

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.4.2005

C O R A M

THE HON'BLE MR. JUSTICE.S.K. KRISHNAN

S.A.No.471 of 1994

The Commissioner  
Pondicherry Municipality  
Pondicherry.

.. Appellant (Defendant)

Vs

Janardhanam

..Respondent (Plaintiff)

Second Appeal is filed under Section 100 C.P.C. against the judgment and decree dated 2.12.1991 passed in A.S.No.76 of 1991 on the file of the First Additional District Court, Pondicherry, reversing the Judgment and decree in O.S.No.536 of 1989, dated 30.4.1991 on the file of the Principal District Munsif Court, Pondicherry.

For Appellant : Mr.K.K. Sashidharan  
Addl Govt. Pleader for Pondicherry.  
For Respondent: Mr.S.Krishnasamy

JUDGMENT

Aggrieved by the judgment and decree dated 2.12.1991 passed in A.S.No.76 of 1991 by the First Additional District Judge, Pondicherry reversing the judgment and decree dated 30.4.1991 made in O.S.No.536 of 1981 by the Principal District Munsif, Pondicherry, the defendant has filed the above second appeal.

2. The averments made in the plaint are as follows:

The plaintiff is a dealer in vegetables both wholesale and retail in big market, Pondicherry, and has been doing business since 1978 under the name and style of Dhanalakshmi Vilas. The plaintiff used to utilize the vacant site under the stair case on the Northern side of Grand Bazaar abutting the arch for keeping the vegetable baskets being unloaded from lorries in the early hours. With a view to harass the plaintiff, the defendant attempted to remove the baskets, which were kept for a short period, forcibly in

the month of September 1988. Though the plaintiff offered to pay rent to the vacant space under the stair case, he was not allotted any vacant space under the stair case. Further, whenever the shops in the market fell vacant, the defendant is not inclined to allot the vacant shop to the plaintiff. In the month of February, 1989, when the defendant tried to fence the space behind the stair case with grill, the plaintiff issued a statutory notice dated 7.2.1989 to the defendant, who also gave reply containing false and untenable averments. Hence, the plaintiff filed the above suit seeking for a decree of permanent injunction.

3. Denying the averments made in the plaint, the defendant filed a written statement and prayed for dismissal of the suit.

4. On the basis of the oral and documentary evidence, though the trial Court dismissed the suit, the lower appellate Court allowed the appeal. Hence the defendant has come forward with this second appeal.

5. Heard both sides.

6. The Second appeal was admitted on the following substantial questions of law:

a. Whether the Courts below have committed error in recording a finding in favour of the plaintiff, when the plaintiff has asserted possession against the real owner of the property that is the Municipality and has not been able to show any right or interest in the property in question?

7. The learned counsel appearing for the appellant/defendant would contend that the respondent/plaintiff without based on any legal right or interest in the suit property, he cannot be in possession of the suit property for stocking his vegetables.

8. It is an admitted fact that one Subramaniam was doing vegetable business along with one Subban and Krishnan. Thereafter, the respondent/plaintiff joined with the said Subramaniam and has been running his vegetable business in the name and style of Dhanalakshmi Vilas, in shop No.31, Block No.1 Big Market, Pondicherry.

9. No doubt the respondent/plaintiff has produced certain tax receipts paid for doing vegetable business in the said place as a license holder. It is not in dispute that the respondent/plaintiff is running the said business in the said place in the name and style of Dhanalakshmi Vilas from 1978 onwards.

10. The only dispute in this case is that the respondent/plaintiff used to unload the vegetable baskets from lorries in the early hours of the day and used to stock them under the stair case in the Northern side of the Grand bazaar without any permission from the authority concerned. Since the appellant/defendant Municipality has taken cognizance of the act of the respondent/plaintiff as the act of the defendant is causing nuisance to the general public. Therefore, in order to prevent the plaintiff from storing such vegetable goods and baskets in that place, the appellant/defendant has taken legal proceedings to evict the respondent/plaintiff from storing those goods in the specified area.

11. It is pointed out by the learned counsel appearing for the appellant/defendant that for storing the vegetables in that place, the Municipality has not given any permission to the respondent/plaintiff. In such circumstances, the learned counsel appearing for the appellant/defendant would vehemently contend that without basing any legal right or interest over the suit property, the respondent/plaintiff committed nuisance in that particular place. In such circumstances, it is emphasised that the respondent/plaintiff is not at all entitled to claim any right or interest to use that place for storing vegetable baskets.

12. It is contended by the learned counsel appearing for the appellant that since the respondent/plaintiff is an unauthorised occupant of the suit property, he has no locus standi to file a suit for permanent injunction against the appellant Municipality.

13. Further, it is contended by the learned counsel that the the first appellate court committed an error by holding that the appellant Municipality has shirked his duty by not examining high ranking officials and not by marking any document to nullify the case of the respondent while the burden of proof lies on the respondent to prove the case.

14. In this connection, the learned counsel appearing for the respondent/plaintiff would contend that the appellant/defendant while issuing license it should follow a particular procedure. Since the respondent/plaintiff has filed a civil suit against the municipality and also has filed writ petitions against them the appellant/municipality wantonly disturbed the respondent/plaintiff from running his vegetable business near to the place in which he is running his vegetable shop.

15. It is pointed out that the respondent/plaintiff was running the said business from 1978 onwards. Further, for storing that vegetables and other baskets in that place, the respondent/plaintiff has written several letters to the municipality under Exs.A.5, A.7 and A.9 requesting them to permit the respondent to store up the vegetable baskets in the vacant space. However, his representation was not at all considered by the municipal authorities. Therefore, the respondent/plaintiff, being a licensee and doing his vegetable business for a long time, is entitled to use the suit property without any disturbance. In such circumstances, the respondent/plaintiff approached the court and sought for the relief of permanent injunction against the municipal authorities.

16. Per contra, the learned counsel appearing for the appellant would vehemently contend that several proceedings have been initiated against the respondent/plaintiff for using that place to store the vegetable baskets. Since the authority viewed that the storing of vegetables and vegetable baskets in that place, is an act of nuisance to the general public, the respondent/appellant has come forward and asked him not to use that place for storing the vegetables.

17. In this connection, the learned counsel appearing for the appellant/defendant would contend that the respondent/plaintiff is not at all entitled for asking such relief against the municipality for the reason that the respondent/plaintiff without based on any right or interest over the suit property and he has approached the court to file the civil suit against the municipality for which he is not legally entitled to.

18. In support of his contention, he relied on the decision in The Corporation of Calicut v. K. Sreenivasan (JT 2002 (4) SC 589), wherein the Supreme Court held as follows:

"In view of the foregoing discussions, we hold that the expression, 'unauthorised occupation' within the meaning of section 2(f) of the Act would embrace within its ambit the case of licensee as well after expiry of the period of licence or upon its determination for any reason whatsoever, as such the estate officer was quite justified in initiating proceeding under the Act and passing eviction order therein."

19. In these circumstances, it is pointed out that without considering the legal principles, the lower appellate Court has arrived at an erroneous conclusion by holding that unless

and otherwise the respondent/plaintiff is evicted by due course of law, he is entitled to use the suit property. Such decision arrived at by the lower appellate court is totally against law as the respondent has no right or interest over the suit property. Moreover, the respondent/plaintiff is considered to be an unauthorised person and illegally occupied that space without any licence or permission from the concerned authority. Therefore, the decision arrived at by the lower appellate court in favour of the respondent/plaintiff is not maintainable and is liable to be set aside.

20. On a careful analysis of the arguments put forth by the learned counsel appearing for the appellant/defendant, this Court is of the view that there is some force in the argument advanced by the learned counsel appearing for the defendant. In such circumstances, the enjoyment of the respondent/plaintiff over the suit property is considered to be an unauthorised occupation. In such circumstances, the respondent/plaintiff is not at all entitled to claim any right against the defendant municipality.

21. Further, the reasoning given by the lower appellate court for arriving such conclusion is against the well settled principles of law. In such circumstances, this Court finds that there are valid reasons to interfere with the decision arrived at by the lower appellate court. Accordingly, this Court is of the view that the judgment and decree passed by the lower appellate court is against law and the same is liable to be set aside.

22. In the light of the discussions held above, the respondent/plaintiff is not at all entitled to claim permanent injunction against the municipality.

23. In result, the second appeal is allowed setting aside the judgment and decree of the lower appellate court. The judgment and decree of the trial Court is restored. No costs.

RNB

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The First Additional District Judge  
Pondicherry.

2. The Principal District Munsif  
Pondicherry.

3. The Record Keeper,  
VR Section,  
High Court,  
Madras.

KLT (CO)  
SR/17.5.2005

S.A.No.471 of 1994



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