



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 19.11.2021

CORAM

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

SA(MD)No.110 of 2011

The Commissioner,
Inam Karur Municipality,
Kulathupalayam,
Karur Taluk.

... Appellant/Appellant/3rd Defendant
vs.

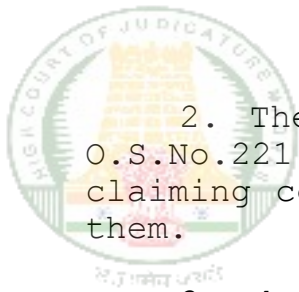
- 1.Thiruvavaduthurai Adheenam
Represented by
Its Adheenakarthha Sri-La-Sri
Sivaprakasa Pandara Sannathigal,
Thiruvaduthurai,
Myladuthurai Taluk,
Nagapattinam District. ... 1st Respondent/Respondent/Plaintiff
- 2.The Director of Municipal Administration,
Kuralagam, NSC Bose Road,
Chennai.
- 3.The State of Tamil Nadu
Represented by
The District Collector, Karur.
- 4.Ganapathi ... Respondents/Respondents/
Defendants 1, 2, 4

Prayer: Second Appeal filed under Section 100 of CPC against the Judgment and decree in AS.No.26/08 dated 31.07.2009 on the file of the District Court, Karur confirming the Judgment and decree made in OS.No.221/2001 dated 25.01.2008 on the file of the Sub Court, Karur.

For Appellant	:	Mr.K.Balasubramani
For Respondents	:	Mr.B.Brijesh Kishore for R1 Mr.G.Suriya Ananth, Additional Government Pleader for R2 and R3

J U D G M E N T

The concurrent Judgments and decrees passed in O.S.No.221 of 2001 by the Subordinate Court, Karur and in A.S.No.26 of 2008 by the District Court, Karur are being challenged in the present Second Appeal.



2. The first respondent / plaintiff has instituted a suit in O.S.No.221 of 2001 on the file of the Subordinate Court, Karur claiming compensation of Rs.2,02,335/- for the damages suffered by them.

3. The case of the plaintiff is as under:-

(i) The plaintiff is a Hindu Religious and Charitable Institution. They own properties all over Tamil Nadu and some other States. The income derived from the property is used for carrying out the charities and religious functions. The suit property was leased to the fourth defendant in the year 1986 for annual lease of Rs.400/- and the third defendant, the Commissioner, Inam Karur Municipality, Kulathupalayam, Karur Taluk attempted to take possession of the property from the plaintiff for formation of road. The plaintiff objected the same and filed a suit in OS.No.763/1996 before the District Munsif Court, Karur, seeking permanent injunction. The fourth defendant also filed a suit for permanent injunction in OS.No.190/1997 and inspite of the pendency of the suits, the third defendant, without any permission, has illegally encroached upon the property and laid a road, which is against the principles of natural justice. The plaintiff therefore decided to claim compensation from the third defendant, since the property has been taken over for public purpose. The third defendant occupied 13 cents of land, which extends to 5668 sq. ft. The plaintiff issued notice to the defendants under Section 80 of Civil Procedure Code seeking compensation at the rate of Rs.25/- sq. feet. However, the plaintiff was not compensated by the defendants. Hence, the plaintiff filed a suit in OS.No.221/2001 before the Subordinate Judge, Karur, claiming compensation of Rs.2,02,335/-.

(ii) In the suit, the third defendant has stated that the plaintiff and the fourth defendant never objected for laying the road and the road has been laid for public use. It is the further contention of the third defendant that the fourth defendant gave his voluntary permission for laying the road and not pressed the suit in OS.No.190/1997. The property was acquired by the third defendant only for the purpose of laying a road for public use and not for personal use and therefore, the plaintiff cannot seek compensation from the third defendant. The compensation claimed by the plaintiff at the rate of Rs.25/- per sq. ft. is on the higher side and prayed for dismissal of the suit.

4. On the above pleadings, the Trial Court had framed the following issues for consideration:-

"(i) Whether the plaintiff is entitled for the relief sought for by him?

(ii) Whether the plaintiff is entitled for any other relief?

(iii) Whether the road was laid by the Municipality for the public use, with the knowledge



of the plaintiff and the fourth defendant and with the consent of the plaintiff is correct?"

5. Before the trial Court, on the side of the plaintiff, PW1 and PW2 were examined and Exs.P1 to P11 were marked. On the side of the defendants, the third defendant was examined as DW1 and Exs.D1 to D3 were marked.

6. The learned Subordinate Judge, Karur, after hearing both sides and perusing the available documents, decreed the suit in favour of the plaintiff, who is the owner of the property, by fixing compensation at the rate of Rs.25/- per sq. ft. and directed the first and third defendants to pay a sum of Rs.2,02,335/- to the plaintiff, in which, the plaintiff was entitled for interest at the rate of 6% for a sum of Rs.1,41,700/-.

7. Aggrieved by the Judgment and decree passed by the Trial Court, the third defendant, the Commissioner, Inam Karur Municipality, Kulathupalayam, Karur Taluk, filed an appeal in AS.No.26/2008 before the District Court, Karur. The Appellate Court after hearing both sides and analysing the materials available on record, dismissed the Appeal Suit with costs, by confirming the compensation fixed by the Trial Court and directed the plaintiff to proceed against the second defendant, the District Collector, Karur to recover the suit amount and permitted the second defendant to recover the same from the defendants 1 and 3.

8. Challenging the said Judgment and decree, the third defendant, who is the appellant in the Appeal Suit has filed this Second Appeal raising the following substantial questions of law:-

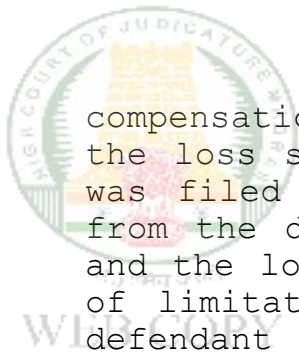
"(a) Whether the Courts below are right in decreeing the suit by holding that the suit is not barred under Section 14 of the Limitation Act?

(b) Whether the suit is maintainable in the absence of notice under Section 80 of the Code of Civil Procedure?

(c) Whether the present suit is hit by the law of acquiescence?"

9. Heard the learned counsel appearing for the appellant, learned counsel appearing for the first respondent and the learned Additional Government Pleader appearing for the second and third respondents.

10. The learned counsel for the appellant / third defendant would submit that the first respondent / plaintiff has given consent to lay the road in the suit property. He would submit that the fourth respondent / fourth defendant was a lessee of the suit property and the first respondent / plaintiff has to seek

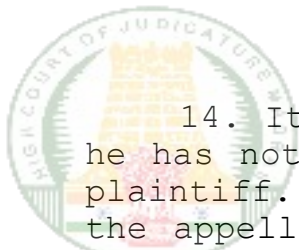


compensation only from the fourth respondent / fourth defendant for the loss suffered by them. He would further submit that the suit was filed by the first respondent / plaintiff, after three years from the date of formation of road, which is barred by limitation and the lower Courts ought to have dismissed the same on the point of limitation. He would also submit that the appellant / third defendant laid the road only for public use, however, the lower Courts without considering this aspect, directed the plaintiff to recover the compensation from the appellant / third defendant. The learned counsel also submitted that the appellant / third defendant had deposited the entire decree amount before the Subordinate Court, Karur, at the time of filing this appeal.

11. The learned Additional Government Pleader appearing for the respondents 2 and 3 conceded that the appellant / third defendant had deposited the decree amount before the Trial Court. Anyhow, he would submit that for the loss suffered by the first respondent / plaintiff, the appellant / third defendant, the Commissioner, Inam Karur Municipality, Kulathupalayam, Karur Taluk is liable to pay compensation.

12. The learned counsel for the first respondent/plaintiff submitted that the appellant / third defendant and the respondents 2 and 3 / defendants 1 and 2, without following the procedures prescribed under the Land Acquisition Act, illegally occupied the first respondent / plaintiff's property and the encroachment of the property is not denied by them. The appellant / third defendant has laid the road without the consent of the first respondent / plaintiff. The submission of the learned counsel for the appellant / third defendant that the appellant / third defendant laid a road with the consent of the first respondent / plaintiff is not proved by adducing any document. The Trial Court and the Appellate Court after analysing the documents, have rightly decreed the suit in favour of the first respondent / plaintiff and prayed for dismissal of this appeal. The learned counsel would submit that though the appellant / third respondent had deposited the decree amount before the Trial Court, due to the pendency of the Second Appeal, the first respondent / plaintiff is not in a position to withdraw the amount.

13. Admittedly, the first respondent / plaintiff, Thiruvaduthurai Adheenam, a Hindu Religious and Charitable Institution, is the absolute owner of the suit property, which is not denied by any of the parties to the suit. The first respondent / plaintiff leased the suit property to the fourth respondent / fourth defendant in the year 1986, for annual lease of a sum of Rs.400/-. While that being the position, the appellant / third defendant occupied the suit property and laid a road for public use, without following due process of law.



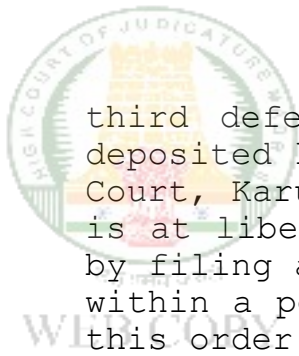
14. It is not the case of the appellant / third respondent that he has not encroached the property owned by the first respondent / plaintiff. In the arguments put forth before the Appellate Court, the appellant / third defendant had contended that the suits filed by the first respondent / plaintiff and the fourth respondent / fourth defendant were not pressed and hence, the first respondent / plaintiff is not entitled for any compensation. Even before this Court, the appellant / third defendant has raised a ground that the suit in OS.No.221/2001 is barred by limitation and hence it ought to have been dismissed. From the grounds and arguments raised by the appellant / third defendant, it is clearly seen that the appellant has trespassed into the property owned by the plaintiff/Thiruvaduthurai Adheenam and laid a road for public purpose without issuing any notice.

15. The ground raised by the appellant / third defendant with regard to limitation has already been well considered by the Appellate Court. The Appellate Court has given findings to the effect that the suit property was encroached in the year 1997. The first respondent / plaintiff issued notice on 16.12.1998 under Section 80 of Criminal Procedure Code claiming compensation for the loss suffered by them. Excluding the sixty days time period for giving reply to the notice, the limitation period would start only on 16.02.1999. Therefore, the suit ought to be filed on or before 16.02.2002. In the present case, the suit is filed in the year 2001, which is well within the limitation period. This Court also concurs with the decision of the Appellate Court that the suit is filed within the limitation period.

16. The significant point for consideration in this Second Appeal is that the appellant / third defendant had not adduced any valid document to prove that he has followed due process of law to acquire the land belonging to the first respondent / plaintiff. In the absence of any such evidence, the oral arguments put forth on the side of the appellant / third defendant that the road was laid with the consent of the first respondent / plaintiff are not acceptable. Hence, this Court is of the firm opinion that the first respondent / plaintiff has suffered loss by the act of the appellant / third defendant and he has to be necessarily compensated.

17. For the reasons stated above, this Court finds no reason to interfere with the well reasoned Judgments of the Courts below and therefore, no substantial question of law arises for consideration in this appeal. Accordingly, the Second Appeal is hereby dismissed. No costs.

18. The first respondent / plaintiff is entitled for compensation of Rs.2,02,335/-, in which, 6% interest is to be paid from the date of judgment till the date of payment. The learned counsel for the appellant /



third defendant submitted that the entire decree amount has been deposited by the appellant / third defendant before the Subordinate Court, Karur in OS.No.221 of 2001. The first respondent / plaintiff is at liberty to withdraw the decree amount together with interest, by filing a payment out petition before the Subordinate Court, Karur within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Sub Judge,
Karur

2.The District Judge,
Karur

COPY TO:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.B. BRIJESH KISHORE, Advocate (SR-35147[F]
dated 19/11/2021)

+1 CC to M/s.K. BALASUBRAMANI, Advocate (SR-35493[F]
dated 23/11/2021)

+1 CC to M/s.SPL GP (SR-35320[F] dated 22/11/2021)

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VR(CO)

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