M.Sivasubramaniam
3.K.Sekar
4.S.Gnanasekaran
5.J.Velliangiri
6.A.Raju
7.K.Kumar
8.S.Srini
9.D.Kumaravel

... Appellants/Defendants

Vs.

P.K.Gomathi

... Respondent/Plaintiff

PRAYER : The Second Appeal filed under Section 100 of C.P.C., against the Judgement and Decree dated 20.10.2009 made in A.S.No.81 of 2008 on file of Principle District Court, Erode, confirming the Judgement and Decree dated 26.04.2007 made in O.S.No.41 of 2002 on the file of Principle District Munsif Court, Erode as prays to set aside the same.

For Appellants : Mr.S.Kathamalai Kumaran

For Respondent : No appearance

JUDGEMENT

This Second Appeal has been filed against the Judgement and Decree dated 20.10.2009 made in A.S.No.81 of 2008 on the file of the Principle District Court, Erode, confirming the Judgement and Decree dated 26.04.2007 made in O.S.No.41 of 2002 on the file of the Principle District Munsif Court, Erode and set aside the same.

2. The Appellants are the defendants in the suit.

The short facts of the plaintiff's case are as under:-

3. The plaintiff has purchased the suit property measuring 1539 sq.ft. (Plot No.39) by virtue of a sale deed dated 26.06.1971. As per the power deed dated 19.03.1998 in respect



of the suit property, an extent of 300 sq.ft out of 1539 has been excluded for the purpose of keeping a temple. This portion lies on the northern side of the property purchased by the plaintiff. If the said extent of 300 sqft. is excluded, plaintiff's entitlement to the house site will be only for 1239 sq.ft. The defendants trespassed into the vacant site allocated to erect a temple and installed a Vinayakar deity in the said site. Later they negotiated with the owners of the land to pay a lump sum amount in order to vacate the site. The defendants have no manner of right in the property and whatever they do is per se illegal. Hence the plaintiff has filed the suit for relief of mandatory injunction against the defendants for removing the Vinayakar statue installed therein and for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment over the property.

The short facts of the written statement of the first defendant adopted by the defendants 2, 4 to 9 including the additional written statements and the written statement of the 3rd defendant:-

4. The plaintiff had never been in the possession of the suit property at any point of time. Description of property in the suit is different from the description of property in the sale deed of the plaintiff. The plaintiff has suppressed the material facts and did not come to the Court with clean hands. The suit property consists of temple and it is maintained by the public who are residing in the locality of the Ganapathypuram. Recently, the old temple was renovated and Kumbabhishekam was conducted. The public also worship the deity and maintain the same. The Officials of the South Police Station situated at Surampatti threatened the defendants in pursuance of a complaint given by the father of the plaintiff. In the complaint itself, the father of the plaintiff admitted that there is a Vinayakar Temple in the suit property. Though the entire public were involved in the maintenance of the temple, these defendants alone have been impleaded. Hence, the suit is barred by non-joinder of necessary parties. The Commissioner's report would show the existence of the temple. The defendants were not personally involved in anything and they did not make any attempt to disturb the plaintiff and hence the suit has to be dismissed.

4.1 In the written statement filed by the third defendant, it is stated that the plaintiff has filed the suit for mandatory injunction to remove the temple. Later she amended the particulars of suit property by deleting a small portion. In view of that she cannot be granted with any relief of mandatory injunction. The defendants are interested only as worshippers



in the temple. There is no cause of action to the suit and hence, it is liable to be dismissed.

5. On the side of the plaintiff one witness, P.W.1 was examined and Exs.A1 & A2 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B6 were marked. The Commissioner's report has been marked as Exs.C1 & C2.

6. After the conclusion of the trial, the learned trial Judge has granted the relief of mandatory injunction and permanent injunction as prayed for by the plaintiff. While allowing the suit, the learned trial Judge has observed that in 300 sq.ft of land which has been demarcated for the temple, the plaintiff herself would build a temple from her own expenses. Aggrieved over that, the defendants have filed the first appeal and the First Appellate Court has modified the judgement of the Trial Court by setting aside the decree in respect of mandatory injunction and confirming the decree for permanent injunction in respect of 1239 sq.ft alone out of 1539 sq.ft, by excluding 300 sq.ft ear-marked for the Vinayakar Temple. While passing the judgement in the first appeal, the learned First Appellate Judge has observed that the Trial Court has granted a kind of a relief of mandatory injunction, which was not prayed by the parties to the suit. Aggrieved over the judgement and decree of the First Appellate Court, the defendants have filed the present second appeal. The second appeal is admitted on the following substantial questions of law:-

1. Whether the Courts below are justified in granting a Decree for permanent injunction based on Ex.A1 and A2 (document of Title) without considering the fact the permanent injunction should be granted only on production of documents proving possession as on the date of suit?

2. The Courts below having held that the plaintiff had not approached with clean hands. Whether it is justified in granting a permanent injunction as prayed for?

7. The respondent/plaintiff has purchased a house site by virtue of a sale deed - Ex.A2. Ex.A2 (sale deed), was executed by the power of attorney of the vendor. The power of attorney document executed in favour of Kumaresan by the vendor of the suit property is produced as Ex.A1. In the property particulars of Ex.A1, it is seen that the power of attorney has been given with the power to execute sale deed only in respect of 1239 sq.ft excluding 300 sq.ft which has been demarcated for the temple. But in property particulars of Ex.A2 (sale deed) the whole of 1539 cents is shown. When the suit was filed, the whole of 1539 sq.ft has been shown in the suit schedule. Later the discrepancy was amended by substituting the '1239 sq.ft' in

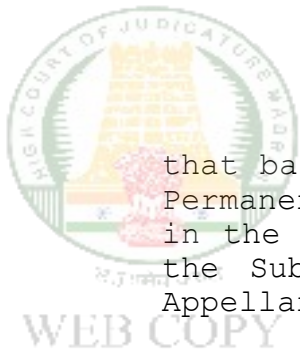


the suit schedule. The Trial Court has appreciated the evidence on record and come to the conclusion that she is the owner of the suit property and she is in possession and enjoyment of the same. Only on that basis, the decree for permanent injunction was granted and the same was accepted by the First Appellate Court also.

8. Despite the plaintiff was not given with a relief of mandatory injunction by the First Appellate Court, she has not filed any cross appeal. That means the plaintiff is satisfied with the decree of the First Appellate Court. The appellants/defendants have been pleading from the beginning that they are third parties and the temple was not put up by them. Admittedly, the site on which a temple was erected is a private property. It is one small portion of the plot which also comprises the portion of the house site sold to the plaintiff. It is an allotment made in a layout for a temple by the land owner when the land was divided into several house sites. So it forms part of the layout and for the common enjoyment of the owners of the house site and no one claim any individual right or enjoyment over the same. It is up to the owners of site or their association to utilize the area so allocated for any specific purpose. The defendants or the public cannot claim any right of enjoyment or management of any common area in a particular layout without being the owners of the plots comprised in the layout or being the members of such owners Association. The defendants or the alleged public have not claimed that they are the owners of the plots in the layout or members of the Owners' Association.

9. If any third person to the layout starts claiming right of enjoyment or management of the common area in the layout and construct a temple, it would definitely cause disturbance to the owners of the plots. The plaintiff being the owner of the immediate site on which the temple is erected would have felt the threat to her enjoyment of her plot. On seeing the temple erected the plaintiff has filed this suit. The appellants who are strangers to the layout have questioned the title and enjoyment of the plaintiff and the appreciation of evidence by the Courts in this regard. That itself will show their undue interest in the common area of a layout, which comprises the plots of the plaintiff and others.

10. Admittedly, the house site of the plaintiff is a vacant site. The position of law with regard to the vacant site is 'possession follows title'. The Plaintiff has proved that she is the owner of the suit schedule property through her sale deed Ex.A2 and as per the settled dictum, her possession follows her title. The Courts below have rightly appreciated the evidence on this aspect and arrived at a correct conclusion. Only on



that basis the First Appellate Court has confirmed the relief of Permanent Injunction. So I find no factual or legal infirmity in the judgement and decree of the First Appellate Court. Thus the Substantial Question of law No.1 is answered against the Appellant.

11. The defendants or any other public need not have any concern about the existence or non-existence of the temple in a site demarcated in a private layout. If anyone unrelated to the layout has erected any temple in the site that will be in clear violation of the law relating to building regulations and approvals. And further it is an act of trespass and encroachment. Only because of that reason despite a temple is erected in the site no one takes individual responsibility of admitting the act. Such kind of actions of the defendants or any public (as mentioned by the defendants) cannot be allowed. Otherwise it will disturb the peaceful enjoyment of the owners of the house-sites comprised in the layout. For the very same reason they cannot be allowed to get into the layout without the permission of the owners of the layout for worshipping/managing the deity erected on the temple site comprised in the layout.

12. The defendants have stated that the temple is constructed by some public and they are not related to them. Despite so, they have challenged the title of a person like the plaintiff who is the owner of a site in the layout in which the temple site also exists. This will prove the rightful cause of action for the plaintiff to file the suit and I find no suppression of facts by the plaintiff. Since the First Appellate Court has modified the decree of the Trial Court and limited it to the relief of Permanent Injunction on the basis of the title of the plaintiff over the suit property, the Substantial question of law No.2 will not arise and it has no basis. Hence the Substantial question No.2 is also answered against the appellants.

13. In the result, the Second Appeal is dismissed and the Judgement and Decree of the First Appellate Court is confirmed. Connected miscellaneous petitions, if any are closed. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar



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To

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1.The Principle District Judge,
Erode.

2.The Principle District Munsif,
Erode.

+lcc to Mr.S.Kaithamalai Kumaran, Advocate Sr.16312

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srg 01/10/2021