



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.326 of 2010

and

M.P. (MD)No.1 of 2010

1.R.Lakshmana Perumal (Died)

2.Chellammal

3.Rajapandian

... Appellants

(Appellants 2 and 3 are brought on record as the legal heirs of the deceased/sole appellant vide order dated 13.09.2013 made in M.P. (MD)Nos.1 to 3 of 2013 in S.A. (MD)No.326 of 2010 by RKJ)

Vs.

1.Kanyakumari Oor Vellalar Samudhaya

Vakai Trust,

Rep. by its President,

P.Pichaimoni.

1.Kanyakumari Oor Vellalar Samudhaya

Vakai Trust,

Rep. by its Secretary,

P.Krishna Pillai.

... Respondents

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.59 of 2008 on the file of the I Additional Subordinate Court, Nagercoil, dated 16.12.2009, confirming the judgment and decree passed in O.S.No.359 of 2003 on the file of the Principal District Munsif Court, Nagercoil, dated 02.08.2006.

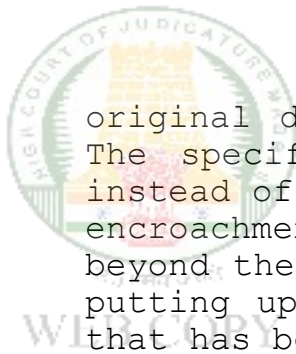
For Appellants : Mr.M.P.Senthil

For Respondents : Mr.K.Sakthivel,

For Mr.R.Sundar

JUDGEMENT

The unsuccessful defendant in O.S.No.359 of 2003 on the file of the Principal District Munsif Court, Nagercoil is the appellant in this second appeal. The respondents herein are admittedly the owners of the suit property. They had leased out a specific plot measuring 10 feet x 10 feet in favour of Lakshmana Perumal, the



original defendant on payment of monthly ground rent of Rs.125/-. The specific allegation of the plaintiffs is that the defendant instead of confining his occupation to the leased out area committed encroachment beyond. He is said to have to put up construction even beyond the leased out area. In order to prevent the defendant from putting up any further construction and to remove the construction that has been unauthorizedly put up, the suit came to be filed. The defendant contended that what was leased out was an area measuring 12 feet north-south and 18 feet east-west. According to him, he has not committed any act of encroachment. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.On side of the plaintiffs, one Pitchaimoni was examined as P.W.1 and Exs.A1 to A6 were marked. The defendant examined himself as D.W.1 and marked Exs.B1 to B3.

3.After consideration of the evidence on record, the trial Court by judgment and decree dated 02.08.2006 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.59 of 2008 before the I Additional Sub Court, Nagercoil. By the impugned judgment and decree dated 16.12.2009, the first appellate Court confirmed the decision of the trial Court and dismissed the appeal suit. Challenging the same, this second appeal came to be filed.

4.Even though the second appeal has been filed way back in the year 2010, it has not been admitted till date. During the pendency of the second appeal, the original defendant passed away and his legal heirs namely, Chellammal and Rajapandian have come on record as the second and third appellants.

5.The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and wanted this Court to admit the second appeal and after framing the substantial question of law take it up for disposal later.

6.Per contra, the learned counsel for the respondents submitted that no substantial question of law arises for consideration.

7.I carefully considered the rival contentions and went through the evidence on record. Even according to the plaintiffs, the defendant has been given a definite plot measuring 10 feet x 10 feet. The defendant on the other hand contended that the leased out area was much more. According to him, it measures 12 feet x 18 feet. Therefore, the onus lay on the defendant to prove that a larger extent was leased out. In any event, when the Courts below have found that the leased out area was 10 feet x 10 feet and the said finding has not been shown to be perverse, I do not want to interfere with the same. The first appellate Court is the final Court of fact. No substantial question of law arises for consideration and the second appeal is dismissed. In other words,



the possession and enjoyment of the appellants' over the leased out area measuring 10 feet x 10 feet stands fully protected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To:

- 1.The I Additional 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.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-9503[F] dated 02/03/2022)

+1 CC to M/s.R.SUNDAR, Advocate (SR-9862[F] dated 03/03/2022)

S.A.(MD)No.326 of 2010
01.03.2022

SS (CO)
KB(22.03.2022) 3P 7C