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S.A.No.423 of 2021

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated : 02.02.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 423 of 2021

1.S.Siva Gopal

2.G.Kalyani

3.V.Ganesan

...Appellants

Vs.

1.The Commissioner
Walaja Municipality
Walajapet,
Vellore District.

2.The Junior Engineer (Urban)
TNEB
Walajapet.

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 06.08.2020 made in



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A.S.No.16 of 2019 on the file of the Court of the II Additional District Judge, Vellore @ Ranipet confirming the Judgement and Decree dated 29.03.2019 made in O.S.No.60 of 2013 on the file of the Court of Sub Court, Ranipet.

For Appellants : Mr. T.P.Prabakaran.

For Respondent 1: No Appearance.

For Respondent 2 : Mr. J.Hemalatha Gajapathy.

J U D G M E N T

The plaintiffs who have unsuccessfully contested their suit for injunction before the Courts below have filed the above Second Appeal. In order to appreciate the grievances of the plaintiffs, it is necessary to set out the facts leading to the filing of the Second Appeal. The parties are referred to in the same rank as before the Trial Court.

2. The plaintiffs had filed the suit O.S.No.60 of 2013 on the file of the Sub Court, Ranipet seeking injunction restraining the defendants



their men, agents and servants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property without complying with the directions of this Court in S.A.No.348 of 2008.

3. It is the case of the plaintiffs that the A Schedule property belonged to one Radha Ammal. Radha Ammal had sold the A Schedule property to the 1st plaintiff through her Power Agent under a registered sale deed dated 30.01.1995. The B Schedule property belonged to one Ruckmani Ammal who sold it to one Ramasamy. The said Ramasamy through his Power Agent, Kalyani, who is the 2nd plaintiff had sold the property to the 3rd plaintiff, who is none else than the husband of the 2nd plaintiff.

4. The plaintiffs would submit that the 1st defendant Municipality had effected the name transfer in favour of the plaintiffs in respect of the A and B Schedule property and they are in possession and enjoyment of the same by paying property tax to the 1st defendant municipality. One Salammal had filed a suit O.S.No.26 of 1995 on the



file District Munsif, Walajapet, against the predecessor in title of the plaintiffs and others including the 1st defendant for a declaration of her right of free access over the A and B schedule properties. The said suit was dismissed and in an appeal to this in A.S.No.7 of 1998, the same was allowed in favour of the said Salammal. Challenging the same, the said Rukkammal and others had filed S.A.No.348 of 2002 on the file of this Court and the same was partly allowed.

5. The plaintiffs would submit that they were totally in dark about these proceedings. This Court had directed the 1st defendant to initiate the proceedings under Section 182 of the Tamil Nadu Municipalities Act, herein after called the Act, after giving opportunities to the parties to prove their perspective right. However, it is the case of the plaintiffs that the 1st defendant has not complied with this order.

6. While so, on 20.02.2012, the plaintiffs had received a notice dated 15.02.2012 from the 1st defendant asking them to remove the



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encroachment in the A and B Schedule properties within 15 days. This notice was challenged by them on the file of this Court in W.P.Nos.6952 and 6953 of 2013. This Court had directed the plaintiffs to work out their remedy before the appropriate forum and the Writ Petition was disposed of. Therefore, the plaintiffs have come forward with the suit in question.

7. The 1st defendant had filed a written statement inter alia contending that the A and B schedule properties were part of a street by a name Bavana Chetty Street, in T.S.No.972 and it is a street Puramboke owned by the State government and the same vests in the 1st defendant under the Act. The 1st defendant has been maintaining this street for several years.

8. The 1st defendant would submit that neither the plaintiffs nor their predecessor in title had any right or title or interest in the A and B schedule property and they are only the trespassers who have encroached into the property belonging to the State. Further, the suit



O.S.No.477 of 1989 on the file of the District Munsif, Ranipet was filed by one Salammal against Radha Ammal, Rumani Ammal, Narasimhan, Deendayalan, Murali and the 1st defendant, which was dismissed. She had thereafter preferred an appeal in A.S.No.7 of 1998 before the Sub Court, Ranipet, which was allowed and this Judgement has been challenged by the plaintiffs' predecessors in S.A.No.348 of 2002 and it was partly allowed. Therefore, the 1st defendant would contend that the plaintiffs cannot plead ignorance about the proceedings, when they had purchase the property. Encroachment on the properties has been made with full knowledge of the legal proceedings. Pursuant to orders of this Court in Writ petition, the 1st defendant had issued a notice under Section 182 of the Act to the plaintiffs to remove the encroachment.

9. The 1st defendant would submit that the plaintiffs have no right to prevent the 1st defendant from exercising the right as per directions of this Court. Hence, they prayed that the suit be dismissed.



10. The learned Subordinate Judge, Ranipet had framed the following issues:

“1. Whether the plaintiffs predecessor in title and the plaintiffs have been in possession and enjoyment of the suit property for the past 40 years?

2. Whether the 1st defendant had issued notice to plaintiffs as per judgment of Hon'ble High Court?

3. Whether the 'A' and 'B' schedule property is a street poramboke?

4. Whether there is no cause of action for the suit?

5. Whether the suit is hit by non-joinder of necessary parties?

6. Whether the plaintiff is entitled to the relief as prayed for?

7. To what relief, if any, the plaintiffs are entitled to?



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11. These issues were subsequently recast as follows:

“1. Whether the 1st defendant had issued notice to plaintiffs as per judgment of the Hon'ble High Court?

2. Whether the plaintiff is entitled for permanent injunction as prayed for?

3. To what relief, if any, the plaintiffs are entitled to?”

12. The 1st plaintiff was examined himself as P.W.1 and marked Ex.A1 to A8. On the side of the defendants, two witnesses were examined and Ex.B1 and B2 were marked. The Court witness was examined as C.W.1 and Ex.C.1 and Ex.C.2 were marked.

13. The Trial Court on considering the evidence held that the suit runs contrary to the orders passed by this Court in the earlier proceedings in S.A.No.348 of 2002, which emanates from the



Judgement and Decree in OS.No.26 of 1995, which is filed against the vendors of the plaintiffs. Therefore, the suit was dismissed.

14. Challenging the same, the appellants herein had filed A.S.No.16 of 2019 on the file of the II Additional District Court, Vellore at Ranipet, which also confirmed the Judgement and Decree of the Trial Court.

15. Challenging the same, the plaintiffs are before this Court. When the matter had come for admission on 17.09.2021, notice was ordered to the respondents.

16. Heard the learned counsels and perused the records.

17. The property which is the subject matter of the instant suit was already the subject matter of the earlier suit in O.S.No.26 of 1995 filed by one Salammal against the vendors of the plaintiffs and the 1st defendant herein. The suit was filed by the said Salammal for a



declaration that she had right of free access to her property in A Schedule property through B schedule property, which is a public Street and consequently to remove the encroachment that have been put up by the vendors of the plaintiffs herein, consequently to declare B schedule property as a easement of necessity for the plaintiff's convenient enjoyment of her house property and for free access and to remove encroachment. The suit was dismissed by the Trial Court which was later reversed by the Subordinate Court, Ranipet in A.S.No.7 of 1998, against which the vendors of the plaintiffs herein had preferred S.A.No.348 of 2002. This Court had observed that the B schedule is a street called Bhavana Chetty Street, in which the predecessors in title of the plaintiffs herein had already encroached and put up construction.

18. This Court had observed that under Section 180 A of the Act, all the streets are to be vested in or maintained by the municipal council for the use of the general public. Therefore, this Court observed that there was no second opinion that the street (B schedule property)



should be kept open for being used by the public including the plaintiff in that suit, namely, Salammal. However, taking note of the provisions of Section 182 of the Act and also taking note of the long encroachment of the property, this Court had passed the following order and thereby modifying the Judgement passed in A.S.No.7 of 1998 by the Subordinate Judge, Ranipet.

“(a)It is declared that the plaintiff has got right to use Bhavana Chetty street to have access into his land comprised in ‘A’ scheduled property described in the plaint.

(b) There shall be a mandatory injunction to the 6th defendant/Municipality to initiate proceedings under Section 182 of the Tamil Nadu District Municipalities Act, against the appellants herein for removal of the so called encroachments on Bhavana Chetty street by issuing appropriate notice. On receipt of such notice under, Section 182 of the Act, the appellants are at liberty to prove before the Executive Authority that they have got prescriptive title in respect of the encroached portion as provided under Section 182(2) of the Act. If the appellants



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prove such prescriptive title then as per Section 182, the Executive Authority shall act accordingly.”

19. The 1st defendant had issued a notice dated 15.02.2012 to the plaintiffs calling upon them to remove the encroachments in the A and B schedule property within 15 days. Challenging this notice, the plaintiffs had filed Writ Petitions in W.P.Nos.6952 and 6953 of 2013 before this Court. The plaintiffs in the guise of the Writ petition was seeking a review / modify the decree of Civil Court. Thereafter, the present suit has been filed.

20. The Judgement passed by this Court in S.A.No.348 of 2002, which is extracted Supra directed the 1st defendant to issue notice to initiate proceedings under Section 182 of the Act for removal of the encroachment on Bhavana street after issuing appropriate notice. In keeping with this Judgement, the 1st defendant had issued the said notice which is in the form of show cause. However, without submitting their objection to the notice and participating with the



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enquiry, the plaintiffs have rushed to the Court.

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21. The Courts below have rightly dismissed the suit and I see no reason to hold otherwise. The plaintiffs / appellants shall make objection to the show cause within a period of three weeks from the date of receipt of a copy of this Judgement. Thereafter, the 1st defendant / 1st respondent shall consider the objections and pass speaking orders, as expeditiously as possible.

22. With the above observations, the Second Appeal is dismissed.

No costs.

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To

1.The II Additional District Judge,
Vellore @ Ranipet.

2.The Sub Court,
Ranipet.



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P.T. ASHA, J,

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