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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

A.S.No.145 of 2017 and
C.M.P.No.6544 of 2017

M.S.Rajamanickam

... Appellant

Vs.

1.Mrs.Marry Maragatham

2.The Greater Chennai Corporation,
Rep. by the Commissioner,
Chennai. ... Respondents

R2 impleaded as second respondent *vide* Court order dated 19.11.2018 made in A.S.No.145 of 2017.

Prayer: This Appeal has been filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.12217 of 2010 on the file of VII Additional Judge, City Civil Court at Chennai dated 16.10.2015.

For Appellant : Mr.M.Stalin for
Mr.V.Sanjeevi

For Respondents : Mr.M.Thamizhavel for R1
Mr.R.Gopinath, Standing Counsel for R2

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JUDGMENT

This Appeal Suit has been filed to set aside the judgment and decree passed in O.S.No.12217 of 2010 on the file of VII Additional Judge, City Civil Court at Chennai dated 16.10.2015.

2. Heard Mr.M.Stalin, learned counsel for the appellant, Mr.M.Thamizhavel, learned counsel for the first respondent and Mr.R.Gopinath, learned Standing Counsel for the second respondent and perused the materials placed on record.

3. The appellant is the defendant in the suit. The plaintiff has filed a suit against the defendant to deliver vacant possession of the suit schedule property and for permanent injunction restraining the defendant and his men from in any manner proceeding with and altering the character of the plaint schedule property either by excavation, putting up any building or in any other manner and with cost. The said suit was decreed in favour of the plaintiff. Aggrieved over that, the defendant has preferred this Appeal.

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4. The short facts of the suit filed before the Trial Court are as follows:

The suit property was originally belonging to one P.S.Ganapathy Iyer and after his death, the entire land comprised in S.No.317/1 was partitioned among the legal heirs of P.S.Ganapathy Iyer through a partition deed dated 29.09.1958. In the said partition, the suit schedule property fell to the share of K.Subramaniam who is the grand son of P.S.Ganapathy Iyer. K.Subramaniam has sold the land fell to his share including the suit property to S.Muthukrishna Iyer under a registered sale deed dated 15.02.1966. After purchasing the property, S.Muthukrishna Iyer developed the entire extent of land and got a layout comprising a number of plots and Plot No.147 is one among the set of plots. In the said layout, the suit schedule property measures about one ground and 1200 Sq.ft (3600 Sq.ft). The suit property was sold by S.Muthukrishna Iyer in favour of the plaintiff under the registered sale deed dated 24.03.1966.

4.1. The defendant is a Builder and he carries a business under the name and style of Vasanth Builders. He is involved in promoting the properties by constructing flats. The defendant approached the plaintiff to sell

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the suit property to him. Since the plaintiff refused to sell away the suit property, the defendant started to give pressure to the plaintiff. The plaintiff had to go abroad and visit her daughter residing at London. During the said period, she appointed her son-in-law as her Power of Attorney to safeguard her interest. On 15.03.2003, the defendant trespassed and commenced excavation of the suit property and that was noticed and objected by the Power Agent of the plaintiff. The Power Agent also lodged a criminal complaint against the defendant on 17.03.2003. However, the police advised the complainant to seek civil remedy before the Court. In order to safe guard the suit property, the plaintiff has erected a compound wall around the suit property. However, the defendant committed trespass into the plaintiff's property, though it is compounded. He started to do excavation for laying foundation for his building. Hence, the plaintiff was compelled to file a suit in O.S.No.12217 of 2010.

4.2. In the written statement filed by the defendant, it has been stated that the defendant is in possession of the land bearing Plot No.90, Bhuvaneswari Nagar, Velachery, Chennai-42 and it is the northern boundary of the suit schedule property. The above said property was originally

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belonging to one N.Kanthimathiammal by virtue of a sale deed dated 24.03.1966. N.Kanthimathiammal built a house in the said property and died subsequently. After her death, her legal heir and son N.Srinivasan sold the land to A.Susila under the registered sale deed dated 02.09.1988. Subsequently, A.Susila and the defendant's wife Vasantha Rajamanickam entered into an agreement for sale on 01.06.2001 in respect of Plot No.90, Bhuvaneswari Nagar, Velachery, Chennai-42. Subsequently, she received the entire sale consideration and delivered possession of the property to the defendant's wife on 10.12.2001. Thereafter, the defendant obtained planning permission and building permit for the construction of ground and first floor residential building with stilt in Plot No.90. He also got CMDA approval by paying development charges. After getting necessary approval, the defendant commenced construction work on 05.02.2003 and erected columns and compound wall on all four sides of the land in Plot No.90.

4.3. Thereafter, the plaintiff met the defendant and told that the she is the owner of the land bearing Plot No.147 and offered the same for sale. The defendant also offered to purchase Plot No.147 for sum of Rs.7,50,000/-. The defendant never trespassed into the suit property and the allegations made in

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the plaint are all false. Since the suit is a vexatious one and filed without a cause of action it has to be dismissed.

5. In view of the above pleadings, the following issues have been framed before the Trial Court:

> "*1.Whether the plaintiff is entitled to get recovery of possession and permanent injunction as claimed in the plaint?*
>
> *2.Whether the identity of the property is in question?*
>
> *3.Whether the defendant is in possession of the property?"*

6. During the trial, on the side of the plaintiff, the husband of the plaintiff was examined as P.W.1 and Exhibits P1 to P9/A9 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Exhibits B1 to B12 were marked. After completion of trial and considering the materials available on record, the learned Trial Judge has decreed the suit in favour of the plaintiff. Aggrieved over that, this Appeal has been preferred by the appellant/defendant.

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7. Mr.M.Stalin, learned counsel for the appellant submitted that the learned Trial Judge ought to have confirmed the lawful possession of the defendant in Plot.No.90. The learned Trial Judge has disregarded the defects in the Advocate Commissioner's report and plan and relied on it for identifying the suit property. The Advocate Commissioner has not even clarified whether the boundary details in Ex.A1 relating to Plot No.147 tallied with the boundary of the suit property. Plot No.90 is not on the northern side of the suit property as found in Ex.A1. The boundaries shown in Ex.C2 plan and Ex.P2 do not tally with each other. In fact, the Commissioner did not identify Plot No.147. The plaintiff has not stated the real dispute and the suit property was not described properly. The evidence on the side of the plaintiff did not prove the case of the plaintiff. The plaintiff has suppressed the real facts and in the guise of claiming title over Plot No.147, she claims right in Plot No.90. Since the learned Trial Judge had decreed the suit without properly appreciating the real facts of the dispute, the decree is liable to be set aside.

8. Mr.M.Thamizhavel, learned counsel for the first respondent/plaintiff submitted that the report of the Advocate Commissioner and his plan would

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show that the defendant has encroached into the suit property in Plot No.147 and started to put up construction. The physical features of the suit property was changed to the advantage of the defendant.

9. Mr.R.Gopinath, learned Standing Counsel appeared on behalf of the second respondent Corporation submitted that the Greater Chennai Corporation was impleaded as a party to the proceedings in the Appeal. Though the Corporation is not a contesting party, is asked to answer certain questions which were raised by the Court and the report of the Zonal Officer, Greater Chennai Corporation was also filed.

10. Points for consideration :

(i) Whether Plot No.147 and Plot No.90 belonging to both the plaintiff and the defendant was identified by the Advocate Commissioner with the help of Surveyor at the time of his visit?

(ii) Whether the finding of the learned Trial Judge that the defendant had encroached the portion of Plot No.147 at the northern side is correct?

(iii) Whether the judgment of the learned Trial Judge in granting the relief sought for by the plaintiff is fair and proper?

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11. The suit property which is comprised in Plot No.147 of Bhuvaneswari Nagar, Velachery forms part of the layout plan Ex.P2. The fact that the first respondent / plaintiff had purchased Plot No.147 and the defendant's vendor purchased Plot No.90 from their respective owners *vide* Ex.P8 & Ex.B2 is also not in dispute. It is claimed by the appellant that from the owners of Plot No.90 *viz.,* A.Susila, the appellant / defendant's wife Vasantha Rajamanickam had entered into an agreement of sale on 01.06.2001. The said agreement is marked as Ex.B6 and there is no quarrel on that.

12. The one and only contention of the plaintiff is that by taking advantage of the sale agreement entered with the vendor of the Plot No.90, the defendant started to encroach on the property of the plaintiff on the northern side. As per the sale deed Ex.P8, the Plot No.147, purchased by the plaintiff consist of four boundaries *i.e.,* Plot No.90 on the northern side, Plot No.146 on the eastern side, Plot No.148 on the western side and 30 feet road on the south. The above Plot would measure north - south 80 feet on both eastern and western sides and east-west 45 feet on the northern and southern side, and the total extent of the property is 3600 Sq.ft. The said property is described in Item No.1 schedule B of the sale deed of the plaintiff dated 24.03.1966 which

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is marked as Ex.P8. Both the parties have agreed that the Plot No.147 and Plot.No.90 are comprised in the layout of Bhuvaneswari Nagar, Velachery approved by D.T.P HIS.REF NO. 26/65 C.No.40104/C3-64 DT. 30.01.65. In the said plan also, the boundaries of Plot No.147 is shown as under:

(i) North – Plot No.90

(ii)West - Plot No.146

(iii)East – Plot No.148

(iv)South-30 Feet Road

13. The above boundaries in the layout plan and the boundaries detailed in the sale deed Ex.P8 would show that there is discrepancy in describing the east and west boundaries. In the description of Item No.1 of B Schedule Property, the eastern side boundary should have been mentioned as Plot No.148 and the Western side boundary ought to have been mentioned as Plot No.146. However, there is no dispute with regard to the east and west boundary of the suit property. Since the defendant's claim is in respect of Plot No.90 which is situated on the northern side of Plot No.147, the discrepancy in describing east and west boundary of Plot No.147, can be ignored.

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14. The defendant's vendor had executed a sale agreement in favour of the defendant's wife which is marked as Ex.B6 in respect of Plot No.90. As per the layout, the boundaries of Plot No.90 consist of 40 feet road on the north, Plot No.147 on the south, Plot No.89 on the west, Plot No.91 on the east. The defendant's document Ex.B2, the sale deed of the vendor of the defendant and the sale agreement Ex.B6 would also confirm the same. However, the northern side is mentioned as proposed 40 feet road. Had the features on the ground is allowed to be remained intact and in accordance with the lay out plan and the sale deed of the respective parties, no dispute would have arisen.

15. The Advocate Commissioner who had inspected the property, has submitted his report along with plan and the same is available as Ex.C1 and C2. The report of the Commissioner would show that at the time of his visit, the boundaries of Plot.No.147 is available as under:

(i) North - 22 Feet Road

(ii) East - Plot No.146

(iii) West - Plot No.148

(iv) South - 25 Feet Road

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16. But as per the layout, the northern boundary of Plot No.147 should be Plot No.90. The Commissioner has noted that the Plot No.90 could not be identified because there is a 22 Feet road on the southern side and thereafter, the plot measures 77 feet long. The 40 feet road which is shown on the northern side of the plot No.90 is not seen on the ground. Despite the layout has left 30 feet road on the south of Plot No.147 and 40 Feet on the north of Plot No.90, the plot owners appears to have encroached the northern side 40 feet road. Instead of having 40 feet road on the north, the Plot owners have left 22 feet on the southern side. The said 22 feet would naturally be the part of Plot No.90 and its neighbouring plots.

17. It is pertinent to note that the measurement as seen in the sale deed of the vendor Ex.B2 and the sale agreement of the first defendant's wife Ex.B6, the measurement of Plot No.90 is north-south 80 feet, east-west 45 feet. Hence, the extent is 3600 Sq.ft. The Commissioner has stated that the length of Plot No.90 was 77 Feet and the Commissioner has also noticed that there was no 40 feet road on the northern side of Plot No.90 and the said feature is contrary to the layout plan. During the pendency of the proceedings, the second respondent Corporation was called upon to answer certain specific

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queries as under:

"(i) When the road was formed between the southern side of the plot No.90 and northern side of the plot No.147?

(ii) When the road was formed, whether the space from the respondent's property had been taken away for forming the road, since the road is not found in the layout?

(iii) Is there any door number given to both the properties, i.e., appellant's property in Plot No. 90 and respondent's property in plot No.147 as per the Corporation records? "

18. For query No (i) - When the road was formed between the southern side of the plot No.90 and northern side of the plot No.147? the second respondent Corporation has answered as under:

"*It is submitted that as per Layout No.26/65, available with, Greater Chennai Corporation, there is no road in between Plot No.90 and Plot No.147 (i.e., on Southern side of plot No.90 and Northern side of Plot No.147). Plot No.90 is facing Bhuvaneswari Nagar 1st Main Road on the Northern side as per layout and there was an old bituminous road in existence and name of the Bhuvaneswari Nagar 1st Main Road was in existence for more than 20 years. Even as per layout there was no road shown in between Plot No.90 and Plot No.147 on the Southern side and Northern side respectively.*

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However, only one disputed land of plot is available in the ground reality which is facing Bhuvaneswari Nagar 1st Main Road on the Northern side and is facing Bhuvaneswari Nagar 2nd Main Road on the Southern side."

19. In the above reply, it is specifically mentioned that there is no road running in between Plot No.90 and Plot No.147 and all that running on the northern side of the plot No.90 is the old bituminous road named Bhuvaneshwari Nagar First Main Road and that was in existence for more than 20 years. So, naturally the northern boundary of Plot No.90 got effaced and merged with the road. Instead of retaining the road of northern side, the Plot owners seem to have bargained the road on the south side. During that course, the extent belonging to the southern side owners like the plaintiff could have also been encroached.

20. For query No (ii) - When the road was formed, whether the space from the respondent's property had been taken away for forming the road, since the road is not found in the layout? the second respondent had given the following answer:

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"It is submitted that as already stated there was no road formed between Southern side of Plot No.90 and Northern side of Plot No.147. The part of the Bhuvaneswari Nagar 2nd Main Road was kutcha road on the Western side of the said road and after removal of road side encroachment in the said Bhuvaneswari Nagar 2nd Main Road in the year 2016 a pucca bituminous road was laid down in the Bhuvaneswari Nagar 2nd Main Road. No land from the plots were taken away for formation of road."

21. The second defendant has re-asserted that there was no road formed between the southern side of Plot No.90 and Northern side of Plot No.147. It is further stated that in the year 2016, the encroachment on the Bhuvaneswari Nagar 2nd Main Road was removed and bituminous road was laid. So, it is asserted that for the formation of the road no lands from the plots were taken, that would only mean that the Corporation had improved only the area demarcated for road and it did not take away any Plot area.

22. For query No (iii) - Is there any door number given to both the properties, i.e., appellant's property in Plot No. 90 and respondent's property in plot No.147 as per the Corporation records? the second defendant has given

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the following answer:

> *"It is submitted that there was an old superstructure in Plot No.90 and it was assessed in the year 2000 itself (date of issue of assessment is 23.03.2000) and it was assessed as Plot No.90 in the name of Susila having shown street as Bhuvaneswari Nagar 3rd Street. As per assessment order no Door number was shown for Plot No.90. Further no Door number was given in respect of Plot No.147 as per Greater Chennai Corporation records."*

23. It is stated that Plot No.90 was assessed in the year 2000 itself in the name of Susila. However, no door number was given for Plot No.147. The above answers given by the second defendant Corporation would only confirm the fact that the physical features on the ground was disturbed by the northern side plot owners by merging their plots with 40 Feet Road and thereby, maximised their Plot area by leaving a portion of their plots, measuring 22 feet on the southern side. If the northern side 40 feet is left out and demarcated as per the plan and the southern side Plot No.147 is also measured in accordance with the sale deed of the plaintiff, then it would show that there is no road area available between Plot No.147 and Plot No.90 and

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that Plot No.147 is situated on the immediate south of Plot No.90.

24. The Commissioner's report and the sketch submitted by measuring the property has clearly identified the location of Plot No.147. Despite it is claimed by the learned counsel for the appellant that the Commissioner's report is false and should be struck down, the said submission was not substantiated. However, the contrary is established through the clarification given by the second respondent Corporation.

25. By taking into consideration of the report of the Commissioner and his rough sketch and the layout plan, the learned Trial Judge had arrived at a conclusion that the Plot No.147 is rightly located on the ground which is seen to be situated at the immediate south of Plot No.90. Because, as per the layout, there is no road on the northern side of Plot No.147 and the appearance of 20 Feet road on the northern side of Plot No.147 have been created since 40 Feet road on the northern side of the Plot No.90 was encroached and the road was effaced. However, the Corporation has reset the physical features on the ground and laid roads as per the layout plan and given clarification to the Court that there is no road runs between Plot No.90 and Plot No.147 of

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Bhuvaneswari Nagar. Since the evidence available on record clearly establishes the title of the plaintiff in Plot No.147 within the four boundaries as shown in the approved layout, the learned Trial Court has decreed the suit as prayed for.

26. It is to be noted that the boundary details were wrongly given in the sale deed of the plaintiff Ex.P8, wherein, the Plot No.146 is shown on the eastern side and Plot No.148 is shown on the western side. But infact, it ought to have been shown vice versa. Since the northern west side boundaries of the suit property in Plot No.147 is not disputed, for the purpose of avoiding complication in executing the decree, the plaintiff is at liberty to amend the decree to the above said effect.

27. The combined reading of the sale deeds of the respective parties along with the layout plan the Advocate Commissioner's report and rough sketch would show that the defendant who is the owner of Plot No.90 and had erased the road on the northern side of his property and extended his building on the northern side covering the road and the portion of the site belonging to the plaintiff in Plot No.147. The measurement and the boundaries of the

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properties have been rightly shown in the layout plan for Bhuvaneswari Nagar. Under the guise of developing Plot No.90, the defendant trespassed into Plot No.147.

28. The learned Trial Judge has rightly appreciated the materials available on record and rendered a finding that the plaintiff has established their title and possession over the suit Plot No.147 and granted the relief as prayed for. In view of the above discussion, I feel that the judgment and decree of the learned Trial Judge does not suffer from any factual or legal infirmity so as to warrant interference.

29. In the result, **the Appeal Suit is dismissed** and the judgment and decree passed in O.S.No.12217 of 2010 on the file of VII Additional Judge, City Civil Court at Chennai dated 16.10.2015 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Index: Yes/No **18.07.2022**
Speaking / Non Speaking Order
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R.N.MANJULA, J.

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To

1.VII Additional Judge,
City Civil Court, Chennai.

2.The Commissioner,
The Greater Chennai Corporation,
Chennai.

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