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S.A.No.926 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.926 of 2021

and

C.M.P.No.17498 of 2021

1.R.Shanmugam
2.G.Malathi
3.V.Gowsalya

... Appellants

...Vs...

The Commissioner,
Erode City Municipal Corporation,
Corporation Office,
Brough Road,
Erode District.

... Respondent

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.29 of 2016 dated 28.08.2020 on the file of the learned Principal Subordinate Judge, Erode in confirming the judgment and decree made in O.S.No.149 of 2013 dated 01.03.2016 on the file of the learned Principal District Munsif, Erode.

For Appellants :: Mr.M.Guruprasad

For Respondent :: Mr.Rajamathivanan



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J U D G M E N T

The unsuccessful plaintiffs are the appellants herein.

2.The plaintiffs filed a suit for permanent injunction in respect of "A" schedule property and mandatory injunction in respect of "B" schedule property. The Advocate Commissioner and Surveyor was appointed by the trial Court. As per the report of the Advocate Commissioner, though not marked as exhibits it has been noticed by the trial Court that the Erode City Municipal Corporation had encroached and laid a metal road in the "A" schedule property even in the year 2006 itself. Thus, the trial Court granted Permanent Injunction.

3. In respect of Mandatory Injunction to remove the road, the trial Court stated that the prayer is for a Mandatory Injunction but not for recovery of possession and hence, as per Article 113 of the Limitation Act, the time limit is three years. However, the suit has been filed after three years and thus, on the point of the law of limitation, the trial Court has rejected the claim and only decreed the suit regarding laying the injunction on the "A" schedule property. Consequently, an injunction was



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granted against the Erode City Municipal Corporation from laying the sewerage water line on the "A" schedule property. The suit was dismissed, and the appeal was confirmed.

4. On perusal of the order passed by both Courts regarding the Mandatory Injunction for remove the road known as a metal road, it has been concurrently ruled by both Courts that the trial Court granted Permanent Injunction based on the party's admission of encroachment. This admission was made under patta issued by the Tahsildar on 11.05.2017. The trial Court found conclusively that the encroachment occurred in 2007. As the law suit was filed in 2013, 7 years after, the encroachment, the claim is time-barred under Article 113 of Limitation Act.

5. The Appellate Court also upheld this decision, noting the plaintiff's admission that the Erode Municipality constructed the road in 2007. The act of the defendant by laying the road in the suit property, which is admitted as a property of the plaintiffs as a single act could not amount comes to under Section 227 Limitation Act. Accordingly, it is held that the suit is barred by limitation. Therefore, on the factual ground this



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Court finds that the Commissioner of Erode Municipal Corporation laid the road on the patta land of the appellant/plaintiff without following the procedure contemplated under the Land Acquisition Act. The claim is rejected by the both Courts below solely on the ground of limitation, since the prayer is for a Mandatory Injunction for removal of the road. Hence, I find no reason to interfere with the concurrent finding of the Courts below and the same is hereby confirmed.

6. Taking note of the submissions made in the written statement, the action of the Erode Municipality which had encroached upon the private party without due course of law, is hereby confirmed, and the plaintiff is at liberty to claim for compensation as he may be advised.

7. With the above observations, this Second Appeal is dismissed. No costs. The judgment and decree passed in A.S.No.29 of 2016 dated 28.08.2020 on the file of the learned Principal Subordinate Judge, Erode in confirming the judgment and decree made in O.S.No.149 of 2013 dated 01.03.2016 on the file of the learned Principal District Munsif, Erode are confirmed. Consequently, connected C.M.P is closed.



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Neutral citation:Yes/No

Speaking Order:Yes/No

To

- 1.The Principal Subordinate Judge, Erode
- 2.The Principal District Munsif, Erode .
3. The Section Officer, V.R.Section, High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Judgment in
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