



S.A.No.524 of 2000

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.524 of 2000

Subramania Assary

.. Appellant

Vs.

1.The Commissioner,
Oulgeret Municipality,
Oulgeret Commune,
Pondicherry.

2.Vaithianathan

3.Manickam

4.Santhamurthy

5.Thiyanayagi (alias) Vijaya

.. Respondents

Prayer: Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the decree and judgment passed in A.S.No.92 of 1998, dated 30.04.1999 on the file of the III Additional District Judge, Pondicherry, and O.S.No.62 of 1995 dated 30.06.1998, on the file of the learned II Additional District Munsif, Pondicherry and decree the suit as prayed for.



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For Appellant : Mr.Mohammed Arshadullah Sheriff
for Mr.R.Kamalesh Kannan

For RR 2 & 4 : Ms.Sumithra

J U D G M E N T

This Second Appeal arises out of the judgment and decree of the Court of III Additional Judge at Pondicherry in A.S.No.92 of 1998 dated 30.4.1999, confirming the judgment and decree of the learned II Additional District Munsif, Pondicherry in O.S.No.62 of 1995 dated 30.6.1998.

2.The plaintiff is the appellant.

3.For the sake of convenience, the parties shall be referred as per their rank before the Trial Court.

4.The plaintiff presented the suit for the following reliefs:-

"1) Set aside the order passed in the Proceedings initiated by the defendant on No.36-41/DS/OM/91 dated 30.11.94.



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2) Pass a decree for permanent injunction against the defendant No.2 to 5 his agents or anyone claiming through them restraining them from interfering with the 'B' Schedule property in any manner whatsoever until the disposal of the 2nd appeal S.A.No.29 of 1989 which is pending before the High Court of Judicate at Madras.

3) Or pass any other order as this Hon'ble Court may deem fit and proper under the circumstances of the case."

5.It is the case of the plaintiff herein that the present defendants as plaintiffs, had presented a suit in O.S.No.1175 of 1983, on the file of the II Additional District Munsif at Pondicherry against him. The said suit was decreed. The plaintiff herein had preferred an appeal against the decree in A.S.No.29 of 1986, to the file of the Additional District Judge, Pondicherry. The said Appeal was allowed, and the suit in O.S.No.1175 of 1983 stood dismissed. The second appeal filed by the defendants had been admitted by this court and is pending in S.A.No.29 of 1989.

6.He pleaded that defendants 2 to 5 (wrongly recorded in the plaint as defendants 2 to 6) are highly influential persons in Pondicherry. They



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had convinced the first defendant to issue a notice of eviction of the plaintiff from the 'B' schedule mentioned property. It was also issued on 11.06.1991. He pointed out that earlier, a similar order was passed by the first defendant, against which, he had preferred an appeal before the Principal District Judge, Pondicherry, in C.M.A.No.11 of 1991. The appeal was allowed and the matter was remanded back to the 1st defendant to conduct a fresh enquiry as contemplated under Section 248(1) of the Pondicherry Village and Commune Panchayat Act, 1973. Yet again, the first defendant had issued a Form 'A' notice on 19.05.1993, alleging that the plaintiff had encroached into the road portion to an extent of 23 Centiares, and that the first defendant is not entitled to issue the same. He added that he was called to appear for an enquiry on 15.04.1993. At the time of enquiry, the first defendant did not give him a copy of the report on measurement of the lands said to have been surveyed by the Deputy Surveyor. As the report was not given to him upon request, the plaintiff pleaded that the first respondent had exceeded his powers in the eyes of law. The first defendant adjourned the proceedings to 12.04.1994. In the meantime, the first defendant was won over by defendants 2 to 5 and summons were issued to the plaintiff. Even on 12.04.1994, the plaintiff was neither heard, nor given the measurement report.



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7.The plaintiff further alleged that defendants 2 to 4 had presented a suit in O.S.No.352 of 1994 on the file of the Principal District Munsif, Pondicherry, stating that the plaintiff is trying to encroach R.S.180/1 of Reddiarpalayam, as if the entire Survey number belongs to the defendants, by suppressing the fact that the defendants claim right over certain plots with specific members assigned to them.

8.The plaintiff further alleged that, the first defendant did not conduct an enquiry as per the order in C.M.A.No.11 of 1991, and every time a new Form A would be issued, only to be abandoned. Finally, another form 'A' dated 30.11.1994 was issued, which, the plaintiff submits to be against the law, and that the first defendant is acting in a mala fide manner, as if the plaintiff had to be dispossessed from the suit property. Hence, the suit.

9.Summons were served on the defendants. They filed their written statements.

10.The first defendant took a preliminary objection that, without issuing statutory notice under Section 485 of the Pondicherry



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Municipalities Act, 1978; the suit is not maintainable. He pleaded that

Section 485 is a mandatory provision and without complying with the issuance of notice to the Municipal office, no person is entitled to file a suit against the Municipal authority. It was also pleaded that the issuance of notice, cannot be condoned as in the case under Section 80 of CPC. The first defendant pleaded that the intention of the plaintiff was to stop the proceedings initiated against him by hook or crook. He pointed out that the plaintiff had, at no point of time, claimed title over the property, but, had sought for a permanent injunction in respect of 'B' schedule property. He stated that he is not concerned with the 'B' schedule property or with the appeal said to be pending in S.A.No.29 1989. He alleged that the property in R.S.No.178 belongs to the first defendant, and since the plaintiff had encroached upon the same, he had initiated proceedings under the Pondicherry Municipalities Act. He further alleged that if an order of eviction is passed by the first defendant, remedy of the plaintiff is not by way of filing a separate suit, but only by way of an Appeal to the District Court at Pondicherry, challenging the order.

11.The defendant alleged that as per the directions given by the Principal District Judge in C.M.A.No.11 of 1991, he had taken steps for eviction of all those, who were in unauthorised occupation in R.S.178.



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He alleged that the plaintiff is a trespasser and that a trespasser is not entitled to maintain a suit for injunction restraining the Government from interfering with the possession. It was also pleaded that the plaintiff, without attending the enquiry as mandated under Section 248(1) of the Pondicherry Village and Commune Panchayat Act, 1973, had presented the vexatious suit.

12.He pointed out that the District Munsif Court is not the competent Court to deal with a challenge to notice issued by the Municipality, and it is only the Principal District Judge, who has power to decide the matter relating to unauthorized occupation, as contemplated under the Act. He added that the plaintiff had been given sufficient opportunities but without attending the enquiry, he had filed the suit.

13.Raising a point of law, the first defendant pleaded that the civil court cannot grant an injunction restraining a Government servant from exercising his official powers, and since the proceedings have been conducted in terms of statute, the suit is untenable. Consequently, he sought for dismissal of the suit.



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14.The fourth defendant had filed an original written statement, and an additional written statement, which were adopted by defendants 2, 3 and 5.

15.In those written statements, the fourth defendant pleaded that the 'B' schedule mentioned property is the subject matter in O.S.No.352 of 1984 on the file of the Principal District Munsif, Pondicherry, in which suit, defendants 2 to 4 were the plaintiffs, and the plaintiff herein was the sole defendant. They alleged that in the said suit, an application for interim injunction was taken out, and the same was also granted by the learned Principal District Munsif in I.A.No.1399 of 1994. They pointed out that the plaintiff is not entitled to file another suit for the very same property, which is in possession of defendants 2 to 4. They further pointed out that the relief sought for in the present suit is untenable as the suit property in the pending second appeal before this Court and the property described in the plaint as Schedule 'B' for which injunction is sought for, are not one and the same.

16.According to them, the second appeal related to a hut situated at Mariamman Nagar, Karamanikuppam Village, Puducherry to the south of



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Kundusalai, to the north and west of the land of Seethalatchmy, with an extent east to west 20 feet and south to north 15 feet. They pointed out that the plaintiff himself is not clear as to which property he is seeking permanent injunction for, and in such event, no relief can be granted in the said suit. They denied that they were politically influential and had instigated the first defendant to initiate eviction proceedings against the plaintiff. They pointed out that the plaintiff has filed the suit by suppressing the facts and therefore, on that ground, the suit deserves to be dismissed.

17. With the permission of the court, an additional written statement was presented. In this statement, the defendants pleaded that the plaintiff has not spelt out the extent to which, he is entitled to in the suit property, and that the suit itself is not maintainable.

18. On the basis of these pleadings, the learned Trial Judge framed the following issues:-

"1) Whether the plaintiff has no locus stand to file the suit?

2) Whether the suit is bad for non compliance of notice under section 485 of the Pondicherry Municipalities



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Act, 1973?

3) Whether the plaintiff is entitled for an order to set aside the order passed in proceedings No.36-41/DS/OM/91 dated 30.11.94?

4) Whether the plaintiff is in peaceful enjoyment and possession of the 'B' schedule of property?

5) Whether the plaintiff is entitled for a permanent injunction as prayed for?

6) Whether the plaintiff is entitled to a judgment and decree as prayed for?"

19.On the side of the plaintiff, he examined himself as PW1 and marked Exhibits A1 to A24. The first defendant did not let in any oral evidence. On the side of defendants, the fourth defendant examined himself as DW1 and marked Exhibits B1 and B2. Pending the suit, an Advocate Commissioner was appointed and he was examined as CW1 and his reports were marked as Exhibits X1 to X3. The Settlement Officer for Pudhucherry examined himself as CW2.

20.The learned Trial Judge dismissed the suit. She answered the issues, holding that, without issuing a statutory notice under Section 485 of the Pondicherry Municipalities Act, 1973, the suit is not maintainable



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against the first defendant. Insofar as defendants 2 to 5 are concerned, she came to the conclusion that the court is not competent to grant permanent injunction against defendants 2 to 5, and that the plaintiff will have to prove his possession over the suit schedule mentioned property. Since no proof had been produced to that effect, the plaintiff is not entitled for the said relief.

21. Aggrieved by the same, the plaintiff had preferred A.S.No.92 of 1998. The III Additional District Court at Pondicherry concurred with the finding of the learned Trial Judge, holding that the suit is untenable without a notice under Section 485 of the Pondicherry Municipalities Act, and also pointed out that when defendants 2 to 4 had obtained injunction against the plaintiff, it is unbecoming on the part of the plaintiff to institute a suit for injunction. On the point of possession, relying on the evidence of DW1, he came to the conclusion that the plaintiff had miserably failed to prove his possession over the 'B' schedule property and therefore, dismissed the Appeal Suit.

22. Aggrieved by the concurrent findings, the second appeal was presented before this court. This Court did not admit the second appeal.



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Notice regarding admission was ordered on 11.04.2000. It is listed before me under that caption.

23.Heard Mr.Mohammed Arshadullah Sheriff for S.Kamalesh Kannan, learned counsel for the appellant and Ms.Sumithra for Mr.L.Swaminathan, learned counsel for respondents 2 and 4.

24.Mr.Sheriff urged that as a second appeal is pending before this court in S.A.No.29 of 1989, the learned Trial Judge and the learned Appellate Court have erred in dismissing the suit. He further added that non-issuance of notice under Section 485 of the Pondicherry Municipalities Act, should not be treated as a bar for presentation of a suit against the first defendant. He further urged that the Trial Court and the appellate Court had miserably failed to appreciate the oral and documentary evidences and therefore, the judgments of the courts below are to be held as perverse.

25.Per contra, Ms.Sumithra, inviting my attention to Section 485(1) of the Pondicherry Municipalities Act, pointed out that the bar under sub-section (1) of Section 485 is directed against the Court and no



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suit can be entertained by a civil court without a notice having been issued as contemplated under Section 485(2). She pointed out that the plaintiff had not proved his possession and enjoyment in respect of the suit property and therefore, he is not entitled to the relief of injunction. She pleads this court should not interfere with the findings of the Trial Court and the First Appellate Court, as they had properly appreciated the evidence. She states that there is no perversity in the judgment of the Courts below and therefore, the second appeal deserves to be dismissed.

26.By way of suggestion, Mr.Sheriff pleaded that the following substantial questions of law be framed by this court:-

"1) Whether non-issue of notice under Section 485 of Pondicherry Municipalities Act, 1973 is a bar for filing of a suit against the first respondent?"

2) Have not the courts below erred in dismissing the suit on the ground that reliefs sought for in the suit are two different cause of actions?"

3) Whether the interim order passed in O.S.No.352 of 1994, which was disposed of simultaneously, will affect the rights of the appellant/plaintiff to maintain



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the present?"

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27.I have gone through the judgment of the Trial Court, as well as the lower appellate Court, and the records available with me.

28.First, I will deal with Section 485 of the Pondicherry Municipalities Act. It reads as follows:-

“485. Institution of suits against municipal authorities officers and servants.-

(1) No suit shall be instituted against the municipal council any municipal authority, officer or servant, or any person acting under the direction of the same in respect of any act done or purporting to be done in pursuance or execution or intended execution of this Act or any rule, bye-law, regulation or order made thereunder or in respect of any alleged neglect or default in the execution of this Act, or any rule, bye-law, regulation, or order made thereunder until the expiration of two months after a notice has been delivered or left at the municipal office or at the place of abode of such officer, servant or person, stating the cause of action, the relief sought and the name and the place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be commenced within six months after the date on which the cause of action arose or in case of a continuing injury or damage during such continuance or within six months after the ceasing thereof.



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(3) If any person to whom any notice is given under sub-section (1), tenders the amount due to the plaintiff before the suit is instituted, and if the plaintiff does not recover in any such action more than the amount so tendered he shall not recover any costs incurred after such tender by the person to whom such notice has been given, and the defendant shall be entitled to costs as from the date of tender.

(4) Where the defendant in any such suit is the Chairman, the Commissioner, or a municipal officer or servant, payment of the sum, or any part of any sum, payable by him in, or in consequence of, the suit whether in respect of costs, charges, expenses, compensation for damages or otherwise may be made, with the sanction of the council, from the municipal fund.”

29.As rightly contended by Ms.Sumithra, no suit can be instituted against a Municipal Council, any Municipal authority, officer, or servant with respect to any act done or purporting to have been done in pursuance or execution or intended execution of this Act or any Rule, bye-law, regulation or order made thereunder, unless and until a two months' notice has been issued to the Municipality and the notice has been delivered or left with the Municipal office or abode of such officer or servant or person. Unlike Section 80 of the Code of Civil Procedure, which permits the Court to dispense with issuance of notice in case of emergency, there is no such provision in the Pondicherry Code. When the



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statute declares that no suit shall be instituted, the plea of Mr.Mohammed Arshadullah Sheriff, that this Section does not bar the filing of the suit, is not an acceptable one.

30.A reading of Section 485 makes it clear that this provision is mandatory in nature and has to be strictly complied with.

31.As the plaintiff has presented a suit without notice to the 1st defendant, I find no reasons to take a different view than the one taken by the Trial Court and the Lower Appellate Court.

32.Insofar as the second prayer in the suit is concerned, the plaintiff has moved the learned District Munsif, seeking a decree of permanent injunction, pending disposal of the second appeal before this Court. The power to grant an interim order, pending disposal of the second appeal, is to be exercised by this Court, as that power is concomitant with the power to entertain a second appeal. I find it extremely amusing that, while the second appeal is pending before this Court, a party can approach the learned District Munsif and plead that the said Court should grant an interim order, pending disposal of the second



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appeal.

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33.A suit for permanent injunction is maintainable before the learned Trial Judge, but for the relief of injunction as sought in this suit, since the same is pending disposal of the second appeal, in my view, is an absolute abuse of the process of Court. The plaintiff, in case he wants the relief of injunction, he should have approached the Second Appellate Court and sought for his relief of injunction. In the event that he would have made out a case, the Second Appeal Court would have granted him the relief sought for. Instead, a reading of prayer No.2 in the plaint shows that he wanted the learned District Munsif to grant an order of injunction, when the second appeal is seized of by this Court. Such a prayer is absolutely misplaced and cannot be entertained by any Court, let alone by this Court.

34.Insofar as the evidences are concerned, Exs.A12 to A19 are merely photographs. Exs.A1 to A6 deal with previous proceedings. Exs.A20 to A23 are letters and telegrams issued by the plaintiff. Ex.A24 alone is a chitta, that has been issued by the Deputy Tahsildar. This shows that the plaintiff has not produced any evidence to prove that he is in possession of the entire property. When there is no evidence before the



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Courts below to prove that the plaintiff is in possession and enjoyment of the property on the date of presentation of the suit, the learned Trial Judge and the learned Appellate Judge have rightly concluded that the plaintiff is not entitled for a relief of injunction.

35.As I have concluded that the plaintiff's first relief is barred by Section 485 of the Pondicherry Municipalities Act, and as I have held that prayer No.2 is an abuse of process of Court, I am not inclined to admit the second appeal. The questions of law suggested by Mr.Mohammed Arshadullah Sheriff do not arise of consideration in the second appeal.

36.In the result, this Second Appeal is dismissed. The decree and judgment passed in A.S.No.92 of 1998, dated 30.04.1999 on the file of the III Additional District Judge, Pondicherry, and O.S.No.62 of 1995 dated 30.06.1998, on the file of the learned II Additional District Munsif, Pondicherry, stands confirmed. No costs.

17.10.2025
(½)

ssk / krk



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Index : Yes / No
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Neutral Citation : Yes / No

To

- 1.The III Additional District Judge,
III Additional District Court,
Pondicherry.
- 2.The II Additional District Munsif,
II Additional District Munsif Court,
Pondicherry.
- 3.The Commissioner,
Oulgeret Municipality,
Oulgeret Commune,
Pondicherry.



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V.LAKSHMINARAYANAN, J.

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