



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD).No.503 of 2010

Karuthapillai ..Appellant/Appellant/Plaintiff
Vs.

Packiam (died)

1.Daivanai

2.Karuppayee

3.Sihapi

4.Yahu

5.Kunjaram

6.Sekar (died)

7.Palaniyayi

8.Saritha

9.Shylaja

10.Minor Sneha

11.Minor Umesh ...Respondents/Respondents/Defendants

(R9 to R11 have been impleaded
vide Court order dated 05.02.2021
in MP(MD)No.1 of 2011)

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 19.02.2010 passed in A.S.No.19 of 2008 on the file of the Subordinate Court, Sivagangai, as confirmed by judgment and decree dated 20.12.2007 passed in O.S.No.69 of 2003 on the file of the Principal District Munsif Court, Sivagangai.



For Appellant : Mr.G.Prabhu Rajadurai
For R1 to R5, R7 & R8 : Mr.Vellaisamy for
Mr.M.V.Venkataseshan
For R6 : Died
For R9 : Left

JUDGMENT

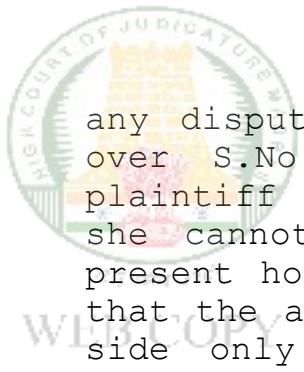
The plaintiff in O.S.No.69 of 2003 on the file of the Principal District Munsif Court, Sivagangai is the appellant in this second appeal. The suit was filed for the relief of permanent injunction. The suit was dismissed by judgment and decree dated 20.12.2007. Questioning the same, the appellant filed A.S.No.19 of 2008 before the Sub Court, Sivagangai. Vide judgment and decree dated 19.02.2010, the appeal was also dismissed. Challenging the same, this second appeal came to be filed.

2.Initially notice was ordered. On the last occasion, the following substantial question of law was framed.

"Is the Court below correct in holding that the plaintiff has not proved possession of vacant land when title is established by plaintiff?"

3.On the aforesaid substantial question of law, I heard the learned counsel on either side. There is no dispute that the land in question is a Natham property. The appellant/plaintiff had already put up a house construction. The house is compounded on three sides. When the appellant wanted to put up construction on the northern side, it is stated that the defendants prevented the appellant from doing so. Of course, as rightly contended by the learned counsel appearing for the respondents, the cause of action is absolutely bald. If the defendants had really interfered with the plaintiff's possession when she attempted to put up any construction within her boundaries, certainly the plaintiff would have issued either notice or lodged a police complaint. In the plaint also, the date on which the alleged interference took place has not been mentioned. Therefore, I have to necessarily concur with the reasons given by the trial Court in this regard. However, the Courts below have given a clear finding that the plaintiff has title as well as possession over S.No.442/26 in Senkulipatti Village in Sivagangai District.

5.Ex.A3 is the extract from the Natham Adangal Register. It is seen therefrom that the plaintiff has title over an extent of 0.03.30 hec. S.No.442/26 has also been sub-divisioned and the survey plan has been marked as Ex.A1. Therefore, there cannot be



any dispute that the plaintiff has possession as well as title over S.No.442/26. Now the defendants would contend that the plaintiff had already come to the edge of the boundary and that she cannot make any construction further to the north of the present house construction. The appellant's counsel would contend that the appellant intends to put up construction on the northern side only within her boundaries. This issue could have been resolved at the trial stage itself.

6.I must note that the defendants took out an application for appointing an Advocate Commissioner to identify the exact lying of the property. It is most unfortunate that the plaintiff ill-advisedly opposed the said petition resulting in its dismissal. The defendants made a second attempt. Again that was opposed and that petition was also dismissed. Only in the first appeal, the plaintiff woke up to file an application for appointing an Advocate Commissioner. It was now the turn of the first appellate Court to dismiss the petition filed by the plaintiff. The appellant's counsel would want me to appoint an Advocate Commissioner in this second appeal. Instead of doing so, the second appeal can be disposed of by giving liberty to the appellant to have an Advocate Commissioner appointed in execution proceedings that may be taken out for enforcing the decree in this second appeal.

7.As rightly pointed out by the learned counsel appearing for the respondents, the plaintiff has not given any four boundaries in the plaint schedule. The appellant's counsel would contend before this Court that between the plaintiff's house and that of the defendant, there is a cart-track running across. He would also claim that there is a strip of land between the present house construction and the cart-track and it is only on this strip of land, the plaintiff is laying his claim. This issue of identification ought to have been resolved before the courts below. However, in the interest of justice, I grant liberty to the plaintiff to take out an application in the execution proceedings, if there arises a dispute between the parties after the disposal of the second appeal.

8.Though the courts below cannot be faulted for having taken a particular approach, I must observe that the courts below have been too technical. There is obviously a running dispute between the plaintiff and the defendant. It is clear that the plaintiff wants to put up a wall on the northern side. That is being objected to by the defendants. Looked at from this perspective, one can note that there has arisen a cause of action for maintaining a suit for injunction.



9. In this view of the matter, the judgment and decree of the courts below are set aside and the substantial question of law is answered in favour of the appellant and the second appeal is allowed.

10. The learned counsel appearing for the appellant undertakes that the appellant will not lodge any police complaint against the defendants in the event of there arising any dispute in the matter of this decree. The issue will be resolved only in the Executing Court. The appellant will file an execution petition and in the said execution petition she will take out an application for appointing an Advocate Commissioner for determining the four boundaries of the suit property in the light of Exs.A1 and Ex.A3. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The Principal District Munsif,
Sivagangai.

2. The Sub Judge,
Sivagangai.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.M.V.VENKATASESHAN, Advocate (SR-16556[F] dated
20/04/2021)

+1 CC to MR.G.PRABHU RAJADURAI, Advocate (SR-16352[F] dated
19/04/2021)

S.A. (MD) .No.503 of 2010
17.04.2021

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