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S.A(MD)No.479 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **14.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A(MD)No.479 of 2005
and
C.M.P(MD)No.13675 of 2024**

The Commissioner,
Srivilliputhur Municipality,
Srivilliputtur.

... 2nd Defendant/Appellant/
Appellant

Vs.

1.Arulmigu Nachiyar Thirukovil,
Srivilliputtur through its
Executive Officer.

... Plaintiff/1st Respondent/
1st Respondent

2.Veeraputhiran (Died)

...1st Defendant/2nd respondent/
2nd respondent

3.V.Marimuthu

(3rd respondent/LR of the deceased
2nd respondent is impleaded as per
the order of this Court dated 01.10.2024)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 07.10.2004 made in A.S.No.119 of 2003 on the file of the Principal District Judge, Srivilliputhur in confirming the judgment and decree dated 05.09.2003 made in O.S.No.42 of 2002, on the file of the Principal District Munsif Court, Srivilliputtur.



For Appellant	: Mr.J.Parakh Kumar
For R1	: Mr.K.Govindarajan
For R2	: Died
For R3	: Mr.K.Dinesh

JUDGMENT

The appellant, who is the second defendant in the suit, filed the present appeal against the judgment and decree, dated 07.10.2004 made in A.S.No.119 of 2003, on the file of the Principal District Court, Srivilliputtur in confirming the judgment and decree dated 05.09.2003 made in O.S.No.42 of 2002, on the file of the Principal District Munsif Court, Srivilliputtur.

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 plaintiff respectively.

3. The plaintiff, who is the first respondent in the present appeal, filed a suit in O.S.No.42 of 2002 before the Principal District Munsif Court, Srivilliputtur, for direction to direct the first defendant to remove the unlawful encroachment made by putting up Asbestos shed in the plaint third schedule property within the time stipulated by the Court, failing which, permit the plaintiff to remove the same and to realise the cost for that from the first defendant by granting



mandatory injunction and for permanent injunction restraining the defendants, their men and their agents and also their subordinates not to interfere with the peaceful possession and enjoyment of the plaintiff in respect of the plaint second schedule property as an ingress and egress to the plaint first schedule property either by leasing out or putting up any construction by raising wall or any other mode.

4. On analyzing documentary and oral evidence, the learned Principal District Munsif, Srivilliputtur, has decreed the suit by granting permanent injunction restraining the first defendant from leasing or erecting a wall or building or otherwise, disturbing a part of the 2nd schedule property so as to interfere with the plaintiff's enjoyment of the 1st schedule property to the 2nd schedule street and a mandatory injunction has also been issued to the first defendant to remove the asbestos shed, walls and door way in the 3rd schedule property within a period of three months. Aggrieved by the said judgment and decree of the trial Court, the second defendant filed an appeal before the Principal District Court, Virudhunagar District at Srivilliputtur which is taken on file in A.S.No.119 of 2003. Considering the pleadings evidences, judgment and decree of the trial Court, the learned Principal District Judge, Srivilliputhur has dismissed the appeal by confirming the judgment and decree of the trial Court.



Aggrieved over the same, the second defendant has filed the present appeal.

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

(i) The suit schedule properties are situate at Aranganatha Perumal Kovil Street, Srivilliputtur Town. The first schedule property is belonged to the plaintiff's temple. For better and proper understanding, a rough sketch not drawn to scale, is appended herewith. In that plan, EFGCD is shown as first schedule property. The second schedule property is Aranganathaperumal Kovil street. It is described as G2, G1, D1, D.C.G. Plaintiff third schedule property is part and parcel of the plaintiff second schedule property, wherein, the first defendant unlawfully encroached and put up an asbestos shed, is marked as A.B.C.D. in the plaintiff rough plan. On the just north of the plaintiff first schedule property, the residential house of the plaintiff's temple Executive Officer is situated as shown in the plaintiff plan. Further, on the west of first schedule property, East Car Street is situated. It is submitted that the plaintiff temple has proposed to construct five shopping complex in the plaintiff first schedule property. The very object of such construction of five shopping complexes, is to improve the funds and revenue of the plaintiff temple and further to make the place free from dirty and also to remove nuisance from the



encroachers like the defendants. With a bonafide intention and good faith to construct shopping complex in the first schedule property, a resolution was passed on 07.12.2001 as per the resolution No.4 by the plaintiff temple. Copy of the said resolution was also sent to the Special Commissioner and Commissioner of HR & CE since the plaintiff temple and its administration is under the control of HR & CE to accord sanction for construction of shopping complex. For such construction of five shopping complex, the temple has also sufficient funds. Only after getting sanction from the Commissioner of HR & CE, the plaintiff has to start its construction.

(ii) Whereas, on 06.02.2002, the second defendant passed an impugned resolution to confirm the lease in respect of plaintiff third schedule property to the first defendant for the period of 3 years, as if the entire second schedule property is the property of the second defendant. Immediately, having come to the unlawful resolution of the second defendant, the plaintiff sent an objection to the second defendant on 06.02.2002 itself and copy of the same was marked to the Higher Authorities, but no use. As a matter of fact, the second schedule property is only a street. It is the paramount duty of the second defendant Municipality to maintain the second schedule property as street. As per the Tamil Nadu District Municipalities Act,



the second defendant has got no right to lease out the second schedule property or any portion of it, ie., third schedule property either to the first defendant or to any one. At this juncture, the alleged lease for the period of 3 years in favour of the first defendant by the second defendant pertaining to the plaint third schedule property, is illegal, invalid and void *ab initio* and not binding the plaintiff.

(iii) It is further submitted that the plaintiff has no other way as an ingress and egress to the first schedule property, except the plaint second schedule property. Whereas taking advantage of the impugned lease in favour of the first defendant in respect of third schedule property, the first defendant unlawfully encroached the third schedule property on 07.02.2002 at 08.00 p.m., and put up an asbestos shed therein, which causes continuing nuisance to the plaintiff and block the ingress and egress to the first schedule property. The first defendant has equally no manner of any right to encroach either the second schedule property or the third schedule property to put up the shed for the purpose of carrying out any business. Under such circumstances, the encroachment made by the first defendant in the third schedule property has to be removed. If not the plaintiff will be put into great hardship and deprived from using the entire third schedule property inter alia of second schedule property as an ingress



and egress to the plaintiff first schedule property. The earnest request of the plaintiff to the defendant were unheeded by them. The plaintiff apprehends that the first defendant may at any time construct a permanent structures in the third schedule property by raising wall on four sides in such a way to obstruct pathway to first schedule. Hence, the suit is laid for mandatory injunction directing the first defendant to remove the unlawful encroachment made in the third schedule property and also for permanent injunction restraining the defendants not to cause any nuisance to the plaintiff in enjoying the second schedule property as an ingress and egress to the plaintiff first schedule property either by putting any construction or shed or leasing out the same or in any manner and for other reliefs.

(iv) During the pendency of the suit, that too after inspection of the suit property by the Commissioner and his report submitted to the Court on 22.02.2002 itself, the first defendant taking advantage of non-issuance of any injunction in I.A.No.225/2002, further unlawfully raised wall on four side of the plaintiff third schedule property. The measurement of the Wall is 9 1/2 feet 3/4 inches thickness. The first defendant also has put up door-way facing towards west and south.



(v) It is submitted that subsequent to suit after getting sanction from the authority concerned, the plaintiff has constructed five new shopping complex in the plaint first schedule property facing doorways towards the plaint second schedule property. The old compound wall in D.C.G. Portion also was completely demolished. Except the plaint second schedule street, there is no other way to reach the first schedule property. Whereas, the unlawful encroachment of first defendant in the plaint third schedule property, the western most buildings ingress and egress is completely blocked and hence, the same is to be demolished.

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

(i) The first defendant admits that the first schedule property belongs to the plaintiff, but he denies the allegations in the plaint that the first defendant has unlawfully encroached and put up an asbestos shed in the second schedule property. He has not encroached upon the street. The second and third schedule properties belong to the Srivilliputtur Municipality. The Municipal Council of Srivilliputtur passed a resolution on 05.02.2002 to lease out the said third schedule property for a period of three years from 05.02.2002 to 04.02.2005 to this first defendant. The Municipality duly got proper permission from



the District Collector of Virudhunagar and Additional Director of Municipal Administration, Madras-5. Hence the allegation of the plaintiff that the first defendant has encroached the second schedule property is false. The plaintiff has stated in his plaint that he proposed to construct five shopping complex in the first schedule property to improve the funds of Sri Andal Temple. After the construction of the five shopping complex outlets in the first schedule property, the plaintiff himself has put up a permanent obstruction to hinder the free and easy access to the enjoyment of his own property. Hence, he has no right to claim the ingress and egress to the plaint first schedule property. The width of the Aranganathaperumal Kovil Street is 40.1 feet which is fairly broad enough to permit the easy and smooth passage of heavy load vehicles such as lorries and bulldozers.

(ii) The second defendant is a statutory authority. He has got every right to lease out the third schedule property to the first defendant. The allegation that the first defendant encroached the second schedule property on 07.02.2002 and put up an asbestos shed are denied. The first defendant committed no encroachment. His act of running a tea stall which is the third schedule property in the second schedule property causes absolutely no nuisance to this plaintiff. The said first schedule property was completely surrounded



by walls and houses and his own shopping complex even before the institution of this suit. The mode of access to the vacant site was perfectly sealed on the southern side of the first schedule property when the plaintiff built five shopping complex outlets. There is no cause of action against the defendants 1 & 2.

8. The second defendant has filed the written statement stating that the second schedule property is known as Aranganathaperumal Kovil Street and the said street belongs to the second defendant. The third schedule property was leased out to the first defendant. The first defendant is a lessee of the second defendant. The first defendant is authorised to enjoy the said property in the second schedule property. The first defendant is not a permanent occupier of the said premises in the second schedule property. he is only a lessee. The plaintiff has no right to claim the ingress and egress to the plaintiff first schedule property. Hence, he prayed for dismissal of the suit. There is no cause of action for the suit and prayed for dismissal of the suit.

9. Before the trial Court, on the side of the plaintiff, one witness was examined as P.W.1 and Exs.P1 to P11 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2



and Ex.D1 to Ex.D29 were marked. Court documents Ex.C1 & Ex.C2 were marked.

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10. 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 by granting permanent injunction restraining the first defendant from leasing or erecting a wall or building or otherwise, disturbing a part of the 2nd schedule property so as to interfere with the plaintiff's enjoyment of the 1st schedule property to the 2nd schedule street and a mandatory injunction has also been issued to the first defendant to remove the asbestos shed, walls and door way in the 3rd schedule property within a period of three months.

11. Aggrieved by the judgment and decree of the trial Court, the second defendant filed an appeal before the Principal District Court, Virudhunagar District at Srivilliputtur which is taken on file in A.S.No.119 of 2003.

12. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, has dismissed the appeal by confirming the judgment and decree of the trial Court.



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

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

"1) Whether the appellant herein which is a statutory body entitled to lease out the unused portion of the road side as per Section 183(3) of the Tamil Nadu District Municipalities Act?

2) Whether the plaintiff having not claimed or proved a right of access to the schedule property or even a right of easement entitled to a decree of mandatory injunction for removal of structure that is permitted by the lawful owner?

15. The learned counsel appearing for the appellant would submit that the Courts below ought to have dismissed the suit in a short ground that the second defendant/appellant have the statutory power to lease out the road sides and street margins under the Tamil Nadu District Municipalities Act 1920. The Courts below erred in law



holding that the plaintiff/first respondent herein was entitled to get the relief of permanent injunction restraining the second defendant from leasing out the third schedule property while a lawful resolution to lease out the third schedule property under Ex.B15 is already there. The Courts below ought to have dismissed the suit on the ground that the suit itself not maintainable since already there is a lawful resolution of the second defendant Municipality under Ex.B15 and without challenging the same, the plaintiff/1st respondent is not entitled to get the relief of permanent injunction. The Courts below failed to see that already there is a compound wall in southern side of the first schedule property and the plaintiff at no time had been using the second schedule property for entering the first schedule property and had been only using the East Car Street as access to the first schedule properties.

16. He further submitted that the Courts below failed to see that there was no inconvenience to the plaintiff or any other public by leasing out of the third schedule to the first defendant. The plaintiff had obtained approval from the Commissioner HR & CE for constructing a commercial complex under Ex.A10 dated 31.12.2001 in the Northern side of the first schedule property which is abutting the East Car Street and not in the Southern side of the first schedule



property and the suit was only for the purpose of causing loss to the first defendant. The Courts below erred in holding that due to leaseout the third schedule property by the second defendant the plaintiff's right has been obstructed when the appellant Municipality has leased out megre extent of 16' x 8' for running a temporary tea stall adjacent to the first schedule compound wall which was having 224' in East-West. At the time of leasing out of the third schedule property as well as at the time of filing suit there is no shops in the first schedule property and only the compound Wall to the extent of 224" was available. Even assuming without admitting that already there is a proposal to construct the shopping complex, no obstruction to the plaintiff due to lease out the first schedule since the leased out first schedule property is situated at southern side of Western end newly constricted shop which is abutting the East Car Street. The Courts below erred in law decreeing the suit as prayed for, when the lease was granted after passing the resolution by the appellant Municipal Council and the same has been approved by the District Collector, Virudhungan and Commissioner of Municipal Administration Chennai. The lower appellate Court ought to have allowed the I.A.No.421/2004 in A.S.No.119/2003 and should be appointed the Commissioner to inspect the suit property and newly constructed shopping complex. Since the western end namely constructed shop is abutting the East



Car Street and there is a way to access the East Car Street. Hence, he prayed for allowing the second appeal.

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17. The learned counsel appearing for the respondents 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 also the appeal suit and there is no interference is required in the judgment and decree of the trial Court and the first appellate Court.

18. I have heard the learned counsel for the appellant and the respondents and also perused the materials on record carefully. There is no representation for the respondents.

19. The plea made by the plaintiff has to be accepted as the said structure was projected and hiding or in disturbance of the free access to their property and the road has been belonging to Aranganathaperumal Kovil and when the said area is classified as road, the authorities cannot lease out the premises under Section 183(3) of the Tamil Nadu District Municipalities Act. As per the above section, the authorities cannot lease out the same by passing the impugned resolution.



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20. In view of the above, the Municipal Authorities are directed to remove the structure within the time granted by this Court.

21. It is seen from the records that the suit second schedule property was vested with the appellant/second defendant and that the appellant/second defendant by a resolution, dated 05.02.2022 had leased out the third schedule property to the second respondent/first defendant for a period of three years upto 04.02.2005.

22. It is seen from the records that the plaintiff temple had a proposal to construct five shopping complex in the plaint first schedule property. With a bonafide intention and good faith to construct shopping complex in the first schedule property, a resolution was passed on 07.12.2001 as per the resolution No.4 by the plaintiff temple. Only after getting sanction from the Commissioner of HR & CE the plaintiff has to start it's construction. As the second schedule property is only a street, it is the paramount duty of the second defendant Municipality to maintain the second schedule property as Street. As per the Tamil Nadu District Municipalities Act, the second defendant has got no right to lease out the second schedule property in favour of the third party. Therefore, the alleged lease for the period of three years in favour of the first defendant by the second defendant



pertaining to the plaint third schedule property is illegal and to be sustained.

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23. After rival submission, both sides have agreed that third schedule property located in second schedule street was given on lease as a vacant site to first defendant. After that the first defendant has requested for permission to construct a tea shop as per Ex.B2. However, on inspection by the Advocate Commissioner appointed at that juncture by the Court, the report and plan of the Advocate Commissioner was marked as Ex.C1 and Ex.C2, in the third schedule property a temporary shed was made with wooden-log and roof was made by Tin Sheet and it was found to be new temporary sheet and it was projecting towards the first schedule property and there was no electricity connection given and the said construction was open in all four sides and it was measuring 10 X 10 feet on south-north direction and 12 feet on eastern side and 18 feet on east-west side. The above fact was made clear from the Advocate Commissioner's report. However, now, the first defendant himself has admitted in his evidence that the temporary shed was transformed as a permanent construction. Later this was made clear from Ex.B13 filed by the first defendant. On a reading of Advocate Commissioner's report, it was clear that the projection made towards third schedule property would



spoil the character of the Commercial building on the northern compound wall of the plaintiff. Further, it is seen that the shop in question has been built in the area which has been earmarked as a road. Hence, both Courts find that the plaintiff access from the first schedule property to the second schedule property was disturbed by the first defendant and hence the trial Court comes to a conclusion that the plaintiff is entitled for mandatory injunction restraining defendant from leasing out the portion of the property in second schedule or to construct a compound wall or in any manner preventing the plaintiff to have the access from the first schedule property and accordingly, granted mandatory injunction as stated above granting three months time to the defendant to remove the construction or disturbance if any in the second schedule property. The first appellate Court on re-appreciation of evidence, concurs with the findings of the trial Court and confirmed the judgment and decree of the trial Court.

24. This Court, by order dated 02.09.2024 directed the authorized officer for the Municipal Commissioner and Revenue Officials concerned, who are maintaining the road register and revenue documents regarding this survey number, to be present before this Court on 18.09.2024.



25. As per the order of this Court, dated 02.09.2024 they appeared before this Court. This Court, by order dated 19.09.2024 passed the following order:

'Pursuant to the order passed by this Court, dated 02.09.2024, the authorized officer for the Municipal Commissioner and the concerned revenue official are present before this Court.

2.Heard the learned counsel appearing on either side.

3.The learned counsel appearing for the appellant/the Commissioner, Srivilliputtur Municipality is directed to issue appropriate notice to the second respondent to vacate the shop in question, who is in occupation of the same and submit the action taken report on the next hearing date.

*4.Post the matter on **18.10.2024.**'*

26.Pursuant to the said order, dated 19.09.2024, the appellant-Municipality issued notice to the petitioner, dated 23.09.2024 to vacate the shop in question within a period of 7 days. Thereafter, the petitioner/third respondent has filed an application in C.M.P(MD)No.



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13675 of 2024 to grant one year time for vacating the tea shop situated at Ward No.1, Block No.6, TS No.728, Srivilliputhur Town, Virudhunagar District and also to direct the appellant Municipality to consider the request of the petitioner for providing alternative shop within the time stipulated by this Court.

27. At that time, the learned counsel for the appellant submitted that the second respondent died and hence, his son was impleaded as third respondent in C.M.P(MD)No.13674 of 2024, dated 01.10.2024. The learned counsel appearing for the petitioner/third respondent would submit that the shop in question was originally in the land of Srivilliputhur Municipality and the said Municipality vide resolution dated 05.02.2002 had leased out the third schedule of property to one Veeraputhiran/second defendant and the petitioner's father was in possession and enjoyment of the shop from the date of passing the resolution. After his demise, the impleading petitioner/third respondent has been running the tea shop and taking care of the entire family and he was not aware of the dispute and Second Appeal which is pending from the year 2005. According to him, the authorities are taking coercive steps to evict him and demolish the small tea shop in the above mentioned address and had not informed him about the pendency of the case, only now, he had the knowledge



of the second appeal and immediately, he has filed the petition to grant one year time to vacate the tea shop and further to issue a direction to the Municipality to consider the said request of the petitioner for providing alternative area within the said Municipality.

28.In view of the above stated facts and circumstances, this Court is inclined to grant time to the petitioner/third respondent for vacating the shop in question and handing over the possession to the Temple authorities on or before 31.12.2024 and it is also made clear that regarding the plea made for giving alternative shop in question, the learned counsel appearing for the appellant-Municipality would submit that already they are constructing new shops at bus stand and the construction of 64 shops has been completed and the petitioner/third respondent can also participate in the open auction to be held for allotment of shops and if he succeeds, he can be allotted a shop in the new shops constructed. Already as per substantial question Nos.2 & 3, the above said construction was made affecting the plaintiff's right over the third schedule property. Therefore, the substantial question of law are accordingly answered in favour of the plaintiff.



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29. In the result, the Second Appeal is dismissed by confirming the Judgment and Decree made in A.S.No.119 of 2003, on the file of the Principal District Court, Srivilliputtur. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.10.2024

Index : Yes/No
Internet : Yes/No
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To

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

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Judgment made in
S.A(MD)No.479 of 2005

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