



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 475 of 2010

The Commissioner,
Madurai City Municipal Corporation,
Madurai.

... Appellant / Appellant/ Defendant

-Vs-

S.Mani

... Respondent / Respondent/ Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.128 of 2004, dated 31.07.2009 on the file of the second Additional Sub Court, Madurai, confirming the judgment and decree passed by the Principal District Munsif Court, Madurai Town in O.S.No.453 of 2000, dated 02.11.2000.

For Appellant : Mr.R.Murali

For Respondent : Mr.N.Vallinayagam

JUDGMENT

The defendant in O.S.No.453 of 2000 on the file of the Principal District Munsif, Madurai Town is the appellant in this second appeal.

2. The respondent herein filed the said suit seeking the reliefs of permanent injunction as well as mandatory injunction. The appellant filed written statement controverting the plaint averments. Based on the rival pleadings, the trial court framed the necessary issues. The plaintiff's husband examined himself as P.W.1. Ex.A1 to Ex.A25 were marked. On the side of the defendant, no witness was examined. However, Ex.B1 to Ex.B3 were marked. After consideration of the evidence on record, the trial court vide judgment and decree dated 02.11.2000 granted the relief of permanent injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the suit property. The relief of mandatory injunction was however denied. Aggrieved by the same, the defendant filed A.S.No.128 of 2004 before the second Additional Sub Court, Madurai. By judgment and decree dated 31.07.2009, the first appellate court dismissed the appeal and confirmed the decision of the trial court. Challenging the same, this second appeal came to be filed. The second appeal was admitted on 10.06.2010 on the following substantial questions of law:-

"A. Whether in law the courts below were justified in granting permanent injunction in favour of the plaintiff who is having no right over the suit schedule properties?

B. Whether the finding of both the courts below that the



appellant is not the owner of the suit schedule property is sustainable?

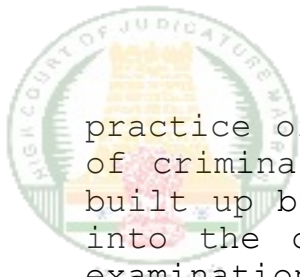
3. The learned standing counsel for the appellant reiterated all the contentions set out in the memorandum of grounds called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the judgments and decrees passed by the courts below and allow the second appeal.

4. Per contra, the learned counsel appearing for the respondent submitted that this Court exercising jurisdiction under Section 100 of C.P.C., may not interfere with the concurrent findings of the Courts below.

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

6. The plaintiff purchased plot No.210 comprised in R.S.No.153/3, K.K.Nagar, measuring an extent of 1421 square feet vide registered sale deed dated 10.09.1996. This plot was allotted by the Tamil Nadu Housing Board in favour of one Maruthiah in the year 1976. Maruthiah executed a registered power of attorney on 15.10.1991 in favour of the plaintiff's husband. On the strength of the said power of attorney, the property was sold to the plaintiff in the year 1996 under Ex.A1. The suit items are situated adjacent to the said plot No.210. According to the plaintiff, the suit items were also enjoyed as an annexe to the allotted plot. It had also been duly fenced. Since the plaintiff came to know that the defendant was proposing to sell the property to the Telecom Department, the suit was laid. The plaintiff's husband was examined as P.W.1. While cross-examining P.W.1, the Standing Counsel for Madurai Corporation put a suggestion that R.S.No.153/3 was sold to the Telecom Department. He had also put another suggestion that the suit property belonged to the Tamilnadu Housing Board.

7. The argument of the learned counsel for the plaintiff / respondent herein is that by putting such suggestions, the defendant Corporation had conceded that they have no ownership over the suit properties. I unhesitatingly reject this contention. In a criminal case, the falsity of a suggestion would not by itself prove the prosecution case or the guilt of the accused. Though in a given case, depending on circumstances, it may be an additional circumstance along with other duly established and proved circumstances against the accused. Suggestions put are no evidence at all against the accused and on the basis of such suggestions, no inference can be drawn against the accused that he admitted the fact suggested in the cross examination. The proof of guilt does not depend on the suggestion thrown to a witness (**Sakariya Vs State of Madhya Pradesh 1991 MPLJ 878**). The Hon'ble Delhi High Court in **Sher Mohammed Vs Mohan Mogotra 2013 SCC Online Del 2530** observed that the



practice of giving suggestions in cross examination to witnesses is of criminal trials where there are no pleadings and the defence is built up by giving suggestions and that the said practice has crept into the civil trials also to the extent that most of the cross examinations are being in the form of suggestions alone. The purport of cross examination is to challenge the testimony and / or to falsify the witness or his credit worthiness and not to give suggestions to the effect that each and every deposition in examination - in - chief is false. Similarly a party in a civil trial is not required to put its case to the witness in cross examination as the same already exists in the pleadings. Therefore, an erroneous suggestion put by the counsel to the witness of the opposite party cannot by itself lead to any conclusion. Merely because the Standing Counsel had suggested to P.W.1 that the suit property belongs to some other department or entity, that by itself cannot mean that the defendant had conceded that they have no title over the suit property.

8.The learned counsel appearing for the respondent submitted that the plaintiff was obliged to show that she had a better title compared to the defendant corporation and that she was under no obligation to prove that she had absolute title. His specific submission is that since the Corporation failed to prove its ownership, the Courts below were justified in granting the relief of permanent injunction. Relying on the decision of Supreme Court reported in **AIR 1951 SC 177**, he submitted that even if the eventual relief granted by the Court has no foundation in the pleadings, still based on the admitted facts, decree can be passed.

9.The proposition advanced by the learned counsel is beyond cavil. But the question is whether the Courts below is justified in granting the relief of permanent injunction in favour of the plaintiff. The plaintiff admittedly had title and ownership only over plot No.210 in R.S.No.153/3, K.K.Nagar, Madurai. The suit properties are situated adjacent to the said plot No.210. The case of the plaintiff is that she had been in possession and enjoyment of the same for over 30 years. That obviously cannot be true. Even according to the plaintiff, she purchased the plot in the year 1996 under Ex.A1. The suit itself came to be filed only in the year 2000. When the plaintiff became the owner of the plot No.210 in the year 1996, she could not have made a tall claim that she was in possession of the suit property for 30 years. The plaintiff's vendor Maruthiah himself was allotted the said plot only in the year 1976. No doubt, on the side of the plaintiff, as many as 25 documents were marked. But all the documents are related only to plot No.210. Not even a scrap of evidence has been filed to show any possession or title over the suit properties.

10. As rightly pointed out by the learned counsel appearing for the appellant, the defendant in this case is a public body. It is



not some private individual. The plaintiff who has not even a semblance of title or right over the suit properties cannot be permitted to annex the same on the ground that she has better title compared to the defendant. The Hon'ble Supreme Court in **(1951) AIR (SC) 177** held that the decree can be granted on the basis of an alternative case if it was admitted by the defendant. In this case, the plaintiff came to the Court with a specific case that the suit properties belong to the Madurai Corporation. Merely because some suggestions were put by the counsel that the suit properties belong to the Tamil Nadu Housing Board or to the Telecom Department, that will not bind the Madurai Corporation as such. One should not forget that when it comes to public bodies, concession made under an erroneous impression or misconception of facts cannot bind the public bodies. It is true that Madurai Corporation did not let in evidence to show their ownership over the suit property. But that is beside the point. The burden lay squarely on the plaintiff. The plaintiff has failed to place even a scrap of evidence to show any possessory or legal right over the suit properties. The Courts below have failed to take note of the utter paucity of evidence on the side of the plaintiff. The local body has the statutory power and duty to take action if there is any unauthorized construction or development on any land falling within its limits. Therefore, permanent injunction could not have been granted against Madurai Corporation. The substantial questions of law are answered in favour of the appellant. The impugned judgments and decrees are set aside. The second appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi/mga

To

- 1.The Additional Sub Judge, Madurai.
- 2.The Principal District Munsif Court, Madurai Town.

Copy To

1. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)



2. The Commissioner,
Madurai City Municipal Corporation,
Madurai.

+1 CC to M/s.R.MURALI, Advocate SR-7161[F]

+1 CC to M/s.N.VALLINAYAGAM, Advocate SR-6387[F]

Judgment made in
S.A. (MD) No. 475 of 2010
16.02.2022

svs (CO)

TR(02.03.2022) 5P 8C