



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)Nos.812 & 813 of 2014 and

M.P. (MD)Nos.2 & 3 of 2014

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S.A. (MD)No.812 of 2014

Datties Joyson

... Appellant/Appellant/
Defendant

Vs.

1. Paul Raj
2. Selvaraj
3. Rajamony

... Respondents/
Respondents/Plaintiffs

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 28.03.2013 made in A.S.No.115 of 2012 on the file of the I Additional Subordinate Judge, Nagercoil Camp, at Padmanabhapuram, confirming the Judgment and Decree dated 08.12.2011 made in O.S.No.269 of 2007 on the file of the Principal District Munsif, Padmanabhapuram.

S.A. (MD)No.813 of 2014

Datties Joyson

... Appellant/Appellant/
Plaintiff

Vs.

1. Paul Raj
2. Selvaraj
3. Rajamony

... Respondents/
Respondents/Plaintiffs

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 28.03.2013 made in A.S.No.103 of 2012 on the file of the I Additional Subordinate Judge, Nagercoil Camp, at Padmanabhapuram, confirming the Judgment and Decree dated 08.12.2011 made in O.S.No.252 of 2007 on the file of the Principal District Munsif, Padmanabhapuram.

(in both S.As.)

For Appellant

: Mr.M.Dennis Joe

For Respondents

: Mr.A.Sivaji

* * *



C O M M O N J U D G M E N T

The appellant Thiru.Datties Joyson filed O.S.No.252 of 2007 on the file of the Principal District Munsif Court, Padmanabhapuram, seeking the relief of permanent injunction against the defendants in respect of the suit property comprised in old Survey No.423/6 in Thirparappu Village measuring an extent of 63 cents. The respondents herein filed O.S.No.269 of 2007 before the very same Court claiming damages to the tune of Rs.50,000/- from the appellant for having damaged the retaining wall of the premises bearing Door No.20/132. The suits were tried together by the trial Court and by judgment and decree dated 08.12.2011, the suit filed by the appellant was dismissed, while the suit filed by the respondents was decreed. Aggrieved by the same, the appellant filed A.S.No.103 of 2012 and A.S.No.115 of 2012 before the Sub Court, Padmanabhapuram. The first appellate Court by judgment and decree dated 28.03.2013 confirmed the decision of the trial Court and dismissed the appeals. Challenging the same, these second appeals have been filed.

2. S.A.(MD)No.812 of 2014 arises out of O.S.No.269 of 2007, while S.A.(MD)No.813 of 2014 arises out of O.S. No.252 of 2007 filed by the appellant herein.

3. This second appeal was admitted on the following substantial questions of law:-

" (i) Whether the Courts below erred in dismissing the suit for injunction on the ground that there was no cause of action?

(ii) Whether the first appellate Court fell into error in not adjudicating the lie of the property in the particular survey number when contrary survey numbers have been pleaded in the written statement?"

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and wanted this Court to answer the substantial questions of law in favour of the appellant and allow the second appeals.

5. Per contra the learned counsel appearing for the respondents would submit that no substantial question of law arises for determination and he pressed for dismissal of the second appeals.

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

7. The suit for injunction filed by the appellant came to be dismissed only on the ground that there is no cause of action. The respondents herein have categorically stated that they have no



interest in the schedule annexed to O.S.No.252 of 2007. However, the learned counsel appearing for the appellant would submit that the appellant and the respondents are neighbours and since the relationship between them was under strain, the appellant seeks the protective armour of permanent injunction. He would state that the respondents made an attempt on 30.07.2007 to interfere with his possession.

8. The respondents do not dispute the title and possession of the appellant in respect of the suit schedule property in O.S.No.252 of 2007. Considering the rival pleadings and the case projected by the parties, I am of the view that the appellant has shown that there was cause of action for filing the suit. I answer the first substantial question of law in favour of the appellant.

9. In this view of the matter, the judgment and decree passed by the Courts below impugned in S.A.(MD)No.813 of 2014 are set aside and S.A.(MD)No.813 of 2014 is allowed. The appellant is entitled to the decree of permanent injunction.

10. The case of the plaintiffs in O.S.No.269 of 2007 is that the appellant demolished their retaining wall and thus caused loss to the tune of Rs.50,000/-. The plaintiffs in the said suit had given police complaint and they were also duly marked as Ex.B.4. The Courts below have concurrently found that the appellant damaged the said wall. The case of the appellant is that due to floods, the retaining wall got washed away. When the Courts below have concurrently found that the appellant caused the damage, I am of the view that no interference is called for in exercise of my jurisdiction under Section 100 of C.P.C.

11. In this view of the matter, the second substantial question of law is answered against the appellant. The judgment and decree impugned in S.A.(MD)No.812 of 2014 is confirmed and S.A.(MD) No.812 of 2014 is dismissed. If the respondents herein are in possession of any channel poramboke, the same will have to be removed and it is open to the appellant herein to bring it to the notice of the concerned authorities about the encroachment committed by the respondents and press for its removal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

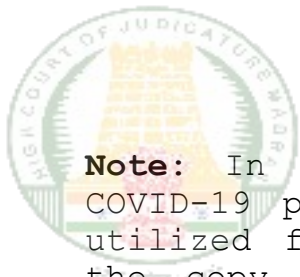
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Sub Assistant Registrar(CS)

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To:

1. The I Additional Subordinate Judge,
Nagercoil Camp at Padmanabhapuram.
2. The Principal District Munsif,
Padmanabhapuram.

COPY TO

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

+2 CC to M/s.A.SIVAJI, Advocate (SR-19953 & 20090[F])
+2 CC to M/s.M.DENNIS JOE, Advocate (SR-19954 & 19955[F])

S.A.(MD)Nos.812 & 813 of 2014
22.06.2021

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