



S.A.No.2017 of 1999

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.2017 of 1999
and
C.M.P(MD) No.49 of 2023

1.A.S.Savari Gruez

2.Thomas Christopher

...Appellants

-Vs-

1.Kanagavel Colony Manai
Vadakai Kudiyiruppor Sangam,
Reg.No.4/84, through its Secretary,
Having Office at 4, Kanagavel Colony,
Madurai.

2.Thirumeni

3.Raju

4.S.Somasundaram

5.Pandi

6.S.Meenakshi Ammal

7.Devaraj

8.Sargunam

9.Annathai

1/14



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... Respondents

(Memo dated 17.07.2018 in USR No.3306 is recorded as the respondents 2, 4 to 8 are given up vide Court Order dated 03.01.2023 made in S.A.No.2017 of 1999)

(Memo dated 31.12.2022 (filed on 02.01.2023) in USR No.26 is recorded as the respondents 3, 9 and 10 are given up vide Court order dated 03.01.2023 made in S.A.No.2017 of 1999)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.68 of 1998 on the file of the Principal Subordinate Judge, Madurai, dated 30.07.1999 reversing the judgment and decree in O.S.No.715 of 1990 on the file of the District Munsif, Madurai, dated 20.03.1998.

For Appellants : Mr.K.N.Thampi

For Respondents : No appearance

JUDGMENT

The plaintiff in the suit is the first appellant. The suit was decreed by the trial Court. The appeal filed by the respondents came to be allowed by the



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first appellate Court and consequently, the suit was dismissed. Aggrieved by the same, the plaintiff is before this Court. Pending the second appeal, the first appellant/plaintiff died and his legal representative was brought on record as second appellant.

2. According to the first appellant/plaintiff, the site of the suit property originally belonged to Sri Vyasaraaya Mutt. The plaintiff put up construction in the site belonged to Sri Vyasaraaya Mutt, which is situated on the eastern side of the suit property. The plaintiff had been running three schools, namely, Veerama Munivar Vydyasala Middle School, Good Shepherd Matriculation Higher Secondary School and Holy Angles Girls Higher Secondary School. The present suit property was shown as 'A B C D' in the Rough Plan attached to the plaint, which situated on the front portion abutting Kanagavel Colony Main Road. The suit property is a open space lies on the western side of the school building and eastern side of the road. The plaintiff also put up fence demarcating the open space left by him and the road on immediate west of the suit 'A B C D' portion. The measurement of the suit property is 380 feet on north-south, 42 feet east-west on northern side and 41 feet east-west on southern side. The width of the



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Kanagavel Colony Main Road which lies on immediate west of suit property is 15 feet. The defendants/respondents herein own houses on the west of the road. The defendants tried to interfere with the possession of the plaintiff and hence, the plaintiff was constrained to file a suit for bare injunction in respect of 'A B C D' portion.

3. The defendants/respondents herein filed a written statement denying the various averments contained in the plaint of the first appellant/plaintiff. According to the defendants, the width of the road on western side of the suit property is 30 feet east-west and it was further averred by the defendants that the plaintiff had encroached 15 feet on road portion by putting up barbed wire fence and thereby, reduced the width of the road from 30 feet to 15 feet. Further, the defendants also denied the allegation made in the plaint of the first appellant/plaintiff that they tried to interfere with the plaintiff's peaceful possession and enjoyment, but however claimed that they only asked the plaintiff to remove the encroachment made in 30 feet road.



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4. The parties went to the trial on these pleadings. The plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the first appellant/plaintiff, 12 documents were marked as Ex.A1 to Ex.A12. On behalf of the respondents/defendants, the Assistant Secretary to the first respondent association was examined as D.W.1 and yet another witness was examined as D.W.2 and 9 documents were marked as Ex.B1 to Ex.B9.

5. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the first appellant/plaintiff was entitled to enjoy the suit property and consequently, granted a decree for injunction as prayed for. Aggrieved by the same, the respondents/defendants had filed first appeal in A.S.No.68 of 1998 on the file of Principal Sub Court, Madurai. The first appellate Court reversed the findings of the trial Court, allowed the appeal and consequently, dismissed the suit. Aggrieved by the same, the first appellant/plaintiff has come by way of this second appeal.

6. The second appellant filed C.M.P(MD)No.49 of 2023 for raising additional evidence, namely, Building Plan Approval by the Corporation of



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Madurai for construction of Holy Angel School, dated 27.03.2015, Town Survey Land Register Extracts pertain to Town Survey No.326, Block No.35, Ward No.5 of Melmadurai, Ponmeni, Madurai Corporation, dated 16.10.2018 and TSLR Sketch for T.S.No.326, dated 23.5.2022 as additional evidence.

7. Heard the arguments of the learned counsel for the appellants. Though notice was served on the first respondent, nobody entered appearance on behalf of the first respondent. The respondents 2 to 10 were already given up by the second appellant.

8.The learned counsel for the second appellant by taking this Court to the pleadings of the respondents and also the admissions of D.W.1 submitted that the first appellant/plaintiff proved his settled possession over the suit property and hence, the first appellate Court ought not to have dismissed the suit in its entirety. In nutshell, it is the submission of the learned counsel for the second appellant that the second appellant is entitled to limited injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property except by due process of law.



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9. On the basis of the submission made by the learned counsel for the second appellant the following substantial question of law arises for consideration in this second appeal:

“Whether the dismissal of the suit for bare injunction is correct in the eye of law, when appellant's settled possession is admitted by the respondents?”

10. The learned counsel elaborated the substantial question of law by submitting that D.W.1 in his evidence admitted that the first appellant/plaintiff had put up fencing separating the main road and the suit property even long back in the year 1990 and in view of the specific admission made by the respondents' side witness, D.W.1, the settled possession of the plaintiff over the suit property stands proved. The learned counsel had also taken this Court to the pleadings of the respondents, wherein they admitted the possession of the plaintiff over the suit 'A B C D' portion. The learned counsel had also drawn attention of this Court to the additional document No.1, namely, Building Plan Approval by the Madurai Corporation wherein the width of the Kanagavel Colony Main Road was shown as 18 feet on the northern portion and 21 feet 6 inches on the southern portion.



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Therefore, it is the contention of the learned counsel for the second appellant that the plea raised by the respondents as if the width of road was 30 feet, got falsified. The learned counsel, by taking this Court to the additional document No.2, TSLR Extract of Town Survey No.326, submitted that the width of road, which lies in town survey No.326 was shown as only 5.6 metres or 18.37 feet. The learned counsel for the second appellant had also taken this Court to the Town Survey Land Register for Survey No.326 to correlate T.S.No.326 with old survey No.1208-22-2A. According to the learned counsel, the additional document No.1 came into existence only subsequent to the filing of the second appeal. Therefore, the same could not have been produced before the trial Court. As far as the additional document Nos.2 and 3 are concerned, the learned counsel submitted that those two documents are very much relevant to decide the actual width of the road in the revenue documents maintained by the local body, which will have bearing on the ultimate decision of the case.

11. A perusal of the additional documents filed along with C.M.P(MD) No.49 of 2023 would make it clear that those documents would be very useful to decide the actual controversy in the suit. In the case on hand, it is the specific



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case of the respondents that the width of the road abutting the suit property on the western side was 30 feet and the plaintiff encroached 15 feet of the road portion. However, in the revenue documents maintained by the local body the width of the road was shown as only 18.37 feet. Therefore, the entry in the revenue records will have a bearing on the ultimate decision in the second appeal. In view of the same, allowing of petition for reception of additional evidence would enable this Court to decide the controversy involved in the appeal in a better way and consequently, the petition for reception of additional evidence is allowed and three documents produced by the second appellant along with the Civil Miscellaneous Petition as additional evidence are marked as Ex.A13 to Ex.A.15 in this second appeal.

12. The respondents even in their pleadings admitted the possession of the plaintiff over the suit property. Even in the written statement, they had averred that the plaintiff encroached 15 feet of the road portion by putting up barbed wire fence. On perusal of the Advocate Commissioner's Report and Plan, namely, Ex.C1 and C2 would also show that there is a barbed wire fence separating the road and the suit property. The Advocate Commissioner also noted



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a building constructed by the plaintiff for the use of watchman of the school in the northern portion of the suit property. The suit property appears to be a open space in front of the school immediately abutting the public road. The evidence of D.W.1 also supports the first appellant/plaintiff's possession over the suit property. D.W.1 had gone to the extent of saying that plaintiff encroached the suit property encompassing the same by putting up barbed wire fence. He also deposed that fencing was put up by the plaintiff in the year 1990. When he was questioned about the objection to the Advocate Commissioner's Report, he deposed about his ignorance of the same.

13. If the evidence of D.W.1 is taken into consideration in the light of the pleadings of respondents and also the Advocate Commissioner's Report and Plan, it will be clear that the suit 'A B C D' portion, which lies on the immediate east of the road was in settled possession of the plaintiff even on the date of plaint.

14. The Hon'ble Apex Court in case of ***Rame Gowda (Dead) by Lrs, Vs. M.Varadappa Naidu (Dead) by Lrs and Another*** reported in (2004) 1



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SCC 769 held that the person in a settled possession of the property is entitled to limited injunction restraining the defendant from interfering with his settled possession except by due process of law. It is also observed that even the real owner of the property cannot take law into his own hands and try to evict the person in settled possession of the property except by due process of law. In the case on hand, evidence available on record and also the pleadings of the parties proved that the second appellant is in settled possession of the property and hence, his possession should not be disturbed except by due process of law. Consequently, the second appellant is entitled to decree for injunction to that extent.

15. In view of the discussion made earlier, the substantial question of law arising for consideration in this second appeal, is answered in favour of the second appellant and the second appeal is partly allowed by granting qualified injunction restraining the respondents from interfering with the second appellant's possession except by due process of law.



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16. In nutshell,

(i) The second appeal is partly allowed by setting aside the judgment and decree dated 30.07.1999, made in A.S.No.68 off 1998 on the file of the Principal Subordinate Judge, Madurai.

(ii) The second appellant is entitled to a decree for injunction restraining the respondents from interfering with his peaceful possession and enjoyment over the suit property except by due process of law.

(iii) It is always open to the Madurai Corporation, which is the owner of the public road within the Corporation limit to take appropriate action against the second appellant, if so advised, in accordance with law.

(iv) In the facts and circumstances, there will be no order as to costs.

12.01.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The Principal Subordinate Judge,
Madurai.

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2. The District Munsif, Madurai.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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