



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.666 of 2010

Thanjavur Municipality,
Rep. By its Commissioner,
Having his office at Municipal Campus,
Gandhiji Road,
Thanjavur Town and Munsif.

... Appellant / 2nd Respondent /
2nd Defendant

Vs.

1. Karanthai Tamil Sangam,
No.1929, Sessaiah Sastri Road,
Karanthai,
Thanjavur Town and Munsif,
Through its Secretary
R.Sundaravadanam.

(Memo dated 12.04.2022 is recorded and the Secretary /
R-1 is *suo motu* substituted vide Order dated 12.04.2022)

... 1st Respondent / Appellant /
Plaintiff

2. The District Collector,
Thanjavur District.

... 2nd Respondent / 1st Respondent/
1st Defendant

Prayer: Second appeal filed under Section 100 of C.P.C.,
against the Judgment and Decree passed in A.S.No.25 of 2006 on the
file of the Principal District Judge, Thanjavur, dated 28.03.2008
reversing the Judgment and Decree passed in O.S.No.199 of 2002 on
the file of the Principal Subordinate Judge, Thanjavur, dated
14.03.2006.

For Appellant : Mr.N.Dilip Kumar

For R-1 : Mr.V.K.Vijayaraghavan

For R-2 : Mr.N.Muthu Vijayan,
Special Government Pleader.

J U D G M E N T

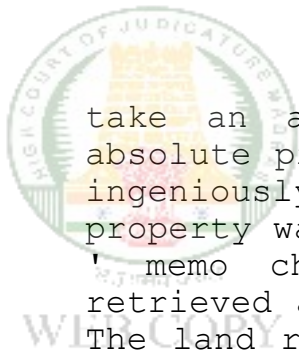
The second defendant in O.S.No.199 of 2002 on the file of the
Principal Sub Court, Thanjavur, is the appellant in this second
appeal.



2. The first respondent herein filed the said suit seeking the relief of declaration and permanent injunction. The first defendant was the Government of Tamil Nadu, while the second defendant was the Thanjavur Municipality. The plaintiff is a registered society running educational institutions. It had put up a compound wall on the western side. According to the local body, by putting up the compound wall, the plaintiff society had encroached a portion of what is known as Old Thiruvaiyaru road to an extent of 18,000 sq.ft. The local body called upon the plaintiff to remove the same. That furnished cause of action for filing the suit. The defendants filed written statement controverting the plaintiff's averments. Based on the divergent pleadings, the trial Court framed the necessary issues. On the side of the plaintiff, as many as five witnesses were examined and Ex.A.1 to Ex.A.15 were marked. On the side of the defendants, three witnesses were examined. The municipal surveyor was examined as D.W.3. Ex.B.1 to Ex.B.23 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. After considering the evidence on record, the trial Court by judgment and decree dated 14.03.2006 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.25 of 2006 before the Principal District Judge, Thanjavur. By the impugned judgment and decree dated 28.03.2008, the first appellate Court reversed the decision of the trial Court and decreed the suit as prayed for. Challenging the same, this second appeal came to be filed.

3. Though the second appeal was filed way back in the year 2008, only notice was ordered and it has not been admitted till date.

4. The learned counsel appearing for the local body / appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame substantial questions of law and admit this second appeal and then take it up for disposal. He pointed out that the plaintiff had not come out with a consistent case. He drew my attention to Ex.B.2 order dated 18.07.2002 disposing W.P.No.5677 of 2002. The plaintiff had given a representation to the Commissioner of Thanjavur Municipality for leasing out the suit property. Seeking consideration of their request, they filed the aforesaid writ petition. The Hon'ble Court directed the Municipality to pass orders on the plaintiff's representation. The Municipality was also restrained from demolishing the compound wall till orders were passed on the plaintiff's representation. After considering the plaintiff's representation, the Municipality issued final notice dated 10.10.2002 (Ex.B.16) calling upon the plaintiff to remove the encroachment. The learned Standing counsel appearing for the Municipality pointed out that after taking a categorical stand that they are in occupation of the property belonging to the local body and seeking long term lease, it was not open to the plaintiff to



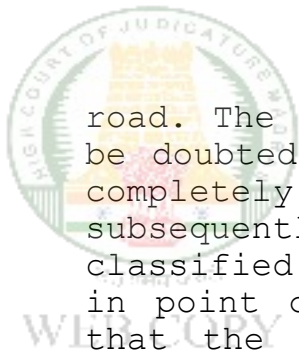
take an about-turn and claim that the suit property is their absolute property. He would also point out that the plaint has been ingeniously drafted. It had been pleaded that a portion of the suit property was in the occupation of one Ramamoorthy who was paying ' B ' memo charges to the Government and that the plaintiff had retrieved a portion of the suit property from the said Ramamoorthy. The land retrieved from the said Ramamoorthy is a part of the suit property. When admittedly Ramamoorthy was paying ' B ' memo charges and the plaintiff had taken the land only from him, the plaintiff cannot claim a better title. The learned Standing counsel would further point out that the land comprised in Survey No.2299 has been classified as a road and therefore the occupation of the road portion for any length of time cannot constitute adverse possession. If on the road portion encroachment has been committed, even if it was with the knowledge of the then municipal officials, that will not confer any right on the plaintiff. He therefore called upon this Court to set aside the impugned judgment and decree and restore the decision of the trial Court.

5. Per contra, the learned counsel appearing for the plaintiff submitted that no substantial question of law arises for consideration.

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

7. It is true that the plaintiff had made a request to the appellant for leasing out the suit property in their favour. But making such a request will not operate as an estoppel. If the plaintiff without being aware of their rights, made an erroneous request, that will not come in the way of the plaintiff from asserting their claim later. I do not find any force in the initial objection raised by the learned Standing counsel appearing for the appellant.

8. The case of the plaintiff is anchored on Ex.A.1 to Ex.A.3. Ex.A.1 is a registered copy of the auction certificate in E.P.No.280 of 1924 in O.S.No.69 of 1923 on the file of the Sub Court, Thanjavur. One Balambal had purchased a piece of the property in a court auction sale. The property has been described as lying in Karunthattankudi Village and to the east of the road and comprised in Survey Nos.2300, 2299 and 2216. The said Balambal executed Ex.A.2 sale deed selling the said property in favour of four persons on 08.05.1928. The plaintiff Sangam had purchased the suit property under Ex.A.3 (Document No.248 of 1931). The same four boundary description as well as the survey numbers were mentioned in Ex.A.3 also. Ex.A.3 also mentions the western boundary as the road going to Thiruvadhi (Thiruvaiyaru). The title deed of the plaintiff clearly indicates that the property purchased by them is comprised in survey No.2299 also and that it is lying to the east of Old Thiruvaiyaru



road. The description given in these ancient title documents cannot be doubted. It can be safely concluded that survey No.2299 was not completely classified as a road portion then. Only in the subsequently prepared ' A ' register, survey No.2299 has been classified as road. The documents filed by the plaintiff are prior in point of time. The appellant has not been able to demonstrate that the description and the survey numbers given in Ex.A.1 to Ex.A.3 are erroneous. I therefore infer that survey No.2299 was not originally fully classified as a road. Of course in the subsequent revenue documents, survey No.2299 has been classified as a road. But then, an entry in the revenue records cannot prevail over title documents.

9. The first appellate Court correctly came to the conclusion that the plaintiff had established its title through Ex.A.1 to Ex.A.3. This approach of the first appellate Court by any stretch of imagination cannot be construed as perverse. It is not in dispute that the possession of the suit property is only with the plaintiff. That is why, they sought the relief of permanent injunction. The first appellate Court also found that the suit property is covered under Ex.A.1 to Ex.A.3. This finding of the first appellate Court is further reinforced by the fact that the municipal body has not prescribed the street alignment for Old Thiruvaiyaru road as per Section 166 of The Tamil Nadu District Municipalities Act, 1920. Section 166 of the Act is as follows:-

" Power to prescribe building line and street alignment .-

The Council may –

(a) prescribe for any public street a building line or a street alignment or both ;

(b) from time to time, define a fresh line in substitution for any line so defined or for any part thereof :

Provided that in either case –

(i) at least one month before the meeting of the Council at which the matter is decided, public notice of the proposal has been given and special notice thereof has also been put up in the street or part of the street for which such line is proposed to be defined ; and

(ii) the Council consider all objections to the said proposal made in writing and delivered at the municipal office not less than three clear days before the day of such meeting."

Section 3(29) of the said Act defines street alignment as a line dividing the lands comprised in and forming part of a street from the adjoining land. The land purchased by the plaintiff society under Ex.A.3 obviously touches Old Thiruvaiyaru road. Ex.A.3 states that the property covered thereunder also includes survey No.2299. Unless Thanjavur Municipality had passed any resolution fixing the street alignment for old Thiruvaiyaru road, it is not possible to come to the conclusion that encroachment has been committed thereon by the plaintiff society. I hold that no substantial question of law



arises for consideration. The impugned judgment and decree is confirmed. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

WEB COPY

08/06/2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal District Judge,
Thanjavur.
2. The Principal Subordinate Judge,
Thanjavur.
3. The District Collector,
Thanjavur.

Copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.K. VIJAYARAGAVAN, Advocate (SR-21416[F] dated 26/04/2022)

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-21794[F] dated 27/04/2022)

+1 CC to M/s.SPL.GP. (SR-21865[F] dated 27/04/2022)

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