
(2012) 09 MAD CK 0052
In the Madras High Court
Case No : Second Appeal No. 204 of 2005

K. Duraisamy

APPELLANT

Vs

Rajendra Babu and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 41 Rule 27, Order 41 Rule 31, Order 8 Rule 3, Order 8 Rule 4
Penal Code, 1860 (IPC) — Section 80

Citation : (2012) 4 LW 823

Hon'ble Judges : V. Periya Karupiah, J

Bench : Single Bench

Advocate : M.R. Khapali, for the Appellant; N. Thiyagarajan for Respondent-1, No appearance for Respondents 2 to 5 and Mr. M.S. Subramaniam for Respondents 6 to 10, for the Respondent

Final Decision : Allowed

Judgement

V. Periya Karupiah, J.—This appeal is directed against the judgment and decree passed by the first appellate court in A.S.No. 25 of 2002

dated 23.01.2004 in confirming the judgment and decree passed by the trial court made in O.S.No. 185 of 1990 dated 23.04.2002 in dismissing

the suit. The appellant herein was the plaintiff and the respondents 1 to 7 were the defendants before the trial court. The respondents 8 to 10 are

the legal representatives of the deceased 6th respondent/6th defendant. For convenience, the status of parties before the trial Court are adopted in

this judgment.

2. The case of the plaintiff as put forth in the plaint would be as follows:-

The plaintiff has purchased the plot No. 24 in S.No. 291/1 and 292/2 of Vengathur Village, Manavala Nagar, Tiruvallur Taluk, in the layout

known as "Rangaiah Reddy Colony" from the first defendant under a registered sale deed dated 24.02.1983. It was covenanted by the said

vendor that the said layout had been approved by the third defendant vide proceedings No. D/Dis/2861/82 dated 29.03.1982 and the said

approval was incorporated in the sale deed and the plaintiff had put a house also subsequently, on the property purchased by him. After his

purchase, the appellant/plaintiff took up the matter to the first defendant for the statutory requirements relating to the layout, but he was refused to

comply with the same and therefore, he took up the matter to the third defendant, who in his communication dated 16.07.1987 in RC.

7248/86/A4 come up with the shocking revaluation that the approval was only for the house in plot No. 29 in the name of one Kalavathi and not

for the layout as such and on further proceedings, the second defendant sent a letter dated 06.10.1987 in No. 6753/87/A9 to the said vendor

informing that the sales were not proper and asking him to meet him. However, even after that, the said vendor sold plot No. 7 on 24.04.1988 and

Plot No. 22 on 26.08.1988 and infact, the layout is not an authorised one and pleading helpless is nothing but the abdication of the duty to the

innocent public and aiding the avaricious and unscrupulous sellers. It is incumbent on the part of the Government to safeguard the public interest

and the fourth defendant as the registering authority to comply with the guidelines issued by the authorities like Town and Country Planning

Authority so as to safeguard the interest of the innocent prospective buyers. But unfortunately, the first defendant using his influence in the locality

and his status as an advocate weaned away the members from continuing their struggle and effectively secured the dissolution of the association.

Lastly the plaintiff sent a registered notice on 03.01.1990 u/s 80 of IPC to the defendants 2 to 5 calling upon them to discharge their obligation

under the law and even after the receipt of the said notice, the defendants 2 to 5 did not do anything in this regard. Hence, the suit.

3. The objections raised by the first defendant in the written statement cum counter claim would be as follows:-

The suit is neither maintainable in law nor on facts and also the suit is bereft of any justifiable cause of action. As there was no privity of contract

exists in inure the even otherwise reliefs prayed for, the suit cannot have the exorable jurisdiction in this Court. No covenant had ever been

expressly entered into with the plaintiff even to stumble, even an adumbrative cause of action and the covenant as alleged in the plaint, as is being recited in the sale deed dated 24.02.1983, is obscure and spurious. In fact, the notional recital cannot confer any right, but could be acted upon as a supposal obligating the vendees of the plots, if they so desire to countenance the sanction of the building plan on compliance of certain formalities and payment of betterment charges by them. Even otherwise, such a recital was unilaterally interpolated into the draft sale deed by the appellant/plaintiff by copying from the typed original sale deed at the time of execution and registration and the said inimitable insertion did not confer any right or claim on the truculent plaintiff so as to give rise any substantial cause of action. Now after a lapse of seven years, without having any whisper, the appellant/plaintiff has filed this vexatious suit. He is nothing to do or gainsay as to the gleanings of knowledge of the plaintiff regarding the requirement of layout plans, building plans, loan sanctioning etc., as the rules and regulations thereof have been scouted and flayed by him. The appellant/plaintiff has created "Shanthi Nagar Association" to foulplay in the office of the panchayat etc., with spurious letter pads. In fact, the layout plan of "Rangaiah Reddy Colony" was approved by Kadambathur Panchayat Union by its endorsement dated 29.03.1982 in its entirety in the right perspective impatible otherwise and when all the plots of "Rangaiah Reddy Colony" were already sold, the registration of some of which are in the offing and when the said layout plan was approved, the vicinity had been an isolated thicket adjoining a harmful hamlet to the credit of this defendant to undergo incessant trials and tribulations. Even now, save that of his layout plots, devoid of free ingress and egress, are being sold at exorbitant rates, by one and all, who have not set apart space for get-together, place for playing cards, haven for bootleggers etc.,. The vendees are aware of the true state of affairs and have obligated themselves with this defendant for remittance of betterment charges for their homely uplift. The defendants 2 to 5 have no locus standi to join the plaintiff in his ceaseless fight. In view of alienation of all the plots having been made already with the knowledgeable concurrence of the village panchayat, subject to the requirement of the registration of some of the plots, and in the light of the exclusive ownership, possession and enjoyment inhering in this defendant over plot No. 30, which is impartible and in the event of

the absence of public interest or justifiability for proceeding with, the suit against this defendant against whom no cause of action for litigation has not even been adumbrated for the accrual of any interest or occasioning of any injury at any time, the suit against this defendant is liable to be dismissed.

4. The objections of the 5th defendant as stated in his written statement would be as follows:-

The document mentioned in para 3 of the plaint has been registered in the office of the Sub-Registrar, Tiruvallur in Document No. 652/83 Book 1,

Volume No. 1610. As per Indian Registration Act and the Tamil Nadu Registration Rules, the Registering Officer cannot forbid the registration, if

it is duly presented. The other contents in the plaint are not concerned with this defendant. Hence, he prayed for the dismissal of the suit.

5. The objections set out by the 6th defendant and adopted by the 7th defendant in the written statement and the additional written statement

would be as follows:-

5(i) This defendant has nothing to do with the purchase of the site by the plaintiff. The plaintiff has chosen to file the suit in view of certain

differences he had with the first defendant. This defendant is in no way connected with the allegations made in the plaint and the relief sought for by

the plaintiff. This defendant has purchased a plot with a house therein from the first defendant under a registered sale deed dated 16.04.1997. The

pendency of this suit is not at all an impediment to purchase the property by this defendant from the first defendant. The issue in dispute is a matter

between the plaintiff and the first defendant. This defendant is an unnecessary party to the suit. There is no cause of action as against this defendant.

Hence, dismissal of the suit is prayed.

6(ii) In the additional written statement, it has been stated that the plaintiff is only a purchaser of a small plot in "Rangaiah Reddy Colony" and as an

individual, the plaintiff has no locus standi to question about the alignment and the existence of the roads in "Rangiah Reddy Colony". As far as the

plaintiff is concerned, there is a proper approach road to his house. The house sites in "Rangaiah Reddy Colony" have been purchased by several

persons before a long number of years and none of the residents in "Rangiah Reddy Colony" has questioned the manner in which the roads exist in

the colony. The plaintiff, who is inimically disposed off against the first defendant, has vexatiously filed the suit and sought for amendment of the
plaint belatedly, eight years after Filing of the suit. Even if the plaintiff has got any right, it is hopelessly barred by limitation. The purchasers of the
house sites in "Rangiah Reddy Colony" have constructed their respective houses more than 15 years ago and using the roads as they exist. Now, it
is too late for the plaintiff to contend that a roads do not exist as found in the approved layout plan and seek its re-alignment. Hence, this defendant
prayed for dismissal of the suit.

6. The objections raised by the plaintiff to the counter claim raised by the first defendant in the form of reply statement would be as follows:-

6(i) The claim made by the first defendant is not in accordance with Order 8 Rule 3 and 4 CPC. The relief claimed by the plaintiff in the main suit
has not at all connected with the claim now sought to be made by the defendant. The defendant had annexed an extent of 40" x 35" abutting the
suit property in 1985. He put up a hut for the construction work then in progress. The plaintiff had fenced off the entire area with velikathan trees
initially and replaced it with barbed fence in 1989. The barbed wire fenced on the eastern side stilt remains. The plaintiff had put up compound wall
on other two sides in or about 1991 at the cost of Rs. 2000/- and had sunk a borewell in 1987 in this area at the cost of Rs. 2000/-. The plaintiff
had put up a manual hand pump with the electric motor jet (1 H.P) in or about 1990 costing Rs. 3000-. The plaintiff is paying "B" memo charges
continuously since 1985. Thus, the possession of the plaintiff in respect of the said extent by way of his own act of enjoyment without reference to
the first defendant. The first defendant does not have even the trace of any right in respect of the same. The first defendant had no locus standi at
all.

7(ii) The plaintiff firmly maintains that the poramboke property in the occupation has no reference at all to the defendant. No doubt, the plaintiff
wanted to sink a borewell on the north abutting the river bank and executed a letter in favour of the first defendant seeking his permission.
However, the plaintiff on second thoughts did not proceed to sink the bore in the location contemplated in the letter. The plaintiff sunk the borewell
in the property annexed by himself as mentioned above. Admittedly, the entire

sketch of land on the north of the plaintiff's property is a river

poramboke. It is the government that alone has the right to it. The said poramboke, unlike "natham poramboke cannot be appropriated by any

individual on permanent basis. The plaintiff without admitting that the property mentioned in the letter is one in occupation of the plaintiff submits

that it is only the government that has the right of ejectment. The letter cannot operate as estoppel.

7(iii) The defendant's claim is unsound and based on misconception of law and on facts. The defendant was not in possession of any poramboke

property and he merely made a false bravado that he was entitled to the enjoyment of the property. The defendant did not put up any fence at any

point of time and so there was no question of the plaintiff breaking the fence. The District Collector has not been made as party. The first defendant

is not entitled either to possession or damages. The claim is an assault on the right of the state government. Hence, the claim is liable to be

dismissed with exemplary costs.

7. On considering the pleadings put forth by the parties to the suit, the trial court had framed necessary issues and entered trial. It has examined

PW.1 on the side of the plaintiff and DW.1 and DW.2 on the side of the defendants apart from admitting Exs.A1 to A31 on plaintiff's side and

Exs.B1 to B11 on defendants' side as documentary evidence. After appraising the evidence adduced on either side, the trial court had come to the

conclusion of dismissing the suit as well as the cross suit filed by the first defendant without costs.

8. Aggrieved upon the judgment and decree passed by the trial court in dismissing the claim of the plaintiff, the plaintiff has preferred an appeal

before the first appellate court in A.S.No. 25 of 2002 challenging the judgment and decree passed by the trial court. The first appellate court had

heard the arguments of both sides and had come to the conclusion of dismissing the first appeal and thereby, confirmed the judgment and decree

passed by the trial court against the plaintiff.

9. Having aggrieved by the judgment and decree passed by the first appellate court, the plaintiff has come forward with the present Second

Appeal.

10. On admission of the Second Appeal, this Court has formulated the following

substantial questions of law for consideration in this appeal:-

1. Whether the provisions of the Panchayat Act is inapplicable to the suit layout.
2. Whether there can be estoppel against the plaintiff in invoking the Statutory Rules framed under the Panchayat Buildings Rules, 1970.
3. Whether the right in question cannot be enforced by any of the plot owners for the benefit of all.

11. Heard Mr. M.R. Khapali, learned counsel for the appellant/plaintiff and Mr. N. Thiyagarajan, learned counsel for the first respondent/first

defendant and Mr. M.S. Subramaniam, learned counsel for the respondents 6 to 10. No appearance for the respondents 2 to 5.

12. The learned counsel for the appellant/plaintiff would submit in his argument that the courts below have wrongly interpreted the pleadings and

evidence and they logically wrong in appreciating the evidence and they have also misinterpreted the provisions of law and thereby, the judgment

and decree passed by the first appellate court was simply confirming the judgment and decree passed by the trial court, which is contrary to law.

He would further submit in his argument that as per the provisions of Rule 8 of the Tamil Nadu Panchayat Buildings Rules framed in the year 1970,

there can be an approved layout and even the non-submission of the appellant's application for approval of layout will not free the layout from

encumbrances created by the Rules.

13. The learned counsel for the appellant/plaintiff would further submit that the plaintiff was one of the plot owners by purchasing the plot No. 24 in

S.Nos. 291/1 and 292/2 in Vengathur Village, Manavalanagar, Tiruvallur Taluk in the layout known as "Rangaiah Reddy Colony" from the first

defendant on 24.02.1983. He would further submit that the vendor/first defendant told the plaintiff that the said plot has an approved layout

obtained from the 3rd defendant in its proceedings dated 29.03.1982 and accordingly, it was also incorporated in the sale deed executed by him.

He would further submit that on the hope that it was an approved layout, the plaintiff had applied for planning permission and also seek permission

to construct the house with the appropriate authority and put up a house in the plot purchased by him. He would further submit that according to

Ex.A3, the approval was only in favour of the Plot No. 26 and not for the entire layout despite Ex.A1 sale deed dated 24.02.1983 would disclose

that it is an approved layout.

14. The learned counsel for the appellant/plaintiff would further submit that the first appellate court had failed to correct the stand of the trial court

by interfering in the judgment and decree of the trial court, but it had simply confirmed the judgment and decree passed by the trial court. He would

also submit that the prayer of declaration in the suit which was in respect of the provisions of the Tamil Nadu Panchayat Buildings Rules, 1970

would apply to the suit layout and for other reliefs.

15. The learned counsel for the appellant/plaintiff would also submit that the layout as referred in the sale deed is not an approved one and the said

fact has not been considered by the first appellate court. He would further submit that the trial court as well as the first appellate court have

considered that the approval of the layout produced in Exs.B1 and B2 are not related to the entire layout, but was related to a building approval

submitted by one Kalavathi Ammal, which was promptly replied by the Commissioner of Kadambathur Panchayat Union in Exs.A3 and A4. He

would further submit that having agreed that the said approval was not for the entire layout, the courts below ought to have granted the prayers

sought for by the plaintiff. He would also submit that DW.1 during his cross examination had admitted that the Commissioner had stated in Ex.A3

(also wrongly marked as Ex.B3) that the approved layout was not in respect of all the plots in the layout, but was relating to the building of

Kalavathi Ammal.

16. The learned counsel for the appellant/plaintiff would further submit that the layout consists of 30 plots and in accordance with Rule 18 of the

Tamil Nadu Panchayat Buildings Rules, 1970, 10% of the total extent of the layout with an extent of 2 acres 47 cents, namely, 24 cents have to be

left for public space in order to accommodate playground, recreation ground, park and for other public needs. He would also submit that the said

fact was known to the plaintiff only upon the reply given by the Commissioner of Kadambathur Panchayat Union in Ex.A3 and therefore, it has

become necessary for the plaintiff to file the suit for necessary reliefs, which are not appreciated by the courts below. He would also submit that the

courts below have come to a conclusion that the approval of layout in Exs.B1 and B2 should have been set aside and thereafter only the plaintiff

could ask for necessary reliefs and that would be possible if any space is available in the layout, cannot be correct in the eye of law.

17. The learned counsel for the appellant/plaintiff would also submit that the plaintiff is enforcing the right to have the public space as per the rules

for the benefit of all the other plot owners as the Secretary of Shanthi Nagar Progressive Committee and there is no contra interest for the plot

owners and therefore, such a right can be enforced by the plaintiff. He would further submit in his argument that even after the filing of the suit, the

vacant plots in No. 1, 7A, 10, 15, 19 including 30, were sold to third parties in order to defeat the claim in the suit by the first defendant and such

alienation will not in any way prejudice the claim of the plaintiff.

18. The learned counsel for the appellant/plaintiff would also submit that the Rules framed in Tamil Nadu Panchayat Buildings Rules 1970 has been

repealed by the subsequent Tamil Nadu Panchayat Buildings Rules, 1997 and there is no serious change in the said Rules and it was continued

without any major change. Even otherwise, the Tamil Nadu Panchayat Buildings Rules as well as repealing of Tamil Nadu Panchayat Act, 1958 by

the Tamil Nadu Panchayat Act of 1994 would relate back and would applied to the present case also. He would also cite a judgment of the

Hon"ble Apex Court reported in Siddalingamma and Another Vs. Mamtha Shenoy,) in support of his argument.

19. The learned counsel for the appellant/plaintiff would also submit that the defendants 6 and 7 had purchased plot No. 30 after the filing of the

suit and therefore, they were impleaded as parties and they are also bound to a decree likely to be passed against them. He would also submit in

his argument that when the statute required to do a certain thing in a certain way that must be done in that way or not at all. He has quoted the

judgment of "Taylor ..v.. Taylor" as referred in the judgment of the Hon"ble Apex Court reported in A.R. Antulay Vs. Ramdas Srinivas Nayak

and Another, for that proposition of law. Relying upon the said judgment, he would insist in his argument that when once Tamil Nadu Panchayat

Act with its Buildings Rules had categorically laid down a procedure for approval of layout, it ought to have been done by the authorities

concerned and if it was not done that would not have been considered as a layout at all. He would rely upon yet another judgment of this Court

reported in 2009 (6) MLJ 56 (Kothari Industrial Corporation Limited, represented by its Chairman, Kothari Buildings, Chennai ..vs.. Kotak

Mahindra Bank Limited, Chennai, represented by its Deputy Vice President J. Kannan) for the principle that when the mandatory statutory

provisions are not followed, order should be passed against the violation.

20. The learned counsel for the appellant/plaintiff would also submit in his argument that since the plaintiff had filed the suit on behalf of other plot

owners, he need not seek any permission under Order 1 Rule 8 CPC since it was only an enabling provision. He would also submit that by virtue

of getting a decree in favour of the plaintiff, it would be a decree in favour of other plot owners also and therefore, there would not be any adverse

effect against the plot owners and therefore, the plaintiff as a single man can agitate the right for other plot owners.

21. The learned counsel for the appellant/plaintiff would also submit that the trial court had found in the issues of limitation, maintainability and in

other aspects in favour of the plaintiff, but had decided in the issues of mis-joinder and non-joinder of parties and also for the grant of reliefs as

sought for by the plaintiff, had come to an erroneous conclusion and the first appellate court did not correct the findings of the trial court by

following the principles of law, but had simply confirmed the judgment and decree passed by the trial court.

22. The learned counsel for the appellant/plaintiff would further submit that the first appellate court had framed only one point as to "whether the

decree and judgment passed by the trial court are liable to be set aside or not" and had come to the conclusion that the trial court's judgment and

decree were unassailable without any detailed discussion in various points. He would further submit that the first appellate court is under the

obligation of framing various points and to give findings with the help of evidence and law as per the provisions of Order 41 Rule 31 CPC. The first

appellate court did not frame the points for consideration, but had discussed the entire points and had simply confirmed the judgment and decree

passed by the trial court which is not correct. He would also submit that the points as framed by the 1st appellate court were not sufficient to cover

or deal with the entire factual aspect in accordance with the evidence. He would also submit that the 1st appellate court did not follow the mandate

as contemplated under Order 41 Rule 31 CPC. He would also rely upon the judgments of Hon''ble Apex Court reported in Union of India (UOI)

and Another Vs. Ranchod and Others, and 2008 (3) CTC 528 (SC) (Jagdish Singh v. Madhuri Devi) in support of his arguments. He would also

cite a judgment of Hon''ble Apex Court reported in H. Siddiqui (dead) by L.Rs. Vs. A. Ramalingam, for the same principle and he has further

submitted in his argument that the 1st appellate court has not followed the said principles to reach the findings regarding the fact. He would further

submit in his argument that the said attitude of the first appellate court cannot be appreciated and therefore, the judgment and decree passed by the

first appellate court has to be interfered and set aside and the Second Appeal may be allowed.

23. The learned counsel for the first respondent/first defendant would submit in his argument that the first appellate court had concurred with the

findings of the trial court in arriving to the facts and there is no perversity or biased attitude in the mind of the first appellate court and therefore,

there is no interference needed. He would further submit in his argument that the sale deed executed by the first defendant in favour of the plaintiff

does not contain any privity to leave any space as sought for by the plaintiff and the first defendant.

24. The learned counsel for the first respondent/first defendant would also submit that the plaintiff had got the title to plot No. 24 and he had also

applied for the Building Permit and on the basis of the approval of the layout, the said permission was granted to the plaintiff and he had also

obtained loan from the Railway Department and constructed the building in the said plot. He would also submit that having acted upon the layout

approval in Exs.B2 and having put up constructions in the plot, the plaintiff cannot turn round and say that the layout has not been approved and

even the said approval is not in accordance with the Tamil Nadu Panchayat Buildings Rules and seek for reliefs, which cannot be granted.

25. The learned counsel for the first respondent/first defendant would further submit in his argument that all the plots in the layout were sold and the

persons, who purchased the plots have put up constructions and no open space is now available for complying with the conditions. He would

further submit that since both the courts below have found that the plaintiff is not entitled to any reliefs and there is no perversity or violation of any

principles of law, the Second Appeal preferred by the plaintiff may be dismissed.

26. The learned counsel appearing for the respondents 7 to 10/defendants 6 and 7 would submit in his argument that the plaintiff had purchased the property from the first defendant and the layout plan has been annexed with the said sale deed, which did not contain any open space as sought for by the plaintiff. He would further submit that the said sale deed was acted upon by applying for loan and Building Permit by the plaintiff and he had put up construction in the plot.

27. The learned counsel appearing for the respondents 7 to 10/defendants 6 and 7 would further submit in his argument that the open space has to be left as per Rule 18 of the Tamil Nadu Panchayat Buildings Rules, 1970 would require 10% of the space to be left for public use, to which the said area must be in a single place and it should not be allotted in piecemeal. He would also submit that the plaintiff has asked for mandatory injunction seeking for allotment of the public place to an extent of 24 cents from and out of "B" schedule property, which comprised Plot Nos. 1, 7A, 10, 15, 19 and 30, which forms part of "A" schedule property. He would also submit that such open space should be allotted for at least 25 houses at one place and another open space to be allotted for other 25 houses as per Rule 18 of the Tamil Nadu Panchayat Buildings Rules, 1970.

He would also submit that the plots as referred to in "B" schedule property would not be available in one place so as to comply with the prayers for declaration and consequential mandatory injunction as sought for by the plaintiff and on that score itself, the plaintiffs prayers cannot be granted.

He would also submit that if the plaintiff has generally asked for allotment of 24 cents by vacating the plot owners, even it could be the plaintiff's plot and he has not accordingly asked in the prayer.

28. The learned counsel appearing for the respondents 7 to 10/defendants 6 and 7 would also submit in his argument that the Town and Country Planning Act has no application to the suit village and therefore, the relief sought for against the fourth defendant is not liable to be granted.

29. The learned counsel appearing for the respondents 7 to 10/defendants 6 and 7 would also submit that the suit ought to have been filed from the date of the sale deed executed in favour of the plaintiff or from the date of gleaning the knowledge and as per the Article 113 of the Limitation Act,

the suit claim is not within time. He would further submit in his argument that the plaintiff is estopped from questioning the layout, on which he has

acted upon and obtained benefit. He would also submit that even though the layout was unapproved, it would not be against the statute.

30. The learned counsel appearing for the respondents 7 to 10/defendants 6 and 7 would also submit that according to the plaintiff's case, "B"

schedule plots were alone available unsold on the date of the suit and such plots cannot be allotted towards old space in piecemeal in order to

satisfy Rule 18 of Tamil Nadu Panchayat Buildings Rules, 1970. He would further submit that the plaintiff even though sought for allotment of the

public space in "B" schedule property, he had deposed in his evidence to switch over to plot No. 30 alone for that purpose. He would also submit

that the plaintiff has abandoned his claim in respect of other plots in "B" schedule, but insisted only upon the plot No. 30, to which the defendants 6

and 7 purchased and such claim is not sustainable for want of vacant space to an extent of 24 cents. He would further submit that the plot No. 30

was not a open space, but was having a building in the said property and the same was also admitted by the plaintiff and therefore, it could not be

allotted for open space as required in the plaint as well as the evidence of PW.1.

31. The learned counsel appearing for the respondents 7 to 10/defendants 6 and 7 would also submit that the amendment carried out by the

plaintiff in respect of roads provided in the layout cannot also be granted since the constructions have been put up by the owners of the plot in such

a manner tar road has been laid in the said roads and those roads cannot be straightened. He would also submit that the declaration as sought for

by the plaintiff cannot be granted and consequently, the mandatory injunction sought for also not available to the plaintiff. He would further submit

that the courts below have correctly come to the conclusion that the reliefs cannot be granted despite the rules mentioned in the Tamil Nadu

Panchayat Building Rules, 1970 has to be followed and no estoppel against the plaintiff to seek such a statutory remedy. He would therefore,

request the Court to confirm the concurrent findings reached by the first appellate court and to dismiss the Second Appeal.

32. I have given anxious thoughts to the arguments advanced on either side.

33. The suit was filed by the appellant/plaintiff for the following reliefs:-

(i) declaration that an extent of 0.24 cents being the 10% of the total plotted extent of "A" schedule is liable to be earmarked for public purposes

and for the benefit of the plot owners of "A" schedule from out of the "B" schedule lands in a convenient location.

(ii) declaration that roads in the suit layout and should be in conformity with Town and Country Planning Act for the consequential relief of

mandatory injunction directing the defendants 2 to 4 enforce the same even in respect of the existing roads.

(iii) consequential relief of mandatory injunction directing the defendants 2 to 5 to enforce same.

(iv) permanent injunction directing the first defendant or his men or agents from utilising the lands so earmarked for any other purpose.

(v) for costs.

34. According to the plaintiff, the first defendant was the owner of the entire suit property consisting of 2 acres 47 cents and he had divided the

property into 30 plots and prepared a layout and sold plot No. 24 in S.Nos. 291/1 and 292/2 in Vengathur Village, Manavala Nagar, Thiruvallur

Taluk in the said layout known as "Rangaiah Reddy Colony" through a registered sale deed dated 24.02.1983. The said sale deed is produced as

Ex.A1. In the said sale deed, it was referred about an approved layout for dividing the whole property into 30 plots and the said approved layout

was also appended along with the said sale deed. The further case of the plaintiff was that such approval of layout was found to be not in respect

of the layout plan, but it was with reference to one building plan obtained by one Kalavathi. The plaintiff was informed by the third defendant

through the communications in Exs.A3 and A4 and the plaintiff immediately asked the first defendant, the vendor to allot 10% of the total extent for

public use in the said layout and since there was no response, he had issued Section 80 CPC notice to the defendants 2, 3, 4 and 5 in respect of

the filing of the case and since it was not responded, he has filed the suit for the reliefs as stated above against the defendants. The further case of

the plaintiff was that he came to know about the falsity of the approved plan only through the communications given by the third defendant and

therefore, the suit filed within three years from the said date would be within time. The plaintiff has also filed the suit in his individual capacity as well

as the Secretary of Shanthi Nagar Progressive Committee on behalf of other plot owners and for the benefit of other plot owners towards plaintiff reliefs.

35. However, the first defendant and the defendants 6 and 7 have contended that the plaintiff was estopped from questioning the layout since he was benefited by using the said layout for obtaining building plan and permission and also loan from the Railway Department for the purpose of constructing the building and the plaintiff cannot seek for any remedy thereafter.

36. After appraising the evidence adduced on either side, the trial court had found that the plaintiff was entitled to file the suit and the suit filed by him was not barred by the law of Limitation and there was cause of action against the defendants 6 and 7 and the suit against them is maintainable.

However, in the other issues, it had come to the conclusion that the suit was affected by mis-joinder and non-joinder of necessary parties and the impugned approval said to have been obtained by the first defendant was not an approved one and even otherwise, it is construed to be true, after

the constructions are made in the plots the said layout cannot be rectified and the settled matters should not be disturbed. The trial court further

decided the issues regarding the declaratory relief, mandatory injunction, permanent injunction as prayed for in the plaint, against the plaintiff and

thus, dismissed the suit. Similarly, the Cross Suit filed by the first defendant for the recovery of possession of poramboke land lying on the northern

side of plot No. 24 and the damages for the use and occupation was also disallowed by the trial court.

37. The said judgment and decree passed by the trial court was confirmed by the first appellate court on a single point framed by the first appellate

court, which would be as follows:-

whether the decree and judgment passed by the trial court are liable to be set aside or not.

38. It has been vehemently argued that the first appellate court ought to have framed various points on the factual aspects based upon the pleadings

of parties and to decide those points independently with the help of evidence adduced before the trial court and thereafter, the first appellate court

has to either reverse or confirm the judgment and decree passed by the trial court and the violation on the part of the first appellate court is nothing

but the violation of the provisions of Order 41 Rule 31 CPC. On a careful consideration of the said submission, I could see that the first appellate court had framed only point and had discussed summarily all the points and had come to the conclusion of confirming the judgment and decree passed by the trial court.

39. The relevant passage in the judgment of Hon''ble Apex Court reported in Union of India (UOI) and Another Vs. Ranchod and Others, would laid down the following principles on Order 41 Rule 31 CPC which would run as follows:-

10. There being total non-compliance of the mandatory provisions of Order 41, Rule 31 C.P.C. We have no option but to set aside the judgment of the High Court and remand the matter to the High Court for fresh consideration of the Appeals.

40. In yet another judgment of Hon''ble Apex Court reported in Jagdish Singh Vs. Madhuri Devi, which would lay down as follows:-

34. If the above principles are kept in mind, in our judgment, the decision of the High Court falls short of the grounds which would allow the first

appellate court to reverse a finding of fact recorded by the trial court. As already adverted earlier, the High Court has "virtually" reached a

conclusion without recording reasons in support of such conclusion. When the Court of original jurisdiction has considered oral evidence and

recorded findings after seeing the demeanor of witnesses and having applied its mind, the appellate court is enjoined to keep that fact in mind. It

has to deal with the reasons recorded and conclusions arrived at by the trial court. Thereafter, it is certainly open to the appellate court to come to

its own conclusion if it finds that the reasons which weighed with the trial court or conclusions arrived at were not in consonance with law.

41. All these judgments would go to show that the framing of points by the first appellate court is mandatory and the findings reached without

framing such points would not depict a proper discussion of facts in the judgments. We could see that the strict adherence of Order 41 Rule 31

CPC has to be done by the 1st appellate court while passing a judgment in an appeal against the judgment and decree of the trial court. The first

appellate Court has also to look into various points to be decided and to find out the decisions in those points and if it is contrary to the findings of

the trial court, the 1st appellate court has to set aside those points alone and to pass a judgment. No doubt, the 1st appellate court in this case had framed the relevant point and had considered necessary points which he had not framed in the said points and it has not omitted any points both on factual and legal aspects. The first appellate court being the final fact finding Court, it is enumerated in Order 41 Rule 31 CPC to frame necessary points for discussion and decision, but it has not been done by the first appellate court in this case.

42. Now, whether the decisions reached by the trial court as confirmed by the first appellate court are sustainable is the question. The Cross Suit filed by the first defendant against the plaintiff for recovery of possession of the land lying on the northern side of Plot No. 24 was dismissed by the trial court and no appeal was preferred by the first defendant against the said judgment and decree and therefore, it has become final.

43. As regards the issues in the main suit, the trial court had upheld the maintainability of the suit filed by the plaintiff as well as the law of Limitation in favour of the plaintiff. No cross appeal has been launched against those findings before the first appellate court and before this Court. Therefore, there is no necessity for this Court to re-appreciate the said points discussed in those issues.

44. As far as the main point regarding the approval of layout and the joinder of parties are concerned, it has become necessary to see the reasons stated by the courts below for arrival to such findings against the plaintiff. The admitted case in between the parties would be that the plaintiff

purchased plot No. 24 out of the layout consisting of 30 plots through the sale deed dated 24.02.1983, which is marked as Ex.A1. The layout

mentioned in the said sale deed Ex.A1 was produced by the first defendant as Ex.B1. The alleged approval of the said layout issued by the

Commissioner of Kadambathur Panchayat Union on 29.03.1982 was produced as Ex.B2. The evidence of PW.1 would also speak to the effect

that he had got the building permission and plan and obtained loan with the help of the said layout Ex.B1 and constructed the building in Plot No.

24. However, when he has asked about the genuineness of the approval of layout with the third defendant and he has received communications

from the third defendant in Exs.A3 and A4. In the said communications, it has been stated that there was no approval of layout, but it was an

approval of the building of one Kalavathy.

45. The said communications in Exs.A3 and A4 were considered by the trial court and it was decided that the approval was not in respect of the

layout and it was related to a building only. However, it was also found that the constructions have been put up in all the plots and therefore, the

requirement of leaving 10% space for the public use cannot be done. The declaration sought for by the plaintiff was also watered down. While

coming to such conclusion regarding the layout approval, the trial court has relied upon Exs.A3 and A4. When I peruse the contents of Exs.A3 and

A4, I could see that approval in Ex.B2 was relating to the plan Ex.B1. The said approval was affixed on the back of Ex.B1, the layout of

"Rangaiah Reddy Colony". When the said approval was on the back of layout, how it would be for a building plan of one Kalavathy is the

question. The said factual decision ought to have been interfered and set right by the first appellate court. It was not done so. Even though the

Commissioner of Kadambathur Panchayat Union was arrayed as third defendant he would be the best witness to speak about the correctness of

the grant of approval in Ex.B2. Similarly, if the third defendant or any other person from the office of the third defendant has been summoned and

examined despite the third defendant remained absent without filing any written statement, it could have been elicited about the authenticity of

Exs.A3 and A4. In the absence of examination of such witnesses from the office of the third defendant, it would be nothing but to decide the case

on assumptions and surmises. If any witness has been summoned from the third defendant's office to speak about Exs.B1, B2, A3 and A4, the

Court could get a clear idea over the said documents and it would be easier for arriving to a correct conclusion.

46. The findings reached by the trial court on the truth and validity of the approval should have been followed by the application of law as

contemplated in the Tamil Nadu Panchayat Buildings Rules, 1970, which was in force at that time. Rule 18 of the Tamil Nadu Panchayat Buildings

Rules, 1970 would run as follows:-

18. Common amenities:-

In Every layout which has a provision for more than 10 houses, the following minimum standard of amenities shall be provided:-

(1) An open space for common public use as park, playground or recreation ground to an extent not less than 10 per cent of the total area of the layout.

(2) Such open spaces and common amenities shall be so distributed in order that one such open space shall be available for every group of 25 houses.

(3) There shall be provided one or more public wells, public baths and latrines in every layout to the satisfaction of the executive authority.

(4) Facilities such as shopping, recreation centre, community hall and library shall be provided in accordance with the size of the development and based on the following standards:-

(a) For every 100 persons, there shall be at least one shop; and

(b) For every 1000 persons, there shall be a common children playground, a primary school, a community hall, a library and a recreation centre.

(5) Separate provision shall be made in every development site specifically reserved for temples, churches, mosques and other religious institutions as may be necessary.

(6) Provision shall be made for burial of the dead or their cremation at suitable locations away from the residential and other developments and no burial or burning shall be permissible within 90 metres of the development.

Rule 18 of the Tamil Nadu Panchayat Buildings Rules, 1970 requires whenever a layout comprises of more than ten houses, a public space must be left to an extent of 10% of the total layout area for the purpose of housing, play ground, park, recreation etc.

47. The learned counsel for the plaintiff would cite a judgment of the Hon'ble Apex Court reported in 1984 (2) SC 500 (A.R. Antulay ..vs..

Ramdas Srinivas Nayak and another) for the principle that whenever a statute requires to do a certain thing in certain way, thing must be done in that way or not at all. The relevant passage runs as follows:-

22. Once the contention on behalf of the appellant that investigation u/s 5A is a condition precedent to the initiation of proceedings before a special

Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law,

it is unnecessary to refer to the long line of decisions commencing from Taylor v.

Taylor, (1) Nazir Ahamad v. King Emperor (2) and ending with

Chettiam Veettil Ahmad and Anr. v. Taluk Land Board and Ors., (3) laying down hitherto uncontroverted legal principle that where a statute

requires to do a certain thing in a certain way, the thing must be done in that way or not at all Other methods of performance are necessarily

forbidden.

[Emphasis supplied]

48. In the light of the aforesaid judgment of the Hon''ble Apex Court, I could see that the third defendant ought to have followed the principles as

given under Rule 18 of the Tamil Nadu Panchayat Buildings Rules, when it had granted approval in Ex.B2, if true. In case, the approval in Ex.B2

was not granted, it ought to have been shown to Court very clearly that it was not granted for some other purpose, by examining the connected

witnesses. When the trial court did not follow the said principle of law to enforce the rule contemplated under Rule 18 of the Tamil Nadu

Panchayat Building Rules, the first appellate court ought to have corrected it, by discussing the evidence available and to grant the reliefs

accordingly. But the first appellate court had even without framing various points under Order 41 Rule 31 CPC had summarily approved the

judgment and decree passed by the trial court.

49. Even otherwise, I do not find that the evidence produced before the trial court in order to prove that the approval was not true and genuine

was not sufficient to come to a definite conclusion. Even if approval is found to be intact, the plaintiff would be found to have acted on the basis of

the said approval and obtained all the benefits. Similarly, if the approval was found to be true, necessarily such approval should have been set aside

through appropriate forum, and thereafter only, any claim can be made as sought for in the plaint. In case, the approval was found to be fake, the

judgment of the Hon''ble Apex Court as referred supra would apply and the estoppel as pleaded by the defendants against the plaintiff would not

also bar the reliefs because, no estoppel can be pleaded against the provisions of statutes.

50. The plaintiff while he was examined as PW.1 has restricted his claim for the allotment of public space from and out of Plot No. 30 and he has

not insisted over the other plots, namely, Plot Nos. 1, 7A, 10, 15 and 19 in "B"

schedule. Therefore, there would not be any necessity for impleading the owners of other plots for reaching a finding. However, the trial court had come to the conclusion that the suit was bad for non-joinder of necessary parties. Similarly, the trial court had come to the conclusion that the cause of action against the defendants 6 and 7 are available in the suit, since they have derived right from the first defendant in purchasing Plot No. 30. At the same time, the trial court had come to the conclusion of mis-joinder of parties for adding the defendants 6 and 7 in the suit. The said findings are mutually contradictory. The first appellate court did not interfere in the said matter and found the decision reached by the trial court as not sustainable.

51. In the light of the aforesaid discussion and the principles laid down in the judgment of the Hon"ble Apex Court, when I scrutinize the judgment of the courts below, I am of the considered opinion that the validity of approval of the layout dated 29.03.1982 produced in Ex.B2 has to be decided purely on the evidence to be adduced by the third defendant or his authorised officer, who is the best evidence to speak about the said approval of the layout as well as the letter and notice produced in Exs.A3 and A4. The said fact can be determined only after examination of such witnesses from the office of the third defendant. On the basis of the finding regarding the truth and genuineness of such approval of layout only, it can be decided whether it is valid in accordance with Rule 18 of the Tamil Nadu Panchayat Buildings Rules, 1970. Only after finding the genuineness and validity of the approval of layout in Ex.B2, the other points regarding the grant of declaration, mandatory injunction, permanent injunction as sought for by the plaintiff can be determined in the light of the judgment of the Hon"ble Apex Court reported in A.R. Antulay Vs.

Ramdas Srinivas Nayak and Another,

52. In the earlier discussion, I have also held that the first appellate court has not framed necessary points to discuss and reach findings and it had not also discussed the evidence to reach the findings. Therefore, in the said circumstances, the judgment and decree passed by the first appellate court is necessarily to be interfered and set aside and the first appellate court is directed to frame necessary points in the light of the judgment of the Hon"ble Apex Court reported in A.R. Antulay Vs. Ramdas Srinivas Nayak and

Another, and to issue summons to examine necessary witnesses from the office of the third defendant on the side of plaintiff and if plaintiff is not taking steps to issue summons, the Court itself to examine the same witnesses as Court witnesses to speak about the genuineness of the approval made in Exs.B1 and B2 and thereafter, to decide the points to be framed as referred in this judgment. For the said purpose, it has become necessary for this Court to remand back the matter to the first appellate court for fresh disposal in accordance with the directions as stated above. After the examination of necessary witnesses either on the side of the plaintiff or examined as Court witnesses, the said evidence shall be received as additional evidence under Order 41 Rule 27 CPC, since those evidence are necessary to enable the first appellate court to pronounce judgment.

53. No doubt, the Tamil Nadu Panchayat Buildings Rules, 1970 (now repealed by 1994 Rules) is certainly applicable for every layout and in the light of such guidance given in the said rules, the layout has to be granted or approved by the authorities concerned. Accordingly, all the questions of law formulated are decided in favour of the appellant/plaintiff. In fine, the judgment and decree passed by the first appellate court, confirming the judgment and decree of the trial court, are set aside and the case is remanded back to the first appellate court for fresh disposal as per the directions indicated above. Accordingly, the Second Appeal is allowed. No order as to costs. The parties are directed to appear before the first appellate court on 01.11.2012.