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S.A No. 474 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 474 of 2024

1. R.Dravidamani
2. Mr.Francis Devakumar

... Appellant

Vs.

- 1.M.Abdul Wahid
- 2.The Corporation of Chennai
Through its commissioner,
Ribbon Building, Chennai - 600 003.
- 3.The Regional Deputy Commissioner,
Corporation of Chennai, RDC North Office,
No.62, Basin Bridge Road,
Old Washermenpet,
Chennai - 600 021.

..Respondents

PRAYER : This Appeal has been filed under Section 100 of CPC, against the judgment and decree of the XVI Additional City Civil Court, Chennai dated 31.08.2023 in A.S No. 47 of 2020 confirming the judgment and decree passed by the VIII Assistant City Civil Court dated 18.11.2019 in OS No. 4637 of 2017 dismissing the suit for injunction.



For Appellants : Mr.B.Dineshkumar
For R1 : Mr.M.Saravanakumar
For R2 & R3 : Mr.A.C.Manibharathi

JUDGMENT

Challenging the concurrent findings of the Courts below, the appellants filed this second appeal.

2. The case of the plaintiffs is that an extent of land measuring 1030 sq.ft is the part and parcel of the suit property in which the plaintiff was in possession. Thereafter, he purchased abutting property through sale deed dated 18.07.1996 and by long possession he perfected his title. Thereby, he became the absolute owner of 1553 sq.ft. Thereafter, the plaintiff was in possession and enjoyment of the suit property. While so, the first defendant claimed herself as owner of the North Eastern side of the suit property and attempted to obstruct the peaceful possession of the plaintiff. Hence, he filed the suit. The first and second defendant filed the written statement stating that suit as such is not maintainable for the reason that the plaintiff owned 1030 sq.ft through purchase and remaining extent of 527 sq.ft was



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encroached by them by putting up Ac shed due to which the defendant was not able to utilise the public road. Hence, the plaintiff is not entitle for the relief as he claimed in the suit. After considering the oral and documentary evidence the Trial Court held that there is no dispute in respect of 1030 sq.ft which lies in TVK first link road, Thiruvalluvar Nagar, Chennai. In respect of 584.05 sq.ft., as per Ex.B7/ DTCP approval layout No. 262/1973 the Trial Court found that said extent of 584 sq.ft. is encroached by the plaintiff and also the Trial court held that while cross examining P.W.1, he deposed that he has not obtained any approval to put up Ac Shed and also has not produced any document to show his purchased the same from Anna Thomas and also corporation issued notice on 26.07.2017 stating that he encroached the Corporation land to the extent of 584 sq.ft. Therefore, the Trial Court based on the evidence held that cloud arise in the title of the plaintiff in respect of the suit property and the plaintiff has not proved that alleged encroached portion is belongs to him. Accordingly, dismissed the suit. Challenging the same, the plaintiff, preferred an appeal before the VI Additional Court, Chennai, in A.S No. 47 of 2020, which independently analysed the facts and evidence on records and dismissed the appeal.

3. Challenging the concurrent findings of the Courts below, the



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plaintiff filed this second appeal. This Court admitted the appeal on the following substantial questions of law.

“i) Whether the Courts below were right in denying the relief of Injunction for want of title to the Property in spite of Plaintiff establishing possession for more than 30 years?

ii) Whether Ex. A11 and B9 establishes the 584 Sq.ft of the Suit Property was never used as Road.

iii) Whether the 2 nd and 3 rd Defendants entitled to claim 584 Sq.ft in and out of the Suit property as encroachment into public Road without records of the Roads length and breath nor knowledge of when its alleged to have been enroachment?”

4. The learned counsel for the appellant submits that the Courts below failed to appreciate the fact that the plaintiff was in long possession of the suit property from the year of 1981 but without appreciating the above the courts below erroneously appreciated the Taluk Survey Report (short TSR). Further he would submits that so far said 584 sq.ft. also not been handed over to the Corporation based on the long standing possession he conferred with title over the property and clubbed the property which was purchased in the year 1987 thereby he is a absolute owner of the property but the Court below failed to appreciate the said facts erroneously dismissed the suit.



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5. The learned counsel for the respondent raised objection stating that in respect of 1003 sq.ft plaintiff relied sale deed in respect of 584 sq.ft, the plaintiff has not produced any title deed and alleged possession not been proved. Based on the DTCP approved layout/Ex.B7 and Ex.B8, it is proved that the plaintiff encroached the portion which is lies in Thiruvalluvar Nagar, 8th main road with an extent 584 sq.ft and also the same was rightly appreciated by the Trial Court and dismissed the claim of the plaintiff stating he has no right to claim injunction which is road portion. In fact, corporation is the true owner in which the plaintiff has no right. Accordingly, the findings of the Court below needs no interference.

6. Heard both sides.

7. The dispute between the parties is only in respect of 584 square feet. According to the plaintiff, he was in long possession of the property from the year 1981. Thereafter, he purchased 1003 square feet in the year 1996 by clubbing with both properties into 1553 sq.ft which is suit property herein. On the other side, the defendant and corporation claimed that as per DTCP approved layout/Ex.B7 it is Thiruvalluvar Nagar 8th main road, in that road portion 550 sq.ft is under the occupation of the plaintiff/appellant



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herein. Admittedly, the plaintiff has not produced original sale deed in respect of 1003 sq.ft. On the other hand, the plaintiff relied settlement deed executed in respect of 1003 sq.ft and they are not having title deed in respect of 550 sq.ft. Further, the appellant claimed that he was in long possession. It is settled proposition that title follows the possession. Moreover, as per the revenue records road belongs to corporation 584 sq.ft is occupied by him by putting up AC shed. Admittedly, there is no approved plan. As rightly ordered by the Trial Court by executing settlement deed in favour of plaintiff would not confer any title to the appellant/plaintiff which would not bind any of the parties. It was rightly appreciated by the Court below. By clubbing the corporation land to the appellant's land claiming injunction is rightly declined by the Court. Moreover, appellant has not proved his long possession nor title since because it was road belongs to the Corporation which was encroached by him. Therefore, appeal is dismissed as no merits. This court is inclined to give four months time to the appellant/plaintiff to remove the encroachment. If he fails to remove the encroachment, the corporation is entitle to remove the encroachment as per manner known to law. Accordingly, appeal is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.



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T.V.THAMILSELVI,J.

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To

1. The Section Officer,
V.R Section.

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