



WEB COPY



SA.No.1962 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1962 of 2004
and C.M.P.No.16033 of 2004

B.Srinivasan

... Appellant

- Vs -

1.The State of Tamil Nadu
rep. by the District Collector
Dharmapuri.

2.The District Town Panchayat Officer
Dharmapuri.

3.The Executive Officer
Town Panchayat
Uthangarai
Dharmapurai.

... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.02.2004 in A.S.No.60 of 1999 passed by the learned I Additional District Judge, Krishnagiri, confirming the judgment and decree dated 19.03.1999 in O.S.No.202 of 1995 passed by the learned District Munsif-cum-Sessions Judge, Uthangarai.

For appellant : Mrs.V.Srimathi

For respondents 1 & 2 : Mr.M.Muthusamy
Government Advocate



SA.No.1962 of 2004

WEB COPY

For respondent 3 : Mrs. Shanthi Rackappan

J U D G M E N T

1. The appellant herein was the plaintiff before the Trial Court.
The defendants are arrayed as respondents herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which gave rise to the instant Section Appeal, are as follows:

3. The suit property was in physical possession and enjoyment of the plaintiff and his predecessors-in-title. The plaintiff further submitted that he obtained permission from the 3rd defendant for putting up construction in the suit property. In pursuance of such permission, he has also put up construction in the suit property by spending a sum of Rs.1,00,000/-. However, without giving any notice, the defendants have demolished the building, which is marked as 'ABC' in the rough plan on 22.01.1994. It is the



SA.No.1962 of 2004

submission of the plaintiff that the very conduct of the 3rd defendant, having granted license to put up construction and also collecting taxes the sudden demolition of the building is illegal and illogical. They further submits that since the plaintiff's property is situated on the eastern side of the Salem Road, the disputed passage is the only way to the plaintiff to reach the road. Apart from that, the defendants 1 and 3 were also attempting to put up construction in the suit property. If the defendants put up construction, the plaintiff cannot reach his house. Hence, the plaintiff has come forward with the suit for permanent injunction restraining the defendant from interfering with the possession and also not to put up any further construction in the suit property.

4. The said suit was resisted by the 3rd defendant by contending that the mere granting of license to put up construction will in no way confer any right to the plaintiff and also not absolve the right of the defendants to resume the possession of the land, which is classified as Chatram Poramboke in revenue records.

5. It is the contention of this defendant that only upon public



SA.No.1962 of 2004

interest, as per the proceedings of the District Collector, the encroachments have been removed. This defendant submits that the plaintiff has not been granted any right upon the land. The 3rd defendant submitted that they took action as per the Tamil Nadu Land Encroachments Act, 1905, and that the same cannot be agitated before the Civil Court, as the jurisdiction of the Civil Court has been ousted.

6. Before the Trial Court, on behalf of the plaintiff, the plaintiff was examined as P.W.1 and three more witnesses viz., Manickam, Perumal and Kribakaran, Assistant, Uthangarai Taluk Office were examined as P.W.2 to P.W.4, respectively. 21 documents were also marked as Exs.A1 to A21. On behalf of the defendants, three witnesses were examined as D.W.1 to D.W.3 and 7 documents were marked as Exs.B1 to B7.

7. The Trial Court, after having considered the oral and documentary evidence has found that the plaintiff has encroached upon the suit property and that there was no violation in the removal of encroachment hence, ultimately, dismissed the suit.



SA.No.1962 of 2004

WEB COPY

8. Not satisfied with the judgment of the Trial Court, the plaintiff preferred an appeal. The First Appellate Court has also concurred with the finding of the Trial Court and dismissed the appeal.

9. Aggrieved by the judgment of the First Appellate Court, the plaintiff has preferred this Second Appeal against the concurrent finding rendered by both the Courts below.

10. At the time of admission on 12.10.2022, the following substantial question of law was formulated:

“(a) Whether the appellant is entitled for the ingress and egress right by way of right of necessity?”

11. The learned counsel appearing on behalf of the appellant/plaintiff would vehemently contend that, the suit property was all along in the enjoyment of the plaintiff and that the 3rd defendant has given patta to the suit property and has also sanctioned the license for construction of building thereon. The learned counsel further contend that in spite of



SA.No.1962 of 2004

conferring right upon the plaintiff over the suit property, without giving any notice, the defendants have illegally demolished the building, and that though they have referred to 10 persons as the encroachers, they have taken action only against this plaintiff, which could establish the *mala fides* on the part of the defendants. Therefore, the learned counsel would submit that if permanent injunction is not granted, then the defendants would put up construction in the suit property, and in that case, the property will be landlocked and they will not have any other access. Therefore, it is the submission of the learned counsel that both the Courts below have miserably failed to note that the suit property became landlocked and both the Courts below have failed to consider the building license and patta granted by the defendants. Apart from the above submissions, the learned counsel for the appellant/plaintiff had placed much reliance upon the non-issuance of Section 7 notice under the Land Encroachment Act and would submit that such non-issuance makes the action of the defendants become illegal. Therefore, she would contend that both the Court have concurrently erred, thus, plaintiff is entitled to permanent injunction as prayed for.

12. Per contra, the learned counsel of the 3rd respondent/3rd



SA.No.1962 of 2004

defendant would vehemently contend that even according to the documents submitted by this defendant, the property had been classified as Chatram Poramboke. Though the plaintiff contended that they had been given patta, such patta had been given subsequent to the filing of the suit and it is also contended by the learned counsel of the 3rd defendant that mere grant of license to put up construction does not mean that the plaintiff will have the right over the suit property. Apart from the above submissions, the learned counsel would submit that the issue raised by the plaintiff in respect of non-issuance of Section 7 notice, will have no significance in the present proceedings, as he has not sought for the relief to declare the action of the defendants as null and void. They have not even come forward to claim any compensation from the defendants. It is also contended by the learned counsel for the 3rd respondent that the contention put forth by the plaintiff that his land is landlocked, is evidently falsified through evidence. Thus, the learned counsel would contend that there was a finding of fact that the plaintiff has encroached upon the suit property, therefore nothing illegal in removing encroachment. Therefore, contended that such concurrent finding, which is based on evidence and documents cannot be interfered with under Section 100 of C.P.C.



SA.No.1962 of 2004

WEB COPY

13. I have given my anxious consideration to the submissions made on both sides.

14. The first and foremost submission made by the learned counsel appearing on behalf of the appellant/plaintiff is that, if the defendant is permitted to put up construction in the suit property, then he will not have any access to reach the suit property. In this regard, the learned counsel would rely upon the pleadings made in the plaint. Wherein, it has been stated that if the defendants put up construction in the suit property, he will not be in a position to reach his residence. However, such pleading was stoutly denied by the defendants. Even this Court has formulated the substantial question of law as to whether the plaintiff has got any passage to have ingress and egress to his residence.

15. In this regard, it is relevant to refer the finding recorded by both the Courts below. The Trial Court found that through the evidence of D.W.1, the factum of existence of passage to the plaintiff's residence is established.

This Court has perused the evidence of D.W.1, wherein, D.W.1 has



SA.No.1962 of 2004

categorically deposed that there is a passage on the southern side to reach his residence. Though this was objected to by the plaintiff, to disprove the above statement, the plaintiff did not file any application to prove the exact topography and physical features of the suit property so as to prove that the plaintiff is really landlocked in the event of defendant puts up construction in the suit property.

16. Apart from that, the First Appellate Court has also relied upon the evidence of P.W.1, where, the First Appellate Court extracted P.W.1 evidence in para 31 of its judgment. Wherein, the plaintiff has categorically admitted that there is a 3 feet passage in between the shop so as to reach the Thirupathur road. For the sake of easy reference, this Court deems it fit to extract the admission made by P.W.1:

“இந்த பிளான் படி வடக்குபக்கம் 2 அறைகள் 18 12

அடி அளவில் உள்ளது. தெற்குபக்கம் உள்ள கடை பழைய

திருப்பத்தூர் ரோட்டில் உள்ளது. கடைக்கும் 2 அறைகளுக்கும்

இடையில் 3 அடி இடைவெளி உள்ளது. மேற்கு பக்கம் 3 அடிக்கு

வழி விட்டிருக்கிறேன். இந்த கடைக்கு மேற்கு பக்கத்தில் 3 அடி



SA.No.1962 of 2004

WEB COPY

இடைவெளி விட்டிருக்கிறேன். இந்த சந்து வழியாக எங்கள்

வீட்டிற்கும். கடைக்கும் போகலாம்.”

17. Therefore, even according to his admission, a passage exists to reach Thirupathur road through their shop. Therefore, the contention put forth by the learned plaintiff's counsel that the suit property would become landlocked is incorrect statement and the same cannot be accepted at all. When factum of existence of passage has been evidently proved even through the admission made by the plaintiff and through D.W.1 evidence, the plaintiff would have taken appropriate steps for appointment of Advocate Commissioner so as to demonstrate the actual physical feature of the suit property. Here, as per the evidence, the very contention of the plaintiff that the property would become landlocked, has been disproved.

18. From the plaintiff's pleadings, what emerges is that he may not have access on western side, whereas, he has got access to the southern side and that, it would be seen even from the plaint plan. Therefore, the submission made by the learned counsel for the plaintiff that there is no other



SA.No.1962 of 2004

access to reach his residence cannot be countenanced.

WEB COPY



SA.No.1962 of 2004

WEB COPY

19. The next submission of the learned counsel for the appellant/plaintiff is that no notice served under Section 7 of the Tamil Nadu Land Encroachment Act. In this regard, the First Appellate Court has found that, the plaintiff has not come up with the case restraining the defendants from disturbing his ingress and egress except under due process of law, but, sought for absolute injunction, that too, after completion of alleged demolition. Therefore, when the act of demolition has already been completed, the defence of non-issuance of Section 7 notice will be a good defence to move an application claiming damages from the defendants on account of such non-issuance of notice. In this regard, the First Appellate Court has categorically recorded a finding of fact through the evidence, that the plaintiff has come forward to file the suit, only to restrain construction on the western side of his house so as to enable the plaintiff to reach western side road directly from his residence. In view of such admission made by the plaintiff, this Court is of the view that such non-issuance of notice will have no bearing in the instant suit.



SA.No.1962 of 2004

WEB COPY

20. The learned counsel has also relied upon the judgment of this Court in the case of *The State of Tamil Nadu and others vs S.Rajendran and other in S.A.No.107 of 2017 (decided on 15.07.2021)*, wherein, this Court has reiterated the principle about Section 7 notice under Tamil Nadu Land Encroachment Act. However, while looking at the factual scenario of the above relied case, there, the plaintiff has approached the Court prior to demolition of the building, whereas, in the case on hand, the demolition has already taken place. It is also pertinent to mention here that though the plaintiff's relies upon the building plan and the patta, the patta appears to have been issued subsequent to the filing of the suit. Coming to the defence of license for building plan, while analysing Ex.A17/Plan with forensic insight we can find a gap, in between the proposed site and western side road. Therefore, even Ex.A17 justified the case of the defendants about the existence of poramboke land. Therefore, this Court is of the firm view that there is no perversity in the finding recorded by both the Courts below.

21. In view of the above detailed discussion, the substantial questions of law are answered in favour of the respondents.



SA.No.1962 of 2004

WEB COPY

22. In the result, this Second Appeal is dismissed by confirming the judgment of both the Courts below. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

25.04.2024

Internet: Yes/No
Index : yes/No
Speaking Order/Non-speaking order
Neutral Citation Case: Yes/No
apd

To

1. The I Additional District Judge, Krishnagiri.
2. The District Munsif-cum-Sessions Judge, Uthangarai.
3. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



SA.No.1962 of 2004

C.KUMARAPPAN, J

apd

S.A.No.1962 of 2004
and C.M.P.No.16033 of 2024

25.04.2024