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S.A.No.643 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.643 of 2013

and

M.P.No.1 of 2013

Abdul Majeeth

... Appellant

Vs.

The Commissioner,
Tirupattur Municipality,
Tirupattur Town & Taluk,
Vellore District.

... Respondent

Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908 to set aside the judgment and decree in A.S.No.8 of 2009 dated 31.03.2011 on the file of the Sub-Court, Tirupattur, confirming the judgment and decree in O.S.No.78 of 2002 dated 03.04.2007 on the file of the District Munsif Court, Tirupattur by allowing this Second Appeal.

For Appellant : M/s.P.A.Sudhesh Kumar

For Respondent : Dr.S.Suriya,
Additional Government Pleader

J U D G M E N T

This Second Appeal arises against the judgment and decree in A.S.No.8 of 2009 dated 31.03.2011 in confirming the judgment and decree of the learned District Munsif, Tirupattur in O.S.No.78 of 2002 dated



03.04.2007.

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2. The case of the plaintiff is that his father-in-law had encroached upon the suit schedule mentioned property several years ago. According to him, before his father-in-law passed away on 31.01.1985, he had gifted the property in favour of the plaintiff. Plaintiff further pleaded that a separate door number had been given to the encroached portion. It is admitted in the plaint that the suit schedule property had been constructed over a channel poromboke. Since a notice was issued by the Municipality on 04.04.2002 to remove the encroachment, the plaintiff filed a suit for permanent injunction restraining the defendant viz., the Commissioner, Tirupattur Municipality, from initiating proceedings and removing the superstructure which had been constructed over the water channel.

3. The learned Trial Judge after a detailed discussion came to a conclusion that the channel belongs to the Municipality and therefore, dismissed the Suit. This was confirmed in appeal. It is pertinent to point out that P.W-1 entered the witness box and had admitted that the bhoosthuthi channel over which one K.Nasir Ahmed had put up a construction belongs to the Municipality. In the light of the admission made by the plaintiff, the



suit came to be dismissed. The lower Appellate Court referred to Section 21 of the Tamil Nadu District Municipalities Act, 1920 and held that the channel could be brought under the definition of drains attached to street. This Court had ordered notice of motion on 28.10.2013 returnable by two weeks. This Court did not admit the Second Appeal. Mr.P.A.Sudhesh Kumar, learned counsel for the petitioner would plead that if at all anybody can take an action, it is the Public Works Department and not the Tirupattur Municipality.

4. He would plead that the Second Appeal would be admitted in the light of the fact that the property belongs to the Public Works Department and not the Tirupattur Municipality. He would suggest several questions of law for the purpose of admitting the appeal.

5. When the plaintiff himself has entered the witness box and has given a categorical statement that the encroached area belongs to Tirupattur Municipality, the Court need not trouble itself further. The plaintiff is the author of the plaint and knows pretty well as to what he is deposing. The specific admission of the plaintiff had been extracted by the Courts below



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and came to a conclusion that the property belonging to the respondent Municipality, it is entitled to initiate proceedings for eviction. Further, I notice that though notice for removal of encroachment was issued on 04.04.2002, the said notice has not been challenged by the plaintiff in the suit. Even if there be an illegal order, it is for the plaintiff to seek for a declaration that the same has to be set aside. No relief of declaration has been sought for in the present case.

6. In the light of the categorical admission and the aforesaid position of law, I am not inclined to admit the appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.01.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Commissioner,
Tirupattur Municipality,
Tirupattur Town & Taluk,



Vellore District.

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V. LAKSHMINARAYANAN, J.

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