



S.A.No.1040 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.01.2023**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1040 of 2007

Muthukumarasamy ... Appellant/1st respondent/Plaintiff

Vs.

1.Sri Dharbaranesswar Swamy Devasthanam,
Thirunallur,
rep. by its Executive Officer,
Sannathi Street,
Thirunallar. ...1st Respondent/Appellant/2nd Defendant

2.Union of India
rep. by its Chief Secretary,
Pondicherry. ...2nd Respondent/2nd Respondent/1st Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 30.11.2005 in A.S.No.24 of 2005 on the file of the learned Additional District Judge, Karaikal, Pondicherry, reversing the Judgment and Decree dated 14.02.2005 in O.S.No.105 of 2001 on the file of the learned Principal District Munsif, Karaikal.



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For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.V.G.Suresh Kumar for R1

Mr.P.S.Kothandaraman,
Government Advocate (Pondicherry),
for R2

JUDGMENT

The plaintiff in a suit O.S.No.105 of 2001 on the file of the learned Principal District Munsif, Karaikal, is the appellant before this Court. He seeks to challenge the Judgment and Decree passed in A.S.No.24 of 2005 on the file of the learned Additional District Judge, Karaikal, Pondicherry, whereby the learned Additional District Judge had reversed the Judgment and Decree of the learned Principal District Munsif, Karaikal. The parties are referred to in the same rank and array as before the trial Court



2.The facts in brief are as follows:

The plaintiff had filed the suit for the following relief:

“.... to pass a decree for permanent injunction against the defendants, his men and agents restraining them from interfering with the lawful and peaceful possession and enjoyment by the plaintiff over the suit property and also pass such other relief that deems fit and necessary in the circumstances of the case.”

3.The injunction is sought for with reference to the following schedule of property:

“Thirunallar Sub District, Thirunallar Village, a shop premises bearing Licence No.0/2001-2002 situated at Nalankulam East (South East Bank), Tirunallar its boundaries: West of Nalankulam Main Road; East of Nalankulam Tank (Karai); North of Nalankulam



*Thenkarai; South of Vadiveikkal and Nalankulam Tank
and Temple shed.”*

4.It is the case of the plaintiff that he is the proprietor of a tea stall in the name of "Sri Vishnu Tea & Coffee Bar" which business he is conducting at South East Bank, Nalankulam East, Tirunallar and he has been conducting this business in the said shop premises from the year 1999. It is also his case that he has got requisite license from the Authorities for carrying on the said business. He would submit that he has been in possession of this premises without any disturbance and the same is situate within the Commune Panchayat of Tirunallar. It is his further case that all of a sudden, the defendant (Originally the Temple alone had been impleaded) who is the adjacent owner of the land premises is trying to dispossess the plaintiff from the premises. On 31.07.2001, this attempt was first made by the Executive Officer of the defendant. Therefore, the plaintiff has come forward with the instant case. Pending the suit, the Union of India was impleaded as the 1st defendant.



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5.The 2nd defendant/Temple had alone contested the suit. A preliminary objection was taken that the suit has been filed without issuing the mandatory notice under Section 80 of the Code of Civil Procedure. Further, the 2nd respondent had contended that the suit is not maintainable as the injunction is sought for with reference to a movable property as the injunction was sought with reference to a push cart. Further, the 2nd defendant had contended that the description of the suit schedule is incomplete inasmuch as there is no detail about the length and breadth of the push cart or the Survey Number or Door Number of the premises where the shop is being run. The 2nd defendant had contended that the plaintiff is not a lessee under the 2nd defendant Devasthanam. and the 2nd defendant has not given any leave or license to the shop. The license granted is only for the purpose of hawking and does not give permission for putting up any permanent structure. The 2nd defendant had also pleaded that the suit is bad for non joinder of necessary parties inasmuch as the Secretary to the



Government, HR & CE Department, has not been added as a party.

The 2nd defendant would therefore seek to have the suit dismissed. It is thereafter that the 1st defendant had been impleaded.

6.The trial Court had framed the following issues for consideration:

"(1)Whether the plaintiff is entitled for a relief of permanent injunction?

(2)Whether the suit is maintainable or not?

(3)Whether the suit is bad for non joinder of necessary parties?"

7.On the side of the plaintiff, the plaintiff examined himself as PW1 and marked Ex.A.1 to Ex.A.4. The 2nd defendant's official was examined as DW1 and Ex.B.1 was marked.

8.The learned Principal District Munsif, Karaikal, proceeded to decree the suit. The learned Judge has observed that the mandatory



notice under Section 80 of the Code of Civil Procedure has not been issued and the Commune Panchayat had not been made as a party. In this regard, the learned Judge has observed that the panchayat has not sought for dispossession of the plaintiff and there was no requirement to implead the Commune Panchayat to proceed against the Panchayat.

9.The trial Court has also held that the shop was being run on the road and not in the property of the Devasthanam. The learned Judge has ultimately granted him injunction with a rider that he should be dispossessed only by due process of Law. Challenging the said Judgment and Decree, the 2nd defendant had filed the appeal. The Appellate Court taking note of the fact that the injunction was sought with reference to a movable property and relying upon the admission of the plaintiff as PW1 that the property on which the wooden cart is now placed belongs to both the 2nd defendant and the Commune Panchayat allowed the appeal. The Appellate Court had held that there is no document to prove possession and Ex.A.1 to Ex.A.3 does not by any stretch of imagination refer to the suit property. On the contrary, it



only highlights that the license was granted to the plaintiff to run his business and the address given is not the suit property.

10.That apart, the business is being run on a mobile cart which is not a permanent structure. The Appellate Court had also taken note of the fact that the license to carry on business has expired even as early as in the year 2002 which fact has been admitted by the plaintiff in his evidence as PW1. Challenging the Judgment and Decree, the appellant is before this Court.

11.The Second appeal has been admitted on the following Substantial Question of Law:

"Whether the reasoning of the Lower Appellate Court that the Appellant is a trespasser and hence, he cannot claim that he can be evicted only under due process of Law is correct and justified?"



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12.Mr.K.Govi Ganesan, learned counsel appearing for the appellant would submit that even a rank trespasser can be evicted only by due process of Law. In support of his argument, he relied upon the Judgment of the Hon'ble Supreme Court in **(2010) 10 S.C.R. 47 [Meghmala and others v. G.Narasimha Reddy and others]**. He would further submit that the wooden cart is only placed on the road belonging to the Commune Panchayat and not on the land of the respondent. The learned counsel would draw the attention of this Court to the finding of the trial Court to substantiate his arguments that the Decree passed by the trial Court which ought to have been confirmed by the Appellate Court has been wrongly reversed. He would submit that the exhibits filed on the side of the appellant would show that the appellant has been granted a license to run the business at South East Bank, Nalankulam East, Tirunallar and once his right to run his business has been established he can be evicted only due process of Law.



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13.Per contra, Mr.V.G.Suresh Kumar, learned counsel appearing for the 2nd defendant would submit that the plaintiff before instituting the suit has not issued the mandatory notice under Section 80 of the Code of Civil Procedure to the plaintiff. He would submit that injunction is sought for with reference to a movable property and under the guise of this injunction a non existent right is sought to be obtained on the land belonging to the Devasthanam. He would further draw the attention to the evidence of PW1 wherein during the cross examination he had admitted that the mobile cart is half situate on the Devasthanam's property and half on the road. He would further submit that the license to carry on business has not been extended and this has been admitted by the plaintiff in his evidence. He would therefore submit that the Judgment and Decree of the Appellate Court has to be confirmed.

14.Heard the learned counsels appearing on either side and perused the papers.



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15.A reading of the Complaint would give an impression that the plaintiff's business is being run in a permanent shop and that the 2nd defendant who is the adjacent land owner is attempting to evict the plaintiff. In Para 3 of the Complaint, the plaintiff would contend as follows:

“The plaintiff is the proprietor of Sri Vishnu Tea & Coffee Bar situated at South East Bank (Nalankulam East), Tirunallar, which is fully described in the schedule. The plaintiff is conducting the business of Tea, coffee and snacks in the said shop premises for the last two years. For the business purposes, the plaintiff got a permission for sale of food items from the Food and Drugs Administration, Karaikal and the same is renewed up to 2002.”

16.Further, in the Schedule of the Property, no door number or survey number is given. On the contrary, the License No.9/2001-2002 for carrying on the business is shown. The description of the property



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does not show the length and breadth of the shop premises and the boundary description is rather vague. Ex.A.1 to Ex.A.3 does not give the address of the alleged business for which the license was issued. On the contrary, Ex.A.2 is the License given by the Commune Panchayat to run a business under the name and style of Sri Vishnu Tea and Coffee Bar”. In Ex.A.1, the address was shown as "South East Bank, Nallankulam, Tirunallar". The form is filled up with the above address in a different ink. Ex.A.2 would show the address where the shop is to be stocked as "Nallakulam East, Thirunallar”. Likewise, in Ex.A.3, the address was shown as "Nallankulam Road East". Therefore, each of these documents show a different place does not specify the exchange location. Admittedly, the plaintiff is only doing his business on a mobile cart and that too just two years prior to the filing of the suit and it is not as if he had been running his business for many years. Though in his pleadings he would contend that the shop is on the road, however in his cross examination, he has clearly admitted that the mobile cart is partly placed on the road and partly on the property belonging to the 2nd defendant/Devasthanam. The license



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to run the business has also not been extended after 2002. The Appellate Court has rightly taken into account the fact that the plaintiff has come to Court with a vague pleading with reference to the property, the location of his business and also on account of the fact that the notice as contemplated under Section 80 of the Code of Civil Procedure had not been issued prior to the filing of the suit. The plaintiff had admitted that the mobile cart is partly on the land of the 2nd defendant and that he does have a permission of the 2nd defendant to run the business in their premises. The Appellate Court has rightly come to the conclusion that the plaintiff is a rank trespasser and the suit is one for bare injunction where the parties approaching this Court has to necessarily come to Court with clean hands and a definite case.

17.The plaintiff in his evidence had admitted as follows:

**“லைசென்ஸ் 2002க்கு பிறகு புதுப்பித்து
வாங்கவில்லை.”**

In the plaint, the plaintiff had contended that he is running business two years prior to the filing of the suit, however, in his evidence he has



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stated as follows:

“2001ல் கடையை அமைத்து வியாபாரம்
செய்தபோது பிரதிவாதி அதிகாரிகள் என்
அனுபவத்திற்கு இடையூறு செய்தார்கள்
என்பதற்காக இந்த வழக்கு தாக்கல் செய்தேன்”

thereby indicating that the business had commenced only at the time of filing of the suit and the statement in the Plaint is totally false. The plaintiff in his pleadings has given out as if the property in question is a shop premises and that the same is a permanent structure, however, in his evidence, he had admitted that he is running a business only from a pushcart. Therefore, there is a deliberate attempt to mislead the Court. Further, the plaintiff has not been able to definitely prove the fact that he is running his business from the suit property since Ex.A.1 to Ex.A.3 does not prove this contention. Therefore, the Substantial Question of Law is answered against the plaintiff.



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The Second Appeal is dismissed. The Judgment and Decree of the learned Additional District Judge, Karaikal, Pondicherry, in A.S.No.24 of 2005, is confirmed. There shall be no order as to costs.

06.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The Additional District Judge,
Karaikal,
Pondicherry.

2.The Principal District Munsif,
Karaikal.



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P.T. ASHA, J,

mps

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