



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.979 of 2010

&

M.P. No. 1 of 2010

P.T. Prabakaran

...Appellant

Vs.

1. Hasim (died)
2. The Commissioner  
Corporation of Chennai  
Rippon Building, Chennai 3
3. Saleem Seth
4. Hassan Ali

... Respondents

RR3 & 4 brought on record as LR's of the deceased  
R1 vide order of court dated 29.10.2020 made in CMP  
No.10129, 10134 & 10126 of 2020 in s.A. No.979/10.

**Prayer** : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 29.12.2009 passed in A.S. No.607 of 2008, on the file of the VII Additional City Civil Judge, Chennai, reversing the decree and judgment dated 24.04.2007 passed in O.S. No.4405 of 2002, on the file of the XV Assistant Judge, City Civil Court, Chennai.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

For Appellants : Mr. P. Sidharthan  
For R2 : Ms. H.Sujithra  
for M/s. P.T. Ramadevi  
Standing counsel for GCC  
For R3 & R4 : No appearance

### **JUDGMENT**

The appellant is the plaintiff in O.S. No.4405 of 2002 on the file of the XV Assistant Judge, City Civil Court, Chennai. He filed the said suit for a permanent injunction restraining the defendants (1) Commissioner, Corporation of Chennai and (2) Hasim Sulaiman (since deceased), from interfering with his peaceful possession and enjoyment of the suit property morefully described in the plaint as a land and superstructure measuring 100 sq.ft. situate opposite to No.10, Taylors Road, Kilpauk, Chennai 600 010.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

3. The brief facts of the plaintiff in nutshell are as follows:

The plaintiff purchased a bunk shop about 15 years ago in the land in Survey No.154 (part) abutting Taylors Road, Kilpauk and has been doing his business in betel nut without any hindrance from anyone. However, the second defendant (since deceased) who is residing on the opposite side of the bunk has been attempting to interfere with the plaintiff's possession over the suit property and one such attempt was made on 12.08.2002 at about 9 p.m. The said attempt was successfully prevented by the plaintiff. The plaintiff has been in possession and enjoyment of the suit property for more than 15 years and therefore, he is entitled for a permanent injunction as prayed for by him.

4. The first defendant in his written statement has stated that the plaintiff had encroached upon the land belonging to the Corporation of Chennai and is running a stall in the name and style of G.P. Stall opposite to Old Door No.10, New Door No.33, Taylors Road, Kilpauk, Chennai, without any valid license. According to them, they have every right to remove the said encroachment without any notice to the plaintiff.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

In fact, the Division Bench of this Court in W.P.Nos.12356 of 1992, 8465 of 1996 and 10245 of 1996 directed the Corporation of Chennai to remove all the encroachments made in road margin and public road and accordingly, they have removed several encroachments. They therefore prayed for dismissal of the suit.

5. The second defendant in his written statement has stated that he did not interfere with the possession of the plaintiff and that the allegation in the plaint that he attempted to trespass into the plaintiff's land on 12.08.2002 at about 9.00 pm with his henchmen is totally false. The allegation of the plaintiff that he has perfected his title over the suit property is without any merits.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. Whether the plaintiff is entitled for a permanent injunction as prayed for by him?
- ii. To what relief, the plaintiff is entitled?



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

7. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A11. No oral and documentary evidence was adduced on the side of the defendants.

8. The trial Court Judge, after full contest, decreed the suit in favour of the plaintiff vide his decree and judgment dated 24.04.2007 on the following grounds :

- i. The first defendant Corporation of Chennai did not adduce any evidence to disprove the case of the plaintiff and they did not also adduce any documentary evidence to show that they are the title holders of the suit property.
- ii. In fact, the Corporation of Chennai had issued a notice stating that the plaintiff has been running a bunk shop on the pathway causing hindrance to the public and this contention was denied by the plaintiff.
- iii. The plaintiff has been in possession of the suit property for more than 15 years and therefore, he has prescribed title by way of adverse possession and prescription.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

iv. The plaintiff has also established the cause of action by adducing acceptable oral evidence.

9. Aggrieved over the decree and judgment passed by the trial Court Judge, the Commissioner, Corporation of Chennai filed an appeal in A.S.No.607 of 2008 before the VII Additional Judge, City Civil Court, Chennai. The learned VII Additional Judge, City Civil Court, Chennai, after analysing the oral and documentary evidence adduced on both sides, allowed the appeal and dismissed the suit filed by the plaintiff vide his decree and judgment dated 29.12.2009 on the following grounds :

- i. The plaintiff during the cross examination admitted that the bunk shop is in Door No.33, Taylors Road, Kilpauk, Chennai, and that he did not obtain any license to run the bunk shop.
- ii. Various admissions made by the plaintiff would clearly establish that the bunk shop was put up in the platform abutting Door No.33, Taylors Road, Kilpauk, Chennai, which is actually a pathway and Ex.A4 photographs also would prove the same.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

iii. The documentary evidence Ex.A2, Ex.A8, Ex.A10 and Ex.A11 would show that these documents pertain to Door No.33, Taylors Road, Kilpauk, Chennai.

iv. On the contrary, the plaintiff in his plaint has stated that the bunk shop is in S.No.154 (part) Taylors Road.

v. The Commissioner, Corporation of Chennai, had consistently stated that the plaintiff had encroached the land of Chennai Corporation and is running a bunk shop in the name and style of G.P Stall on the platform.

vi. The plaintiff has not established his possession over the suit property by adducing any acceptable evidence and mere *ipse dixit* of PW1 is not sufficient to hold that he is entitled for a decree of injunction since as per Section 38 of the Specific Relief Act, the relief of permanent injunction can be granted only if the plaintiff establishes (1) the actual and physical possession and (2) that he has right to be in possession and that right is recognised under law.

vii. The plaintiff has not also come to the Court with clean hands.

Therefore, the First Appellate Court allowed the appeal and



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY dismissed the suit filed by the plaintiff.

10. Now the Second Appeal is filed by the plaintiff. Notice of motion was issued to the respondents and after several adjournments, the case was posted for final hearing today. In the Memorandum of Second Appeal, the appellant has raised the following substantial questions of law. -

- i. "Whether the Lower Appellate Court is right in holding that the appellant is the trespasser especially when the second respondent has failed to show any trespass or single piece of evidence to prove his title?
- ii. Whether the Lower Appellate Court is right in holding that the plaintiff is a trespasser without any evidence of trespass or prior possession of the second respondent within the statutory period of 12 years and has lost his right if any under Section 27 r/w. Article 65 of Limitation Act?
- iii. Whether the Lower Court is right in holding that the second respondent has title to the suit property without any documentary



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY or oral evidence in respect of title or prior possession during the statutory period?

iv. Whether the Lower Appellate Court is right in allowing the appeal and dismissing the injunction suit filed especially when it is admitted and established by evidence that the appellant is in settled possession?"

11. Heard Mr. P. Sidharthan, learned counsel for the appellant and Ms. H.Sujithra learned counsel for the second respondent .

12. Mr. P. Sidharthan, learned counsel for the appellant would contend that the plaintiff has established his possession over the suit property by adducing Ex.A1 to Ex.A11 and that even the Commissioner, Corporation of Chennai, had issued a notice way back in the year 1992 to the plaintiff directing him to vacate the premises. The said document was marked as Ex.A1 and that when the plaintiff had adduced acceptable evidence to prove his possession over the suit property, the First Appellate Court had committed an error in dismissing the suit filed by



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

the plaintiff. According to him, the first defendant (The Commissioner, Corporation of Chennai) did not adduce any evidence to show that he is the owner of the suit property. It is also his contention that the plaintiff has perfected his title by way of adverse possession and prescription and therefore, the second appeal has to be allowed.

13. Per contra, Ms. H.Sujithra learned counsel for the second respondent would contend that the property belongs to the Corporation of Chennai and since the case is filed by the plaintiff, the plaintiff has to prove his various contentions and he cannot pick holes in the case of the defendants and on that score seek for a decree of permanent injunction. He therefore prayed for dismissal of the second appeal.

14. During the pendency of the second appeal the first respondent died and his legal heirs were impleaded as respondents 3 and 4. No representation on behalf of the legal heirs of the deceased first respondent.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

15. At the outset it may be observed that the plaintiff has not properly described the suit property in the plaint. The suit property is described in the plaint schedule as extracted hereunder :

*"Land of an extent of 100 sq.ft. or thereabouts, opposite No.10, Taylors Road, Kilpauk, Chennai -10, having entrance from Taylors Road, with the superstructure thereon (60 sq.ft.) and running business under the name and style of G.P. Stall"*

The boundary description has not been given and the plaintiff states that he is in possession of 100 sq.ft. opposite to Door No.10, Taylors Road, Kilpauk, Chennai. In paragraph No. 3 of the plaint, the plaintiff has stated that he is running a betel nut shop in S.No.154 (part) abutting Taylors Road, Kilpauk, Chennai. Moreover, the plaintiff during the cross examination had contended that his shop is situated in Door No.33, Taylors Road, Kilpauk, Chennai. According to the plaintiff, Old Door number of the suit property is 10 and new door number is 33. But, as already observed, in the plaint schedule, the plaintiff has described the suit property as a land and superstructure situated opposite to Door No.10,



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

Taylors Road, Kilpauk, Chennai. It is settled law that if the property is not described properly in the plaint the suit has to be dismissed. Moreover the plaintiff is not also clear about the suit property.

16. The plaintiff in his plaint had stated that he has been in possession of betel nut shop for the past 15 years and pressed into service a notice dated 18.09.1992 (Ex.A1) issued to him by Corporation of Chennai. A bare perusal of Ex.A1 clearly shows that the plaintiff had put up his bunk shop on the pavement abutting the road and this document is therefore least useful to the case of the plaintiff. He did not also send any reply to the Commissioner, Corporation of Chennai, to show that his property is not situate on the pavement. Ex.A2 is a summary of sale of cigarettes in G.P.Bunk Shop (plaintiff's shop), wherein the door number is indicated as 10 Taylors Road. Ex.A8 is the acknowledgment card of the money order received by the plaintiff. The said acknowledgment card was delivered at Door No.33, Taylors Road, Kilpauk, Chennai. Ex.A10 & Ex.A11 are the security deposits receipts and telephone bills respectively and the address in both the documents are indicated as Door



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

No.33, Taylors Road, Kilpauk, Chennai. Thus it is clear that the plaintiff has not adduced any acceptable evidence to show that his bunk shop is situate opposite to Old Door No.10, New No.33, Taylors Road, Kilpauk, Chennai. The contention of the learned counsel for the appellant is that the Corporation of Chennai did not adduce any evidence to show that they are the owners of the suit property. However, it is for the plaintiff to prove his possession over the suit property by adducing acceptable oral and documentary evidence. In the instant case, as already observed, the suit property itself is not described properly and therefore, the First Appellate Court was right in dismissing the suit filed by the plaintiff. All the observations made by the First Appellate Court are based on sound principles of law and therefore, I do not see any reason to interfere with the same. In fact, there are no substantial questions of law involved in the present second appeal.

17. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.



S.A.No.979 of 2010 & M.P. No. 1 of 2010

WEB COPY

- ii. the decree and judgment dated 29.12.2009 passed in A.S. No.607 of 2008, on the file of the VII Additional City Civil Judge, Chennai, is upheld.
- iii. the decree and judgment dated 24.04.2007 passed in O.S. No.4405 of 2002, on the file of the XV Assistant Judge, City Civil Court, Chennai, is set aside.

06.06.2023

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
bga



WEB COPY



S.A.No.979 of 2010 & M.P. No. 1 of 2010

**R. HEMALATHA, J.**  
bga

To

1. The VII Additional City Civil Judge, Chennai.
2. The XV Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.

S.A.No.979 of 2010  
& M.P. No. 1 of 2010

06.06.2023