



WEB COPY

S.A.No.1205 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE JUSTICE Mr.V.LAKSHMINARAYANAN

S.A.No.1205 of 2010
and
C.M.P.No.7930 of 2023

V.Sethu.

...Appellant.

Vs.

1.Executive Officer,
Selection Grade,
Executive Town Panchayat,
Katpadi,
Vellore District.

2.The Director of Town
Panchayat,
Kuralagam,
Chennai - 600 108.

...Respondents.

PRAYER:Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 26.04.2010 passed in A.S.No.255 of 2009 on the file of the V Additional City Civil Judge, Chennai, reversing the judgment and decree dated 15.11.2008 passed in O.S.No.4690 of 2007 on the file of the VI Assistant City Civil Judge, Chennai.



For Appellant : Mr.Anand
For Respondents : Mr.P.S.Prabhu for R1
R2 : Mr.B.Tamil Nidhi
Special Government Pleader

JUDGMENT

The appellant/plaintiff is the wife of an Army Officer. He had purchased the suit schedule mentioned property. The entire dispute is whether the plot 5A situated in Jothi Nagar, in approved DTCP plan 77/86, bearing door No.28, Katpadi, Vellore District, had been allocated for a park or was outside the scope of the layout. At the time of the purchase the layout plan was annexed to the sale deed & had been registered.

2. The plaintiff claims that her husband has title to the property whereas, the first defendant has denied that time. While the documents were executed in Katpadi, the plaintiff's husband had taken possession of and has been in enjoyment of the property at Katpadi, she has filed a suit on account of the notice issued by the second defendant, at Chennai.

3. I have gone through the pleadings and I agree with the learned



counsel for the respondent that the City Civil Court, Madras has no territorial jurisdiction to entertain the suit. The property is situated at Katpadi and as pointed out above, the entire cause of action has arisen within the jurisdiction of courts at Vellore district. Merely because the second defendant is residing within the jurisdiction of Chennai, that does not give cause of action to the courts at Madras to seize jurisdiction.

4. In fact, the courts at Vellore district are more convenient to the plaintiff and the first defendant to contest the suit. Whether Plot No.5 A exists in the approved plan or whether a gift deed was executed for the said property by the layout developers or whether it is a subject matter of the suit, could have been done/identified by appointment of an Advocate Commissioner. Perhaps, since Vellore is far, more than 150 kms from Chennai, an advocate commissioner was not appointed. It is trite that courts had to deal with *forum conveniens*, at the time of trying the suit.

5. I feel that the VI Assistant City Civil Court, Madras is not *forum conveniens* and the appellant should have only approached the



courts in Vellore for the relief sought for. The explanation given by the learned counsel for the appellant is that the wife had filed the suit because the husband is serving in the Army and was not available at Vellore during the relevant time. That fact is not sufficient for jurisdiction. In any event, parties cannot by consent confer jurisdiction. Therefore, in the exercise of powers vested in me, under Order VII Rule X *explanation*, I set aside the judgment and decree in A.S.No.255 of 2009 on the file of the V Additional City Civil Court, Chennai dated 26.04.2010, whereby the judgment and decree in O.S.No.4690 of 2007 dated 15.11.2008, VI Assistant City Civil Court, Chennai was reversed.

6. The original plaint is directed to be returned to the plaintiff for presentation before the proper court. The Learned counsel for the appellant, seeks liberty to amend the plaint to seek the relief of declaration of title. The said leave is granted. The plaintiff is permitted to amend the plaint and seek for declaration of title on payment of appropriate court fees. The defendant is at liberty to file an additional written statement challenging the same. Since I have dealt with only on the issue of jurisdiction and I found that City Civil Court, Madras does



not have jurisdiction, I am not imposing any cost.

7. The Office is directed to return the original documents filed by the appellant in U.S.R.No.13983 of 2023 on 20.04.2023 to enable the appellant to produce it before the court at Vellore. Time for return of plaint & documents is one month. The plaintiff is granted further period of one month excluding the ensuing vacation to present it before the proper forum. The City Civil Court, Madras shall return the plaint to the appellant on or before 30.06.2023. The appellant shall present its plaint on or before 31.08.2023. As the wife of the appellant has filed the suit, appropriate impleading application can be filed to implead Mr.Vasu, the army personnel, who is the actual owner, as a co-plaintiff to the suit.

8. The learned counsel appearing for the first respondent would submit that the Katpadi Town Panchayat has since been merged with Vellore Municipal Corporation. The appellant shall take an appropriate application to substitute the Vellore Municipal Corporation in place of Katpdi Municipality.

9. In fine, this Second Appeal stands allowed. The decree in



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A.S.No.255 of 2009 on the file of the V Additional City Civil Court is set aside. Similarly, the decree of the VI Assistant City Civil Court in O.S.No.4690 of 2003 dated 15.11.2008 is also set aside. The plaint is directed to be returned to the plaintiff. No costs. Consequently, connected Miscellaneous Petition is closed.

20.04.2023

Index : Yes/No
Speaking : Yes/No
Neutral Citations : Yes/No
nst

Note to Office: *Plaint may be returned on substitution with certified copies of the plaint and documents.*



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To:

- 1.The VI Assistant City Civil Judge
Chennai.
- 2.V Additional Judge, City Civil Court,
Chennai.
3. Record Keeper
VR Section
High Court of Madras
Chennai.



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V.LAKSHMINARAYANAN. J,

nst

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