



WEB COPY



SA(MD)No.356 and 357 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	31/07/2024
Date of Pronounced	23/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)Nos.356 and 357 of 2021

and

CMP(MD)No.4686 of 2021

(1) SA(MD)No.356 of 2021:-

Baktharatchagan : Appellant/Respondent/
Plaintiff

Vs.

The Administrative Officer,
North Valliyoor,
Selection Grade Panchayat Office,
Valliyoor,
Tirunelveli District. : Respondent/Appellant/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in AS No.92 of 2014 on the file of the Sub Court, Valliyoor, dated 03/12/2020 reversing the judgment and decree in OS No.243 of 2010 on the file of the Additional District Munsif Court, Valliyoor, dated 31/01/2014.

For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar

For Respondent : Mr.H.Arumugam



SA(MD)No.356 and 357 of 2021

(2) SA(MD)No.357 of 2021:-

Baktharatchagan

: Appellant/Respondent/
Plaintiff

Vs.

The Administrative Officer,
North Valliyoor,
Selection Grade Panchayat Office,
Valliyoor,
Tirunelveli District.

: Respondent/Appellant/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in AS No.1 of 2015 on the file of the Sub Court, Valliyoor, dated 03/12/2020 reversing the judgment and decree in OS No.243 of 2010 on the file of the Additional District Munsif Court, Valliyoor, dated 31/01/2014.

For Appellant

: Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar

For Respondent

: Mr.H.Arumugam

COMMON JUDGMENT

SA(MD)No.356 of 2021 is filed against the judgment and decree passed in AS No.92 of 2014 by the Sub Court, Valliyoor, dated 03/12/2020 reversing the judgment and decree passed in OS No.243 of 2010 passed by the Additional District Munsif Court, Valliyoor, dated 31/01/2014, whereas SA(MD)No.357 of 2021 has been filed



SA(MD)No.356 and 357 of 2021

against the judgment and decree passed in AS No.1 of 2015 by the Sub Court, Valliyoor, dated 03/12/2020 reversing the judgment and decree passed in OS No.243 of 2010 by the Additional District Munsif Court, Valliyoor, dated 31/01/2014.

2.The plaint averments in brief:-

The suit property originally belonged to one Arumugam Chettirar. He constructed shops in the suit property and collecting rents and enjoying the same. At the time of construction of the shops, prior permission was obtained from the local authorities. Arumugam Chettiar died without executing any document in favour of any one. So his legal heirs namely his Bhagavathi Ammal, sons namely Athi Narayanan and Mahadevan and his daughter Sundaram Ammal inherited the properties. Arumugam Chettiar died in 1978. His wife namely Bagavathi Ammal dies 14 years back intestate without any partition. The other legal heirs were enjoying the properties. Mahadevan Chettirar, Athi Narayanan Chettiar and Sundaram Ammal died leaving behind the plaintiff, Ramasubramanian, Sheela and Thangammal as legal heirs. The plaintiff married Sheela. After the marriage, Thangammal was living with the plaintiff in a joint family. Ramasubramanian is living in Bangalore. So, the plaintiff



SA(MD)No.356 and 357 of 2021

is collecting rent from the defendant. Without mutation of the revenue records, the property was sold standing in the name of Arumugam Chettiar. The present Door situated No.92. The land is a nathan land. No patta was issued in favour of any one. On 09/06/2010, a notice was issued stating that the plaintiff has encroached the suit property stating that it is an encroached portion. The property never belongs to the defendant. Due to previous enmity between the President and the defendant and the plaintiff, the above said notice was issued. The suit is filed seeking declaration that the notice, dated 09/06/2010 is not valid, permanent injunction and for costs.

3.Statement was filed by the defendant stating that the property originally belonged to Arumugam Chettiar ancestrally. The plaintiff encroached upon the Kalaiyarangam Street. So for removing the encroachment, notice was issued. It is denied that the plaintiff constructed the shops several years back. The plaintiff is liable to be prosecuted for unlawful encroachment of the public street.

5.On the basis of the pleadings, the trial court framed the following issues:-



SA(MD)No.356 and 357 of 2021

(1)Whether the plaintiff is entitled to the relief of declaration that the notice in Na.Ka.No.96/2009/A2 is not valid?

(2)Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(3)To what other relief, the parties are entitled to?

6.During trial, on the side of the plaintiff one witness was examined and 9 documents were marked. On the side of the defendant, one witness was examined and 9 documents marked.

7.At the conclusion of the trial process, the trial court decreed the suit as prayed for without any costs.

8.Against which, As No.92 of 2014 was preferred by the original defendant before the Sub Court, Valiyoor whereas AS No.1 of 2014 was filed by the plaintiff, regarding the dismissal of the portion of permanent injunction. The appellate court allowed the AS No.92 of 2014 setting aside the judgment and decree of the trial court and dismissed the suit. Similarly, As No.1 of



SA(MD)No.356 and 357 of 2021

20154 was also dismissed.

9. Against which, two separate appeals are filed by the plaintiff.

10. At the time of admission, the following substantial questions of law were framed:-

1. Whether the 1st appellate court is correct in dismissing the relief of declaration regarding Ex.A2 when the reasons and conclusions of the trial court have not been discussed and set aside?

2. Whether the 1st appellate Court is correct in framing a new point for determination and giving a finding of its own when no such issue regarding the maintainability of the suit in respect of non seeking in the relief of declaration of title had not been sought for by this appellant in respect of the suit schedule property of the plaintiff?



WEB COPY



SA(MD)No.356 and 357 of 2021

3. Whether the 1st appellate Court is correct when it comes to the conclusion that the civil suit is barred when Ex.A2 is patently illegal and highly ambiguous regarding non furnishing of survey numbers and street wherein the suit schedule property is situated?

4. Whether the Courts below are correct in negating the relief of injunction when admittedly revenue patta granted by the government through Ex.A1 which is based on previous title deeds and also the possession for more than 70 years had been proved by documentary evidence?

11. Heard both sides.

12. We will take up the substantial question of law No.4 for discussion as a preliminary point.



WEB COPY

13.As mentioned in the preamble portion of the judgment, the case of the plaintiff is that the property belonged to Arumugam Chettiar ancestrally. He constructed shops and enjoying the same by renting out to various persons. The plaintiff traces title to the property through Arumugam Chettiar. So, according to him, it is an ancestral property, now devolved upon him by way of legal heir ship. Further, it is stated that being the ancestral property, no prior title deed is available. Ex.A7 according to the plaintiff, the document relating to the subject matter of the suit. But whereas it was contended by the defendant that the property covered under Ex.A7 is relating to the property situated on the north of the suit subject property.

14.The trial court recorded a finding that four boundaries tally with that of the subject matter of the suit. Except southern boundary, other properties were later converted as Kalaiyarangam street. On that account, the trial court recorded a finding that Ex.A7 is related to the suit property.

15.Regarding the northern property also, the plaintiff relies upon Ex.A8. Now there is a finding by the trial court that the property covered under Ex.A8



SA(MD)No.356 and 357 of 2021

related to the property of the northern side of the subject matter. On that account, the trial court recorded a finding that even though, the measurement in Ex.A9 differs from that of the earlier title document, it concluded that the property belongs to the plaintiff.

16.Having found that the property belongs to the plaintiff, the defence in the impugned notice, dated 21/09/2010 was found to be defective. On that account, the suit was decreed for declaration. So far as the injunction is concerned, it is negatived on the ground that if injunction is granted, then the power and the right of the defendant to take action under the provisions of the Tamil Nadu Land Encroachment Act will be affected. So, it negatived the same.

17.We will go to the judgment of the first appellate court.

18.As mentioned in the preamble portion, against the decree portion, Panchayat filed appeal in AS No.92 of 2014. The plaintiff filed AS No.1 of 2015 against the dismissal of the portion of the permanent injunction. It went to the question of whether without seeking declaration of the title, the suit is maintainable.



SA(MD)No.356 and 357 of 2021

Declaration was sought for in respect of Ex.A2 the impugned notice. When the declaration was not sought for by the plaintiff with regard to the title over the suit property, the trial court ought not to have decided the same. So, when the declaration is not sought for, naturally no relief ought to have been granted by the trial court in respect of Ex.A2 also.

19.Regarding the permanent injunction prayer, directed the Commissioner of Valliyor Municipality to make enquiry and decide the same within the time stipulated.

20.In the light of the above said rival findings, now the learned Senior counsel appearing for the appellant would submit that Exs.A6 and A7 are not disputed by the defendant. From 1931 onwards, he is in possession and enjoyment. Recognizing their possession, patta was issued.

21.It is the case of the defendant that the road margin was encroached by the plaintiff. But from the finding of the trial court, it stand established that Exs.A7 and A8 related to the suit property and subsequent to the purchase only, the street was formed; At the time



SA(MD)No.356 and 357 of 2021

WEB COPY

of forming the street, wrong measurement has been taken and classified the disputed portion as encroachment. According to him, the judgment of the trial court that Ex.A2 is not valid ought not to have been interfered by the appellate court. This is the crux of the matter here. Here, Ex.A2 as mentioned above, notice issued by the respondent herein under the Tamil Nadu District Municipality Act stating that it is an encroachment and it must be removed by the plaintiff. But the appellate court relied upon the statutory bar as well as the judgment made in WP No.7197 of 2009, which was marked as Ex.B8 on the side of the defendant. The respondent are duty bound to make enquiry with regard to the alleged encroachment. But without approaching the concerned authorities with documents which are available with the appellant, he straightaway filed the suit for declaration, which according to the appellant court is not maintainable. It appears that it is proper order passed by the first appellate court.

22.Even though the title to the property is a basis for a suit for Ex.A2, but unless the title is pleaded and declaratory relief is sought for, any discussion made with regard to that, will not be binding upon the parties if any future cause is taken in this regard. This will



SA(MD)No.356 and 357 of 2021

WEB COPY

create unnecessary multiplicity of proceedings. So, the finding of the appellate court in dismissing the suit. But at the same time, protected the right of the appellant herein till the respondent decides the issue. On the basis of the enquiry, let the appellant appear before the respondent herein with title document now produced before this court. Let, as directed by the appellate court, the respondent shall decide the issue. Depending upon the enquiry, if the appellant is aggrieved, he can take recourse to law.

23. So, the substantial question of law No.4 is left open to be decided subject to the above said direction issued by the appellate court.

24. In view of the above said discussion, the substantial questions of law Nos.1, 2 and 3 may not arise at this stage.

25. In the result, both second appeals are **dismissed**, confirming the judgment and decree of the first appellate court, granting liberty to both parties. No costs. Consequently connected Miscellaneous Petition is closed.

23/10/2024

Index: Yes/No
Internet: Yes/No
er



SA(MD)No.356 and 357 of 2021

WEB COPY To,

- 1.The Sub Judge, Valliyoor.
- 2.The Additional District Munsif,
Valliyoor,
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA(MD)No.356 and 357 of 2021

G.ILANGOVAN, J

er

SA (MD) Nos.356 and 357 of 2021

23/10/2024



WEB COPY



SA(MD)No.356 and 357 of 2021