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S.A.No.432 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 432 of 2017 and
C.M.P.No.10598 & 19070 of 2017

1.The State of Tamil Nadu represented
by its District Collector,
Collectorate, Ariyalur.

2.The Assistant Engineer,
Highways, Ariyalur,
Trichy Main Road,
Ariyalur.

3.The Chairman (Executive Officer)
III Grade Municipality, Ariyalur

...Appellants

Vs.

1.S.Masilamani
2.S.Lavananandan
S.Viswanathan(Deceased)
3.Shanmugalakshmi
4.Lavanyabahvani
(R3 and R4 amended as per order
in I.A.No.21/2015 dated 27.08.2015)

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 22.12.2016 passed by the Court of Principal District and Sessions Judge, Ariyalur in A.S.No.03 of 2014



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confirming the judgment and decree dated 27.06.2013 passed by the Court of Sub-ordinate Judge, Ariyalur District in O.S.No.72 of 2008.

For Appellants : Mr.C.Sathish
Government Advocate

For Respondent 1 : Mr.P.Valliappan
Senior Counsel
for Mr.M.S.Gokul Raj

J U D G M E N T

The respondents 1 and 2 and one S.Viswanathan(deceased) under whom the 3rd and 4th respondents are claiming right filed a suit seeking compensation from the appellants for demolition of the building in the suit property. The suit was decreed by the Trial Court and the first appeal filed by the appellants was also dismissed. Aggrieved by the same, the appellants are before this Court.

2. According to the respondents, they have erected shops in the suit property belonging to them. Earlier, the 1st and 2nd respondents' father filed a suit for declaration and injunction in O.S.No.609 of 1974 against the State represented by the District Collector, Tiruchirappalli and the same was decreed. Thereafter, patta was also granted in favour of the respondents for the suit property as per the directions given in W.P.No.18096 of 1994. In these



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circumstances, the 2nd appellant along with sub-ordinates of 3rd appellant came to the suit property on 09.05.2008 and illegally demolished the building constructed by the respondents in the suit property without any prior notice. Due to the illegal act of the appellants, the respondents suffered loss to the tune of Rs.4 lakhs. The respondents confined their claim to Rs.2 lakhs and laid a suit seeking recovery of damages.

3. The appellants filed written statement denying various allegations contained in the plaint. It was averred by the appellants that decree passed in O.S.No.609 of 1974 was not within their knowledge. The appellants also claimed that directions issued by High Court in W.P.No.18096 of 1994 was also not within their knowledge. The appellants also denied the value of the shops mentioned in the plaint. It was asserted by the appellants that as per the directions of District Collector, Ariyalur, the appellants had taken steps to remove the encroachments in the properties belonging to the Highways Department. At the time of removal of encroachment, the respondents did not raise any objection and after having found that the suit property was a classified 'road poromboke', the appellants had removed the construction found there on. The appellants also raised a plea that they were not made as



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parties to the earlier suit.

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4. Both the parties went to the trial based on these pleadings. The 1st and 2nd respondents were examined as P.W.1 and P.W.2 and one Arivanantham was examined as P.W.3. On behalf of the respondents, 11 documents were marked as Ex.A1 to Ex.A11. The respondents also marked valuation report of the Engineer as Ex.X1. On the side of the appellants, 2 witnesses were examined as D.W.1 and D.W.2 and 4 documents were marked as Ex.B1 to Ex.B4.

5. The Trial Court, based on the evidence of P.W.1 to P.W.3 and the documentary evidence produced by the respondents namely the patta as Ex.A4 in the name of respondents and the suit register extract of the earlier litigation marked as Ex.A1, came to the conclusion that respondents proved their right over the suit property and decreed the suit by directing the appellants to pay a sum of Rs.2 lakhs together with interest at the rate of 6 % per annum. Aggrieved by the same, the appellants preferred an appeal in A.S.No.3 of 2014 on the file of Court of Principal District and Sessions Judge, Ariyalur. The 1st Appellate Court also, based on the documentary evidences produced by the respondents, came to the conclusion that the respondents had proved their



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right over the suit property and the act of demolition by the appellants was illegal. Consequently, the appeal filed by the appellants was dismissed. Aggrieved by concurrent findings against them, the appellants have come up with this second appeal.

6. Mr.C.Sathish, learned Government Advocate appearing for the appellants submits that the respondents failed to prove their title over the suit property by producing any acceptable documents and therefore, both the Courts erroneously came to the conclusion that the respondents have proved their right over the suit property. The learned counsel further submitted that the respondents also failed to prove the actual damage suffered by them and therefore, the decree granted by the Courts below directing the appellants to pay a sum of Rs.2 lakhs is untenable in law.

7. The learned Senior Counsel appearing for the respondents by taking this Court to the findings rendered by the Courts below submitted that both the Courts below rightly appreciated the documents filed by the respondents with regard to the earlier litigation and based on the said documents found that the respondents established their right over the suit property and the said finding



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requires no interference by this Court.

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8. A perusal of the typed set of papers would indicate that the father of the 1st and 2nd respondents filed a suit for declaration and injunction in O.S.No.609 of 1974 on the file of Sub-Ordinate Judge, Ariyalur. The State represented by District Collector, Tiruchirappalli was arrayed as defendant in the said suit. The suit was decreed in favour of the father of the 1st and 2nd respondents. The title of the 1st and 2nd respondents' father was declared in O.S.No.609 of 1974. The District Collector, Tiruchirappalli was party to the said suit. In the present suit, the State of Tamil Nadu is represented by the District Collector, Ariyalur. Though the appellants claimed that they were not made as parties to the earlier suit, based on Ex.A1, the Courts below, came to the conclusion that earlier suit was filed against the District Collector, Tiruchirappalli, who had jurisdiction over the present District of Ariyalur. In such circumstances, the decree for declaration granted in favour of the 1st and 2nd respondents' father is binding on the appellants. As seen from Section 80(c) of Code of Civil Procedure, the District Collector is the representative of the State Government. Therefore, the decree passed in O.S.No.609 of 1974 is binding on the appellants.



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9. Subsequent to the decree in O.S.No.609 of 1974, the respondents appeared to have filed a writ petition in W.P.No.18096 of 1994 and based on the directions issued in the writ petition, patta was also issued in favour of the respondents in respect of the suit property. The said patta has been marked as Ex.A4. As the patta for the suit property was issued in favour of the respondents based on the directions issued in the writ petition, the appellants cannot say that the suit property belongs to Highways Department. Therefore, the findings reached by the Courts below that the suit property belongs to the respondents based on Ex.A1, Ex.A3 and Ex.A4 is justified and it requires no interference by this Court.

10. As far as the quantum of damages arrived at by the Courts below is concerned, the appellants produced the estimate prepared by an Engineer under Ex.X1. The 1st Appellate Court, while considering the Ex.X1 observed that the certificate issued by Chartered Engineer has not been seriously disputed during cross-examination. The Courts below, based on the evidence of P.W.3 and the certificate issued by him under Ex.X1, came to the conclusion that the appellants are liable to pay a sum of Rs. 2 lakhs together with interest



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at the rate of 6 % per annum. Hence, I do not see any perversity in the findings of the Courts below. The second appeal does not involve any substantial question of law and hence deserve dismissal.

11. With the above observations, the second appeal stands dismissed.

a) by confirming the judgment and decree dated 22.12.2016 passed by the learned Principal District and Sessions Judge, Ariyalur in A.S.No.03 of 2014 confirming the judgment and decree dated 27.06.2013 passed by the learned Sub-ordinate Judge, Ariyalur in O.S.No.72 of 2008.

b) In the above facts and circumstances of the case, there is no order as to costs.

c) Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The learned Principal District and Sessions Judge, Ariyalur
2. The learned Sub-ordinate Judge, Ariyalur



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S.SOUNTHAR, J.

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