



S.A.No.745 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.745 of 2023

1.R.Kuppu

2.S.Munusamy

3.S.Kothandan

4.S.Ganesan

5.S.Kandan

6.S.Ashok

7.Muniayammal

8.V.Suresh

...Appellants

Vs

1/11



S.A.No.745 of 2023

WEB COPY

Ozone Projects Pvt Ltd.,
Rep by its Authorised Signatory
S.R.K.Krishnan, Sr. DGM (Legal),
No.63, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Respondent

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 27.07.2022 passed by the XIX Additional City Civil Court, Chennai in A.S.No.404 of 2018, confirming the Judgement and Decree dated 26.04.2018 passed by the III Assistant Judge, City Civil Court, Chennai in O.S.No.5438 of 2014.

For Appellant : Mr. H.Adaikala Arochiaraj.

JUDGEMENT

The plaintiffs who have lost in both the Courts below are the appellants before this Court. Brief facts which have led to the filing of the above Second Appeal is herein below set out. The parties are



S.A.No.745 of 2023

referred to in the same rank as before the Trial Court.

WEB COPY

2. The plaintiffs had filed O.S.No.5438 of 2014 on the file of the III Assistant Judge, City Civil Court, Chennai for a decree of permanent injunction restraining the defendant or their person, men etc., from proceeding with the construction in the suit property.

3. It is the case of the plaintiffs that the property belonged to one Alavattan, who had 5 sons, namely, Boyi, Chinnapan, Vavuthan, Amavasai and Thoplan. The plaintiffs would claim that they are the legal representatives of Thoplan. The defendant who was adjacent owner had started to put up construction in their property and while doing so they had encroached into a portion of the suit property. The plaintiffs became aware of it in the first week of August 2013 and immediately issued a legal notice dated 20.08.2013. A reply dated 31.08.2023 was received from the defendant.



S.A.No.745 of 2023

WEB COPY

4. The plaintiffs would submit that while the construction was on, the defendant had been filing caveats which would go to show that the defendant was very much aware that they had encroached into the plaintiffs' property. The legal heirs of Alavattan and plaintiffs are jointly entitled to the property. The said Alavattan had purchased the property under the deeds bearing document No.1703/1914 and 505/1910. The defendant who has no manner of right, title or interest over the suit property is attempting to encroach into the same and they are proceeding with the construction. Therefore, the plaintiffs had come forward with the above suit.

5. The defendant had filed a written statement which inter alia sets out that the suit for permanent injunction alone is not maintainable. The defendant would submit that their predecessors in title one



S.A.No.745 of 2023

WEB COPY

Karpagambal had acquired right to the property under a registered sale deeds. These registered deeds are not mentioned in the plaint. The defendant would further submit that a group of persons claiming to be a lineal descendant of Alavattan and Ammavsai claimed patta in respect of 4.76 acres of land forming part of suit property. Their request was declined by the Assistant Settlement Officer and Settlement Officer and ultimately by the Commissioner of Land Administration by order dated 14.05.2001. This order was challenged in W.P.No.12613 of 2001, where this Court upheld the order passed by the Commissioner of Land Administration. The plaintiffs had moved W.A.Nos.844 and 845 of 2011 before the Division Bench of this Court and no interim orders had been granted and the interim applications were dismissed and the Writ Appeals are pending.

6. The defendant is putting up construction in their own lands and it appears that the defendant has also obtained patta in respect of



S.A.No.745 of 2023

WEB COPY

the larger extent including suit property from competent authorities.

The defendant had denied the contention of the plaintiff that they had come to know about the construction very recently.

7. The Trial Court had framed the issues as to *whether the plaintiffs were entitled to relief of injunction?*

8. The 2nd plaintiff had examined himself as P.W.1 and one Elumalai as P.W.2 and marked Ex.A.1 to Ex.A.11. On the side of the defendant the authorised signatory had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.20.

9. The Trial Court dismissed the suit against which the plaintiffs had filed an appeal in A.S.No.404 of 2018 on the file of the XIX Additional City Civil Court, Chennai. The Lower Appellate Court had also concurred with the Judgement and Decree of the Trial Court and



S.A.No.745 of 2023

dismissed the appeal, against which the present Second Appeal has been filed.

10. Heard the learned counsel and perused the records.

11. The first defence that has been taken in the above suit for bare injunction is that the plaintiffs are not in possession of the property and that the defendant is in possession of the property and has put up construction thereon. The suit has been filed for the following reliefs:

“(a)To grant permanent injunction restraining the defendant their men, agents, representatives, or anybody acting on its behalf from proceeding with the construction in the suit schedule property.

(b)Direct the defendant to pay the cost of the suit.

(c)To pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”



S.A.No.745 of 2023

WEB COPY

12. Though the defendants had denied the title of the plaintiff and set up an independent title to the suit property, the plaintiff had not deemed it necessary to amend the plaint to include the relief of declaration. Further, the defendants have proved their possession of the suit property and have completed the construction. The prayer for injunction therefore becomes infructuous.

13. Therefore, on the face of the very submission and evidence, it is crystal clear that the plaintiffs are not entitled to the relief. Therefore, the suit for bare injunction without seeking the relief of declaration is *per se* not maintainable. That apart, the relief claimed in the suit has also become infructuous. Further, the plaintiffs have not let in any evidence whatsoever to show how they claim to be the legal representatives of the said Alavattan. The Courts below have in extenso considered the evidence and dismissed the suit.



S.A.No.745 of 2023

WEB COPY

14. In the result, the appellants having not made out any Substantial Question of Law the Second Appeal is dismissed. No costs.

19.10.2023

kan

Index : Yes/No

Speaking order/non-speaking order

To,

1. The XIX Additional Judge,
City Civil Court,
Chennai.

2. The III Assistant Judge,
City Civil Court,
Chennai.

9/11



WEB COPY



S.A.No.745 of 2023

P.T.ASHA, J.,

kan

S.A.No. 745 of 2023



WEB COPY



S.A.No.745 of 2023

19.10.2023