



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.408 of 2013 and

CMP(MD) No.1443 of 2019

WEB COPY

1.R.Parasuraman
2.R.Devadas
3.R.Rajaram
4.D.Mageswari
5.V.Rajeswari
6.M.Latha

... Appellants/Respondents/Plaintiffs
.vs.

Lakshmipuram Panchayat,
Periyakulam Taluk,

Represented by its President. ... Respondent/Appellant/Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., against the decree and judgment in A.S.No.5/2009 dated 29.06.2011 passed by the Sub Court, Periyakulam, in reversing the judgment and decree of District Munsif Court, Periyakulam in O.S.No.77/2003 dated 05.01.2009.

For Appellants :Mr.S.Ramesh
For Respondent :Mr.M.Ponniah

JUDGMENT

The plaintiffs in OS No.77 of 2003 on the file of District Munsif Court, Periyakulam are the appellants in this Second Appeal. The appellants filed the said suit seeking permanent injunction against the local body from forming any road across the suit property. The trial Court by Judgment and Decree dated 05.01.2009 decreed the suit. Aggrieved by the same, the local body filed AS No.5 of 2009 before the Sub-Court, Periyakulam and vide Judgment and Decree dated 29.06.2011, the First Appellate Court set aside the decision of the trial Court and allowed the appeal and dismissed the suit. Challenging the same, the Second Appeal came to be filed.

2.The Second Appeal was admitted on the following substantial questions of law.

i.Whether the lower appellate Court was right in finding possession in favour of the defendant based on commissioners report?

ii.Whether the first appellate Court is right in not following the principle that possession follows title though it had confirmed title of the suit property in favour of the plaintiffs?



iii. Whether the first appellate Court is right in protecting the plaintiffs by granting an order of injunction against the high handed act of the defendant using their men and muscle power?

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iv. Whether the Court below is right in rejecting the prayer of permanent injunction having found that the Advocate Commissioner had inspected the property in the year 2008 and he has not even found that the mud road was laid before suit?

v. Whether the first appellate Court is right in denying the relief of permanent injunction on the ground that the appellants/plaintiffs have not prayed for mandatory injunction?

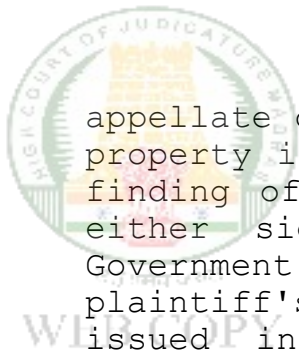
3. Heard the learned counsel on the either side.

4. The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial Court.

5. The learned counsel for the respondent/local body drew my attention to the written statement filed by them. In the written statement, it was specifically pleaded that the road had already been laid across the suit property. He also pointed out that an Advocate Commissioner visited the suit property and filed a report on 07.11.2008. In the said report, it has been clearly mentioned that the road runs across the appellants' suit property. The learned counsel for the respondent also pointed out that the plaintiff did not file any objection in response to the Commissioner's Report. His core argument is that in a suit for injunction, the only point for consideration is who was in possession of the suit property on the date of filing of the suit. In the case on hand, the stand taken in the written statement is borne out by the findings of the Advocate Commissioner's report. The trial Court did not take note of the same. The first appellate court rightly noted that the plaintiff ought to have filed a suit for recovery of possession. According to the learned counsel for the respondent this approach of the first appellate court is well founded. His final contention is that no substantial question of law arises for consideration.

6. I carefully considered the rival contentions and went through the evidence on record.

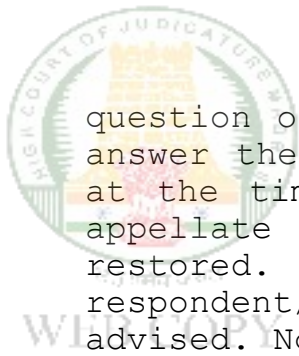
7. The suit property measures 41 cents and is comprised in Survey No.2621/2 in Thamarai Kulam Village in Periyakulam Taluk, <https://hccasesreports.gov.in/services/> the limits of Lakshmipuram Panchayat. The first



appellate court has rendered a finding that title in respect of suit property is very much with the plaintiffs. That is the concurrent finding of the Courts below. A perusal of the evidence marked on either side would show that this property originally was a Government poramboke. It was later assigned in favor of the plaintiff's father, namely, Ramasamy. Patta (Exhibit A4) was also issued in his name. From the entries in 'A' Register, it is seen that there is no mention of any road running across the suit property. As rightly pointed out by the learned counsel appearing for the appellants, if a road did not originally run across the suit property and it was laid subsequently, there must have been official proceedings issued in that regard. The Panchayat must have called for a tender. It must have passed resolution proposing formation of a road. No such evidence has been adduced by the local body. Therefore, there is considerable merit in the contention of the learned counsel appearing for the appellants that between the institution of suit and inspection of the property by the Advocate Commissioner, some development must have taken place. What should matter is the position that obtained on the date of suit. It is well settled that findings regarding possession cannot be given based on the report of the Advocate Commissioner.

8.The local body is a state instrumentality. Even though right to property may have ceased to be a fundamental right following the 44th Constitutional Amendment, it is very much a right recognised by the Constitution of India. Article 300 A of Constitution of India states that no person shall be deprived of property save by authority of Law. In the case on hand, there is ample evidence to show that the suit property stood in the name of the appellants/plaintiffs. If really a road had been laid across the same without formal acquisition, it amounts to depriving the plaintiffs of their property. Article 300 A of Constitution of India mandates that such deprivation can occur only by the authority of law. A property belonging to a private individual can vest with local body or State either through gift or through acquisition. The plaintiffs have not executed any gift conveying the suit property in favour of the local body. Therefore, only through acquisition proceedings, the suit property could have been taken by the local body for forming the road. No such proceedings have been marked before the Courts below.

9.Therefore, I have to necessarily come to the conclusion that even if a road was actually formed in the suit property, it must have been illegally formed. No Court can give its seal of approval for any such illegal action. In any event, I have given a finding that on the date of the suit, adverse development has been taken place, subsequently Courts are compelled to take note of specific development. The Trial Court readily granted the relief of injunction as sought for by the plaintiffs. The first appellate court has erred in holding that the plaintiffs ought to have filed the suit for recovery of possession. The approach of the first appellate court is clearly incorrect. I answer the third substantial



question of law in favor of the appellants. It is not necessary to answer the other substantial questions of law framed by this Court at the time of admission. The judgment and decree of the first appellate Court is set aside. The decision of the trial Court is restored. The Second Appeal is allowed. It is always open to the respondent/local body to take acquisition proceedings, if it is so advised. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

vrn/tmg

Note:

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TO

- 1.The Subordinate Judge,
Periyakulam.
- 2.The District Munsif,
Periyakulam .

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai - 2 Copies

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-28865 dated 13/09/2021)

+1 CC to M/s.M.PONNIAH, Advocate (SR-28873 dated 13/09/2021)

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SJ(CO)

GC/JC(11.11.2021) 4P 7C