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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 1333 of 2013

CNR:{HCMA010469002013}

T.Lawrence
S/o Thomas No. 31 Old No. 143 N.S.K.Nagar
Main Rd. Arumbakkam, Chennai 106

Case QR

..Appellant(s)

Vs

M/s Sri Kusumaharanath
Thunai Ex Serviceman Asso, Rep By President Mr.
R.S. Baskaran No. 11/5 Abv Koil 29 St, G.K.M.
Colony, Chennai 82

..Respondent(s)

PRAYER: This Second Appeal is filed under Section 100 of CPC to set aside the Decree and Judgment dated 15.03.2013 rendered in AS.No.481 of 2012 on the file of the V Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 09.11.2012 rendered in OS.No.1882 of 2011 on the file of the XI Assistant Judge, City Civil Court, Chennai.

For Appellant(s): Mr.A.Lakshmi Narasimhan

For Respondent(s): Mr.P.Sivamani

JUDGMENT

This Second Appeal has been preferred as against the decree and judgment passed by the V Additional City Civil Court, Chennai in A.S.No.481 of 2012. The appellant is the plaintiff who filed a suit in OS.No.1882 of 2011 on the file of the XI Assistant City Civil Court, Chennai, The said suit was dismissed. Aggrieved by the said decree and judgment, the plaintiff has

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preferred an appeal. The first appellate court set aside the decree and judgment passed by the trial court and decreed the suit. Aggrieved by the said decree and judgment, the defendant has preferred this Second Appeal.

2. The case of the plaintiff before the trial court is that the plaintiff is a registered Association under the Society Registration Act. On the request made by the plaintiff's Society, the Government of India, Ministry of Defence on 31.03.1977, after deciding that the land has to be transferred to the plaintiff Association demanded payment of Rs.27,80,000/- and the Association also paid the entire amount on different dates to the Government and the Government of India nominated Tamil Nadu Slum Clearance Board, a Nodel agency of the Government to carry out the development works in the above area of total extent of 139.07 acres including the suit property bearing plot No.1767. The Tamil Nadu Slum Clearance Board have allotted lands to 1762 members out of 1842 members and possession also have been delivered to them. Out of 1842 occupants, 80 dislocated members have not been allotted with any lands and it was agreed that subsequent to development, in case if any lands found available, the same will be allotted to the remainders through the plaintiff's Association. 80 families of Ex-servicemen and their dependants dislocated during improvement Scheme by the MMDA/TNSCB at G.K.M. Colony, Chennai, for whom it is agreed that alternate sites in the two ponds in the said colony comprised in S.No.153, in which, the suit schedule property forming part of it.

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The suit property is to an extent of 2400 sq.ft which is in absolute possession and enjoyment of the plaintiff's possession without any interference from any corner. The entire sale consideration has been paid to the Government of India for the entire extent of lands by the plaintiff's Association and the Government of India also recognised by their several communications regarding the possession of the abovesaid properties. While so, the defendant who was the resident of southern side adjacent property, now shifted to Arumbakkam on 12.02.2011. Taking advantage that the suit properties are vacant lands, attempted to trespass into the suit property and the same was prevented by the defendants. Therefore, the plaintiff filed the suit.

3. The case of the defendant is that the suit is not maintainable. The defendant is Ex- Servicemen retired from Indian Air Force in the year 1978 as Corporal and he is the member of the plaintiff Association. During the tenure of office of Ganapathy as President, the defendant was allocated piece of land measuring 2400 sq.ft., at No.7/114-B, Kattabomman 7th street, G.K.M. Colony, Chennai and the land has been under the possession of the defendant for the past 30 years since 1982. On 27.07.2006, the defendant was provided with an allotment letter issued by the President of the said Association and he constructed a cemented roof house. From Ganapathi's son-Mohan started demanding huge money towards the allotted land. Whenever the defendant had approached the President, his son-Mohan intervenes and demands more money

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and threatened the defendant with the cancellation of the abovesaid allotted property. While so, on 16.02.2011 about 10 unknown persons illegally entered the premises in the absence of the defendant and threatened his family members to dispossess the property. Thereby the wife of the defendant lodged a complaint before the police station on 21.02.2011. Thereafter on 26.02.2011, a group of persons motivated by Mohan entered into the suit premises and forcibly assaulted the defendant and his wife and threatened with dire consequences. Again they lodged the complaint. Therefore, the suit is liable to be dismissed.

4. Based on the abovesaid pleadings, the trial court has framed the following issues:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for?

2. What other relief is the plaintiff entitled to?

5. Before the trial court, on the side of the plaintiff PW1 was examined and marked Ex.A1 to Ex.A10. On the side of the defendants, DW1 was examined and Ex.B1 to B9 were marked. After hearing both sides and perusing the records, the trial court dismissed the suit. Aggrieved by the said Judgment and decree of the trial court, the plaintiff has preferred an appeal in AS.No.481 of 2012 on the file of the V Additional City Civil Court, Chennai, on various grounds.

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6. The first appellate court has framed the following points for determination.

i) Whether the Appellant/plaintiff is in possession of the suit property on the date of plaint?

ii) Whether the Appellant/plaintiff is entitled to the relief of permanent injunction as prayed for?

7. Thereafter the first appellate court set aside the judgment and decree passed by the trial court and allowed the appeal and decreed the suit vide its decree and judgment dated 15.03.2013. Aggrieved by the said decree and judgment the present Second Appeal has been preferred by the defendant.

8. This court at the time of admitting the appeal has framed the following substantial questions of law :-

I) Whether the judgement and decree of the lower Appellate Court is right by allowing the suit and thereby granting an injunction to the respondent by allowing the appeal suit without properly raising the points for consideration on the legal issues raised before it?

ii) Whether the lower Appellate Court is right in reversing the findings of the trial Court and holding that the respondent is in possession and enjoyment of the suit property and they are entitled for an injunction?

Iii) Whether the learned Judge of the lower Appellate Court substantially erred in law in giving findings in respect of facts about which no issues were framed and no points for consideration arose?

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9. Learned counsel for the appellant would submit that the appellant is the defendant and the respondent is the Association. The previous President of Association had personal vengeance with the defendant and filed a suit as if he attempted to encroach the property. In fact, the appellant is also one of the members of the Association and he was also Ex-Service Men and the previous President of the Association had allotted the suit property in favour of the appellant and thereby, he has been in possession and enjoyment of the property. While so, the plaintiff filed a suit as if he trespassed the property and attempted to encroach the property. The defendant has proved his case through sufficient evidences by examining the witness DW1 and Ex.B1 to Ex.B9 were marked.

9.1. The trial court after considering the evidences correctly dismissed the suit. However the first appellate court without considering the evidences in a proper perspective, erroneously allowed the appeal and decreed the suit. The first appellate court failed to consider that the address mentioned in the plaint and the decree are totally different. At the time of filing the appeal, the address has been wrongly mentioned. The first appellate court failed to consider that 80 dislocated members were objected by the Defence Department. The first appellate court wrongly understood that the respondent Association is in absolute possession and enjoyment of suit property as per Ex.A11 and Ex.A12 and failed to see that it is nothing but a common correspondence between the Government of India Ministry of Defence and Tamil Nadu Slum Clearance

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Board. The first appellate court ought not to have come to the conclusion that the respondents were in possession and enjoyment of the said schedule property merely relied upon the documents Ex.A11 and Ex.A12.

9.2. The plaintiff who filed the suit for permanent injunction has not in possession and enjoyment of the property and the defendant also one of the members of the Association and without considering the same, the trial court has granted the decree even without any cause of action. The first appellate court without framing proper points for determination rendered perverse findings and thereby the judgment and decree passed by the first appellate court are liable to be set aside.

10. Learned counsel for the respondents submitted that the respondent is the Association and the Government allotted lands in favour of the members of the Association through the Slum Clearance Board and as per Ex.A11 & Ex.A12, the petitioners were authorised to protect the property from the third parties. The appellant was residing adjacent to the suit property. Taking advantage of the same, the defendant attempted to encroach and trespassed the property, thereby the plaintiff filed the suit. The trial court without considering the evidences in a proper perspective, dismissed the suit. However, the first appellate court set aside the decree and judgement passed by the trial court, after considering the evidences in a proper perspective, decreed the suit. Therefore,

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the judgment and decree and passed by the first appellate court is correct and this Second Appeal is liable to be dismissed.

11. This court heard both sides and perused the records.

12. For the sake of convenience and brevity, the parties in this appeal will be referred as per their ranking before the trial court as plaintiff and defendant, as the case may be.

13. In this case, the plaintiff is the Association and it is an admitted fact that the Government of India has allotted lands to the members of the Association on payment of cost. The Association also paid payment of Rs.27,80,000/- and thereafter allotted the properties to the 1762 members out of 1842. The Government also allotted an extent of 139.07 acres through Tamil Nadu Slum Clearance Board. It is also not disputed that out of 1842 members dislocated and they have not been allotted with any lands and it was agreed that subsequent of the development, in case if any land found available, the same will be allotted to the remainders though the plaintiff Association, Further, the persons who were dislocated during improvement scheme by MMDA at G.K.M.Colony, it was agreed that alternative sites in the two ponds in the said colony premises in SF.No.153 the suit property is also forming part of the property in compromised in SF.No. 153 to the extent of 2400 sq.ft. While so,

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the plaintiff filed the suit as against the defendant and the defendant is none other than the member of the Association and it is an admitted fact that he is also having land adjacent to the suit property. The suit property has been mentioned as Plot .No.1767, Kattabomman 7th street, GKM colony, Chennai, to an extent of 60 x 40 =2400 sq.ft comprised in SF.No.153, TS.No. 8, Block No.2, Ayanavaram, Village, Perambur , Purasaiwalkam Taluk, Chennai District bounded on the

North by : vacant land owned by the plaintiff Association

South by : Plot No.1605

West by : 7th Street

East by : vacant land owned by the plaintiff association

14. The defendant's contention is that he was allotted plot No.7/114-B Kattabomman 7th street, G.K.M.colony, Chennai-82 and he has been in possession and enjoyment of the property for more than 30 years since 1982. During flood in the year 2005, the hut was damaged and the defendant re-constructed the same and was living in that premises. On 27.07.2026, the defendant was provided with an allotment letter issued by the President of the Association and following the said allotment, the defendant had developed the land and constructed the tiled house. Later, it was developed as cemented roof house.

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15. In order to prove the case of the plaintiff, they marked Ex.A11 and Ex.A12. On the side of the defendant, neither they examined witness nor they marked exhibits.

16. On a careful perusal of evidences adduced on both sides, it is seen that there is a dispute between the then President who filed a suit on behalf of the Association and the defendant. There is no any evidence that the defendant encroached the property and the plaintiffs have not filed any application for appointment of Commissioner to show the alleged encroachment made by the defendant. The defendant claiming that he constructed the cemented roof house whereas the suit property has been mentioned as vacant site. Even in the description of the property, the property of the defendant has not been mentioned as one of the four boundaries. The plaintiff mainly relied upon the letters issued by the Ex.A11 and Ex.A12 which are the documents received at the stage of filing of the first appeal. The first appellate court has not stated anything about the petition filed for reception of documents and not even discussed about the receipt of those documents. After receipt of those documents, the first appellate court has not given any opportunity to the defendants and the same is not in consonance with Order 41 Rule 28 of CPC. The first appellate court also not rendered any findings about the possession of the property. Merely placed reliance on the Ex.11 and Ex.A12 which were not produced before the trial court and marked only at the stage of appeal without

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providing opportunity to the defendant to deny the said documents and to adduce the evidences in respect of those documents. Therefore, the judgment and decree passed by the first appellate court is not in consonance with the Order 41 Rule 28 of CPC and thereby, it is appropriate to set aside the decree and judgment passed by the first appellate court and remand back the case to the first appellate court for fresh consideration by permitting the parties to adduce the evidences in respect of the documents received as Ex.A11 and Ex.A12 by giving opportunity to both the parties by complying the provisions of Order 41 Rule 28 of CPC.

17. In the result, the Second Appeal is allowed and the judgment and decree passed by the first appellate court are set aside.

18. The matter is remanded back to the Ist appellate court for fresh disposal after giving opportunity to both the parties in respect of the documents received at the appeal stage and marked as Ex.A11 and Ex.A12 in accordance with law. The first appellate court is directed to dispose of the main appeal within a period of four months from the date of receipt of a copy of this order. No costs.

25.11.2026

Neutral Citation:Yes/No

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P.DHANABAL J.

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To

1. The V Additional Judge, City Civil Court, Chennai,

2. The XI Assistant Judge, City Civil Court, Chennai.

3. The Section Officer,

V.R. Section,

High Court, Madras.

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