



WEB COPY

S.A.No.37 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.37 of 2024

Ashok Leyland Employees Co-operative
Industrial Housing Society Limited,
by its President N.Nachimuthu,
S/o. P.Nachimuthu Gounder,
Having office at:
No.101, Sir A-Ramasamy Mudhaliar Nagar,
Thiruvittiyur Chennai - 600019

... Appellant

Vs.

R.Mani

. . . Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the order passed in A.S.No.15 of 2022 dated 18.08.2022, on the file of the Subordinate Court, Thiruvottiyur, confirming Judgment and decree of the Trial Court in O.S.No.192 of 2013 dated 30.08.2017 on the file of the District Munsif Court, Thiruvottiyur and thereby allow the Second Appeal.

For Appellant : M/s.S.N.Ravichandran



JUDGEMENT

The plaintiff who has concurrently lost before the Courts below has filed the above Second Appeal.

2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff is a Cooperative Society. The plaintiff had purchased an extent of 2.72 acres of land in S.No.618/A of Thiruvottiyur Village under a sale deed dated 24.09.1962 from one Mallikarjuna Rao. The plaintiff had also purchased lands further to the north of the said land in all totalling 10.17 acres. Thereafter, the plaintiff had obtained D.T.P. approval for forming a layout. In and around the year 1964, the plaintiff society had plotted out the said lands and sold the house sites. This layout was known as Sir A.Ramasamy Mudhaliar Nagar. Later the layout was renumbered by the MMDA. It is the contention of the plaintiff that S.No.618/A is the Southernmost portion of the layout. About 20 feet north to south in the northern end of S.No.618/A had been merged onto the road to the north of



S.No.618/A. The north to south measurement is of no concern in the suit.

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4. The eastern most end of S.No.618/A is comprised of plots in the layout. From Plot No.172 in the north eastern end, the plot numbers go in a descending order as they proceed towards the South. The present dispute is with reference to plot numbers 155 and 156 measuring 30 feet north to south and 52 feet east to west (in all 52 feet east to west and 60 feet north to south). The extent in which the defendant wants to encroach and put up construction has been described in the suit property which is the eastern most portion of Plot Nos.155 and 156 and measures about 32 feet.

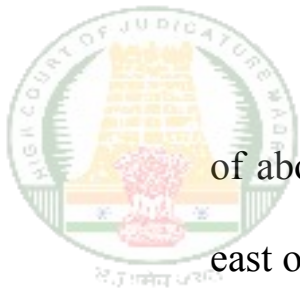
5. To the east of Plot No.166 part and up to Plot No.172 in the north is S.No.280 of Thiruvottiyur Village and to the east of Plot Nos.150 to 165 is S.No.276. These lands were poromboke lands earlier. The 60 feet road commences from the north and proceeds to south for a great length. It is sufficient for the purpose of the suit to refer that portions of the said road in S.No.283,280,276,275 and 274



from the north to south. The plaintiff would submit even in the layout plan, the said road is shown to the east of the plots in the layout. In fact, near S.No.276, a small projection in S.No.618/A is merged onto the road. The Madras Sheet Glass Factory is located to the east of the afore-mentioned 60-feet road. The Glass factory has encroached into this pathway. The plaintiff would submit that if they sell the property to its other members, they would be entitled to access from all points in their plots to the 60 feet road. The encroachers are having structures within 40 feet to the west from the high compound wall of the Glass Factory.

6. The plaintiff had filed a Writ Petition in W.P.No.22335 of 2002 before this Court for removing the encroachment. This Court by order dated 28.06.2002 had given directions to the District Collector, Thiruvottiyur to dispose of the representation of the plaintiff which was to be given within a period of 4 weeks on merits and in accordance with law.

7. The plaintiff would submit that the defendant is in possession



of about 40 feet north to south in S.No.276. The said portion is to the east of plot Nos.155 and 156. The defendant is carrying on construction work in her property in S.No.276. The plaintiff would submit that the defendant had announced on 30.08.2013 that she would encroach onto the suit property and put up structures. Therefore, the plaintiff had come forward with the suit in question.

8. The defendant would deny the allegations contained in the plaint and submit that she is a bonafide purchaser for value and her vendor has put her in lawful possession and enjoyment of the suit property from the date of its purchase. The defendant would submit that she had orally purchased the property and put up construction. The plaintiff has no right to the property which is now in the possession of the defendant. The defendant would further submit that the plaintiff is not clear about the identity of the property. She would submit that the property is abutting the road wherein 55 residential constructions have been put up along the road margin and all the occupants are in continuous possession and enjoyment of the same for over 50 years. The property does not belong to the plaintiff and it only belongs to the



government. The defendant would submit that the property was originally in the occupation of one T.S.Venkatesan and it was later on purchased and enjoyed by the defendant's husband. Penal charges were also being paid by T.S.Venkatesan to the Government which was subsequently being paid by the defendant's husband. Therefore, the defendant would submit that the plaintiff is not entitled to the relief of permanent injunction. The defendant would also submit that the description of the property is vague and misleading. The defendant would submit that she is in possession and enjoyment of the property along with the superstructure. Therefore, she sought to have the suit dismissed.

9. The Trial Court had framed the following issues:-

- 1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
- 2. To what other reliefs?*

10. On the side of the plaintiff, one Nachimuthu was examined as



PW.1 and through him Ex.A.1 to A.8 were marked. The defendant had neither let in evidence nor filed any documents. However, the Trial Court, namely, The District Munsif, Thiruvottiyur had dismissed the suit.

11. The learned Trial Judge observed that the plaintiff had purchased the suit property under Ex.A.1 and obtained planning approval under Ex.A.2. The plaintiff had filed a Writ Petition in W.P.No.22335 of 2002 before this Court for removing the encroachment and directions were issued by this Court to the District Collector, Thiruvottiyur who was asked to dispose of the representation which was to be given by the plaintiff within a period of 4 weeks on merits and in accordance with law. The plaintiff had admitted in the Writ Petition that the encroachment was by third parties. However, the plaintiff had lodged a police complaint wherein they had stated that the defendant had attempted to trespass the land and put up a shed in the suit property. The plaintiff had filed a rough sketch of the suit property, Ex.A.8, wherein it has been stated that the "*Battai encroached by the defendant*" and the encroached portion has been marked in the



plaintiff's property. Therefore, from Ex.A.6 and Ex.A.8, it is clear that the defendant had encroached into a portion of the suit property. There is nothing to show that the defendant had removed the encroachment. Therefore, the plaintiff is not entitled to the relief of permanent injunction and they ought to have filed a suit for recovery of possession and mandatory injunction to remove the obstruction from the pathway, namely, Battai. Therefore, the suit came to be dismissed.

12. Challenging the same, the plaintiff had filed A.S.No.15 of 2022 on the file of the Sub Court, Thiruvottiyur. The learned Appellate Judge had also confirmed the judgment and decree of the Trial Court and dismissed the appeal. Aggrieved by the same, the plaintiff/appellant is before this Court.

13. Heard the counsel for the appellant.

14. From a perusal of the records and the judgment and decree of the Courts below it is clear that the plaintiff's case revolves around Ex.A.6 which is the Xerox copy of the complaint, Ex.A.7, the original



CSR and Ex.A.8, the rough sketch filed by the plaintiff. Apart from the above documents, the plaintiff has not produced any documents to show their possession of the suit property. Further, the plaintiff who admits that there has been an encroachment in the property has not amended the suit to include the prayer for recovery of possession or for consequential reliefs. On the contrary, the suit is filed for a bare injunction as if the plaintiff is in possession of the property. Therefore the judgment and decree passed by both the Courts below that the plaintiff is not entitled to possession of the suit property are very much in order and no exception can be taken to the same. Further, the appellant has not made out a substantial question of law that requires the consideration of this Court. Accordingly, the Second Appeal is dismissed. No costs.

22.01.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Subordinate Court, Thiruvottiyur.

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2. The District Munsif, Thiruvottiyur.

3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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