



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.571 of 2006

and

M.P.(MD)No.1 of 2006

V.S.Sundaram

... Appellant/Respondent/
Defendant

Vs.

Navasivagathammal

... Respondent/Appellant/
Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 12.08.2005 passed in A.S.No.219 of 2004 on the file of the Principal Subordinate Court, Nagercoil, reversing the judgment and decree dated 12.02.2004 passed in O.S.No.125 of 2003 on the file of the Principal District Munsif Court, Nagercoil.

For Appellant : Mr.Balamohan Thampi
For Mr.S.Siva Thilakar

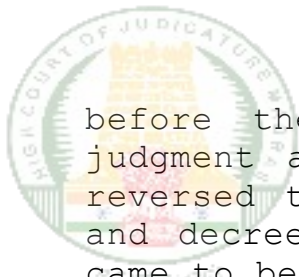
For Respondent : No appearance

JUDGEMENT

The defendant in O.S.No.125 of 2003 on the file of the Principal District Munsif Court, Nagercoil, is the appellant in this second appeal. The respondent filed the said suit for permanent injunction restraining the appellant herein from interfering with her right to carry out repairs in the suit property. The suit claim was resisted by the appellant herein. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.The plaintiff did not even enter the witness box. Exs.A1 to A3 were marked. The defendant examined himself as D.W.1 and marked Exs.B1 and B2.

3.After a consideration of the evidence on record, the trial Court by judgment and decree dated 12.02.2004 dismissed the suit. <https://hccaseservices.mv.in/hccservices/> By the same, the plaintiff filed A.S.No.219 of 2004



before the Principal Sub Court, Nagercoil. By the impugned judgment and decree dated 12.08.2005, the first appellate Court reversed the decision of the trial Court and allowed the appeal and decreed the suit. Challenging the same, this second appeal came to be filed.

WEB COPY

4.The second appeal was admitted on the following substantial questions of law:-

"(i) Whether the lower appellate Court is right in law in decreeing the suit for bare injunction to do repair works in the suit house property, when the registered Udanbady dated 22.01.1951 marked as Ex.A1 executed between the father of the appellant and the husband of the respondent to the effect that the suit house property can be enjoyed by the respondent on humanitarian ground till the life of the dwelling house suit property or till the life time of the respondent? and

(ii) Whether the suit for bare injunction in the facts and circumstances of the case is maintainable in view of the terms and conditions enshrined therein in Ex.A1 registered Udanbady has attained finality?

5.Though the respondent was served and her name is printed in the cause list, she has not chosen to enter appearance.

6.The learned counsel appearing for the appellant 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 appellant and set aside the impugned judgment and decree and restore the decision of the trial Court.

7.I carefully considered the contentions advanced by the learned counsel appearing for the appellant and went through the evidence on record. There is no doubt that the suit property belongs to the appellant. The husband of the plaintiff and the father of the appellant were brothers. The suit property was sold by the plaintiff's husband in favour of the appellant's father namely, Swaminathan Pillai. Since the plaintiff's husband did not have any house of his own, an agreement dated 22.01.1951 was entered into between them. The said agreement was marked as Ex.A1. As per the terms of the agreement, the plaintiff as well as her husband were permitted to stay in the suit house during their life time. The grievance of the plaintiff was that house became uninhabitable and therefore, repairs had to be carried out. Since the defendant was resisting the same, the suit came to be filed. It is true that the suit house is a very old one. Even at the time of filing the suit, it was aged around 125 years.



Therefore, the plaintiff was justified in making a request for effecting repairs. But then, the plaintiff could not have claimed any compensation from the appellant. The plaintiff also cannot carry out repair works in such way so as to cause nuisance to the habitation of the defendant. The defendant/appellant is residing in the adjacent premises and therefore, the plaintiff cannot be conferred with any right to carry out such repairs which may endanger the defendant's premises. The specific case of the defendant was that the house portion occupied by him is in a sound condition. The first appellate Court failed to note that the plaintiff did not even enter the witness box and to adduce evidence in support of her case. The first appellate Court also failed to take note of the terms of Ex.A1. The plaintiff had only been permitted to reside in the suit property during her life time. She is a permissive occupant. Of course, the plaintiff can carry out certain basic repairs. But the plaintiff wanted to put up a new wall as well as new roofing. The plaintiff could not have been granted permission to do so. Since the plaintiff did not enter witness box and since the terms of Ex.A1 do not authorize the plaintiff to do what she sought to do, the substantial questions law are answered in favour of the appellant. The decision of the first appellate Court is set aside and the judgment and decree of the trial Court are restored. The second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

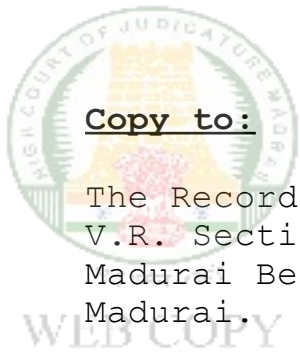
ias

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 Principal Sub Court,
Nagercoil.

2.The Principal District Munsif Court,
Nagercoil.



Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A. (MD) No. 571 of 2006
23.09.2021

RK/JGB (01/11/2021) 4P 5C