



S.A(MD).No.446 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.10.2024**

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**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

**S.A(MD)No.446 of 2006**

The Kovilpatti Municipality,  
New Road,  
Kovilpatti,  
Through its Commissioner.

... Appellant

Vs.

1.D.Jegadeesan (Died)  
2.Selvarajan  
3.D.Jeyaseelan  
4.Siva Subramanian  
5.J.Chitralegah  
6.U.Rajini  
7.J.Vijayanand  
(Respondents 5 to 7 are impleaded as  
LRs of the deceased first respondent  
as per the order of this Court  
dated 30.09.2024)

.... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 17.10.2005 made in A.S.No.36 of 2005 on the file of the Sub-Court, Kovilpatti confirming the judgment and decree, dated 26.10.2004 made in O.S.No.117 of 2002, on the file of the District Munsif Court, Kovilpatti.



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For Appellant : Mr.M.P.Senthil  
For R1 to R3 : Mr.Meenakshi Sundaram  
for Mr.D.Nallathambi

### **JUDGMENT**

The appellant, who is the first defendant, filed the present appeal against the judgment and decree, dated 17.10.2005 made in A.S.No.36 of 2005, on the file of the Sub-Court, Kovilpatti confirming the judgment and decree, dated 26.10.2004 made in O.S.No.117 of 2002, on the file of the Principal District Munsif, Kovilpatti.

2. For the sake of convenience, the appellant and the respondents shall be referred to as per their ranks in the plaint, as the defendants and plaintiffs respectively.

3. The plaintiffs, who are the respondents 1 to 3 in the present appeal, filed a suit in O.S.No.117 of 2002 before the Principal District Munsif, Kovilpatti, for declaration, permanent injunction and mandatory injunction.

4. On analyzing documentary and oral evidence, the learned Principal District Munsif, Kovilpatti has decreed the suit in favour of the plaintiffs. Aggrieved by the judgment and decree of the trial



Court, the defendants filed an appeal before the Sub-Court, Kovilpatti which is taken on file in A.S.No.36 of 2005. Considering the pleadings, evidences, judgment and decree of the trial Court, the learned Sub Judge, Kovilpatti has dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved over the same, the first defendant has filed the present appeal.

5. The case set-up by the plaintiffs in the plaint is as under:-

(i) The plaint schedule property originally belonged to one Thiru.V.Dharmar Nadar, father of the plaintiffs. The said property is situated on the south of Illupaiyurani Main Road, Pudugramman. The plaintiffs father V.Dharmar Nadar died on 17.02.1999 leaving his sons, the plaintiffs and three daughters. The plaintiffs produced the legal heirship certificate. The three daughters had executed a release deed in favour of the plaintiffs relinquishing their rights in the suit first schedule property. The plaintiffs have become the absolute owner of the property. The plaintiffs are one of the bigger manufacturer of matches and their products are sent to many parts of the whole of the India. The schedule property is well protected by compounding fencing with barbed wires with a Gate facing North on the East-West main Road, in between the road and the first schedule property of the plaintiffs there lays the road margin, on which, the plaintiffs have



absolute right of ingress and egress from every point of their property to the main road.

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(ii) The first defendant is the Kovilpatti Municipality. They have already constructed Latrine on the western end of the first schedule property on the road margin and another latrine on the eastern side with a septic tank in the road margin in between the first schedule property and the road. But latrine are not maintained by the first defendant properly and as there is scarcity of water, the excursion and the Urine left in the latrine are not cleaned and they are left to dry by the scorching sun. That defunct latrines on both sides exudes very bad Odor and it is health hazard. The first defendant some two days back through the second defendant as a contractor dug up the road margin in front of the gate of the schedule property and to lay foundation and basement wall. The second defendant has stated that the work order for the construction of the latrine was given by the first defendant. In spite of the best efforts of the plaintiffs they could not meet the commissioner of the first defendant to ventilate their grievance, but the plaintiffs were told that Commissioner gone to Thoothukudi when the plaintiffs enquired about this Office regarding the construction of the latrine, the plaintiffs were informed that the first defendant had to construct particular number of Urinals and



latrines every year within the Municipal area. And to satisfy the statistics, the impugned construction is made before the first schedule property of the plaintiffs.

(iii) While the first defendant cannot even maintain the existing two latrines on the east and west end of the road margin of the plaintiffs first schedule property, another latrine of the same kind is redundant and it is not constructed to meet the need of the public, moreover, to construct a cluster of latrine in one and the same place definitely is not for the shack of the public it is a malafide act. There are number of other places, which may require the construction of latrine instead of that, the defendants construct the latrine only for statistical purpose. The defunct latrines on either sides of the road margine of the first schedule property pollutes the Air as it is not maintained properly. The environmental in and around the suit first schedule property is badly affected by the un-healthy Air that fills up the whole place. The public health is badly affected.

(iv) The plaintiffs have propose to construct a big match factory and a chain of buildings seperately constructed to accomodate various un-finished goods and other chemicals necessary for the business. More than 300 labourers will work in the factory and raw materials



and finished goods will be taken by lorries through the Gate by the side of which, the proposed latrine is situate. It will cause unnecessary hardship danger to life and limb of the people. As the lorries and other vehicles should take sharp turn to enter the premises and to have access to the road. The act of the first defendant is malafide and grievously affect the right of the plaintiffs. As the construction is done by the second defendant is undignified haste, the plaintiffs were forced to sent a telegramme dated 25.09.2002 detailing the hardship of the plaintiffs and its malafide nature but the defendants turned a duff ear and go on in construction work.

(v) The defendants malafide acts can be stopped only by an order and decree of the Court. Hence, the plaintiffs have filed a suit for a declaration that the plaintiffs have got right in every point of the road margin of the first schedule property and for permanent injunction against the defendants restraining them from constructing the latrine in front of the first schedule property. During the pendency of the suit, the defendants finished the construction of the latrine infront of the first schedule i.e., second schedule building, so the plaintiffs have to be asked for an additional prayer for mandatory injunction against defendants.



6. The defence set-up by the first defendant in the written statement is as under:-

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(i) The plaintiffs are not entitled to the reliefs claimed in the plaint, particularly, the relief claimed in para 18(1) of the plaint, when he has two doorways in the plaint first schedule property facing north. The plaintiffs have paid a court fee of Rs.30.50/- for the relief claimed under para 18(a) of the plaint under the Tamil Nadu Court Fees and suit valuation Act 1955 instead of prescribed court fee of Rs.75.50/-. So the plaintiffs have to pay correct fee of Rs.75.50/-. The first defendant submits that the latrine shown as plaint second schedule is about 20 feet west of the western gate of plaint first schedule punja land. The measurements given in the plaint second schedule are not correct and are self-serving.

(ii) The relief of mandatory injunction as prayed by the plaintiffs is an extraordinary relief and such relief is given by Courts very rarely when a relief of compensation, if any, is available of the second schedule public latrine, which is constructed for the benefits of general public, it would cause great hardship, inconvenience loss of finance and discomfort to the general public and particularly to the first defendant. The first defendant has spent a huge amount of Rs.1,00,000/- for the construction of flush out latrine with five seats



and overhead water tank, which is in actual daily use by the general public. So the plaintiffs are not entitled to the reliefs of mandatory injunction decree against the defendants under natural justice also. The defendants adopt the pleadings in their written statement also and prayed for dismissal of the suit.

7. Before the trial Court, on behalf of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and Ex.P1 to Ex.P.9 were marked. On the side of the defendants, D.W.1 was examined and Ex.D1 & Ex.D2 were marked and Court documents Ex.C1 & Ex.C2 were marked.

8. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had decreed the suit.

9. Aggrieved by the judgment and decree of the trial Court, the defendants filed an appeal before the Sub-Court, Kovilpatti which is taken on file in A.S.No.117 of 2002.

10 The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had dismissed the



appeal by confirming the judgment and decree of the trial Court.

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12. Challenging the said concurrent judgment and decree passed by the first appellate Court, the first defendant has filed the present appeal.

13. At the time of admitting the present second appeal, this Court had formulated the following substantial questions of law for consideration:

"i) Whether the findings of the Court below are vitiated by its failure to consider the absence of any evidence establishing the actual nuisance so as to warrant the grant of relief under Section 39 of the Specific Relief Act?

ii) Whether the Courts below erred in law in not considering on the admitted facts the allegations in the plaint that the claim of the respondents is clearly an apprehension of probable difficulty likely to be caused in the enjoyment of the first schedule property at a later part having regard to Section 38 of the Specific Relief Act? and

3. Whether both the Courts below are right in not adverting to the report of the Advocate Commissioner under Ex.C1 and C2 which clearly establishes the distance between the location of the latrine and the



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road and the first schedule property a vacant land?"

14. The learned counsel appearing for the petitioner would submit that the Courts below granting the relief sought for merely on the basis of the allegations in the plaint and on the mere apprehension of the respondents 1 to 3 that their rights likely to be affected in future. The Courts below erred in law in not advertng to the absence of any allegations that by reasons of a construction of the latrine by the Appellant Municipality, the rights of the respondents 1 to 3 will be affected especially when the constructions is far away from the property belonged to the respondents referred to as first schedule. The allegations in the plaint with reference to the maintenance of the latrine by the appellant and that the constructions will cause nuisance had not been substantiated by any oral and documentary evidence. The Courts below erred in law in not advertng to the proved fact that the constructions of the latrine referred to in the second schedule is far away from the respondents 1 to 3 property and the same is also evidenced from the report of the Advocate Commissioner. The Courts below completely overlooked the allegations in the plaint is on the basis that the construction of the latrine is on east west road abutting the respondents 1 to 3 property which is contrary to the actual physical features as well as location as per the Advocate

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Commissioners plea. The Courts below completely overlooked that in the absence of any specific allegations that there is actual nuisance caused by the construction of the latrine that the relief of mandatory injunction cannot be granted. The relief sought for cannot be granted by virtue of section 41 of Specific Relief Act especially in the absence of any materials or any evidence the right of the respondents 1 to 3 is affected on the date of the suit. The claim of the respondents 1 to 3 that they are entitled to have the access to the public road from all portion of the property is clearly a misconception and the same is against the public interest. The Courts below erred in law in not advertng to the indisputable fact that on the allegations in the plaint that on the date of the suit the property referred as first schedule is only an agricultural land and there are no business or any factory and as such the relief sought for cannot be granted. The Courts below erred in law in not considering the admitted fact that the existence of 'Odai' ever since approximate 20' width on the north of main schedule property and only on the further north the east west Elluppaiyurani Main Road and other both sides of the road are retaining walls. In the absence of any actual reference alleged and damages caused, the relief sought for cannot be granted. The Courts below erred in law in not advertng to the admitted facts the existence of two bridges and way to reach the plaint first schedule property from the East West of



Illuppaiyurani Main Road and after crossing 20 feet odai and as such the claim of the respondents on the allegations their right to have access to the Main Road is affected cannot be sustained. The Courts below erred in law in not advertng to the admitted facts the existence of the latrine was before the institution of the suit and as the relief of mandatory injunction cannot be granted.

15. The Courts below erred in law in not advertng to the indisputabel fact that the second schedule property flush out latrine constructed for the benefit of women in the locality and was with the cost of nearly Rs.2,00,000/- in the year 2002 and there was no complaint whatsoever. The construction was made pursuant to the resolution passed by the Municipal council after taking into consideration the need and necessity for the public at large in the area and it is also well maintained as evidenced by the report of the Advocate Commissioner. The respondent had not questioned the validity of the resolution passed by the Municipal Council. The Courts below erred in law in not advertng to the report of the Advocate Commissioner under Ex.C1 and C2 and not considering the evidence of P.W.1 and P.W.2 in a proper and perspective manner.



16. The learned counsel appearing for the respondents 1 to 3 would submit that the trial Court and the first appellate Court after hearing both sides and upon re-appreciating the evidence available on record, had rightly decreed the suit and dismissed the appeal and there is no interference is required. Hence, he prayed for dismissing the appeal.

17. I have heard the learned counsel for the appellant and the respondents and also perused the materials on record carefully.

18. The learned counsel appearing for the respondents 1 to 3/plaintiffs would submit that the latrine which was constructed by the first defendant near front gate of the plaintiffs Beedi Factory is causing obstruction to the free flow of vehicle passing through the gate of the plaintiffs. It is also causing obstruction to the vicinity, therefore, the plaintiffs prayed that the latrine may be removed from the said area and if the Municipal can remove the latrine in the said place and construct the latrine in some other place, the plaintiffs are ready to bear the expenses for the construction.

19. In the light of the submissions made by the counsel on either side, this Court directs the respondents 1 to 3 / plaintiffs to file an



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Affidavit of Undertaking before the Commissioner of Municipality, Kovilpatti, with regard to the expenditure to be involved in shifting of latrine from the existing place / construction of new latrine to some other place. On such filing, the Municipality is directed to pass Resolution to that effect and construct the new latrine on receiving the cost of construction from the plaintiff in some other place, within a reasonable time frame. No costs. However, there shall be no order as to costs.

20. In the result, the second appeal is disposed of.

**29.10.2024**

Index : Yes/No  
Internet : Yes/No  
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To

- 1.The District Munsif Court,  
Kovilpatti.
- 2.Sub-Court,  
Kovilpatti.
- 3.The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**V.BHAVANI SUBBAROYAN, J.**

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Judgment made in  
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