

(2000) 08 MAD CK 0093

In the Madras High Court

Case No : Second Appeal No. 511 of 2000 and C.M.P. No. 4386 of 2000

P. Somu

APPELLANT

Vs

The Commissioner, Vellore Municipality, Vellore

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Citation : (2000) 08 MAD CK 0093

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : M. Ravikumar, for the Appellant; Sankaran, for the Respondent

Judgement

S. Jagadeesan, J.—The appellant claimed to be the legal representative of the original plaintiff by name Chinnammal. The said Chinnammal filed O.S. No. 371 of 1991 on the file of the District Munsif, Vellore seeking for a decree of permanent injunction restraining the defendant-municipality from evicting her by force without following due process of law. The case of the plaintiff is that she had been permitted to occupy the disputed place by the defendant-municipality pursuant to their resolution dated 10.2.1989. Having permitted the plaintiff to occupy the land for having a bunk shop, the defendant's officials are trying to evict her by force. Hence, the suit.

2. The defendant-municipality contested the claim of the plaintiff stating that the plaintiff was never permitted to occupy the land under dispute. She had never been issued with any licence for the location of the shop. Her occupation being unauthorised one, and is causing disturbance to the general public for the use of the platform, the municipal authorities have decided to remove the bunk shop from the said place. At that stage, the said suit had been filed.

3. The trial Court, after considering the oral and documentary evidence, dismissed the said suit by its judgment and decree dated 28.8.1995 finding that the plaintiff was never issued with any licence and her occupation of the disputed place is by way of trespass. Hence, the plaintiff has no right to be in occupation

of the disputed place and as such, cannot seek for the decree of permanent injunction against the true owner.

4. Against the judgment and decree of the trial Court, the said Chinnammal preferred an appeal in A.S. No. 53 of 1995 on the file of the Sub-Court, Vellore. The learned sub-Judge, who heard the appeal, had concurred with the findings of the trial Court and dismissed the appeal by his judgment and decree dated 29.10.1999.

5. It may be pertinent to note that during the pendency of the first appeal, the said Chinnammal died and her son Somu had been impleaded as the legal representative. The said Somu - the appellant herein preferred this Second Appeal against the judgment and decree of the lower appellate Court. After filing the Second Appeal, the said Somu, the appellant herein, died. Learned counsel for the appellant took time representing that a legal heir petition has been filed and C.M.P.S.R. No. is 44409 of 2000. Though the matter was adjourned twice to get this application numbered, learned counsel for the appellant did not evince any interest in numbering this application. Considering the facts of the case, I am of the view that there is no need to bring the legal heirs of the deceased appellant herein on record.

6. The only question urged by the learned counsel for the deceased appellant herein is that the legal heir of the deceased appellant cannot be evicted without following due process of law, especially when the original plaintiff had been in occupation since 1989.

7. A perusal of the judgments of the Courts below reveals that the said Chinnammal, the original plaintiff, seemed to have made an application to the respondent municipality seeking permission to locate the bunk shop in the year 1988. In fact, the municipality did not grant any permission to the original plaintiff. The plaintiff relied upon a resolution passed by the municipality. It is not known as to how the plaintiff got the copy of the resolution of the municipality. It is an admitted fact that though the municipality had passed the resolution to grant the licence to the original plaintiff Chinnammal, she was not granted any licence pursuant to the said resolution. Hence, there is no doubt that the resolution of the municipality had not been given effect to. In the absence of any licence for the original plaintiff to locate the bunk shop in the disputed place, she cannot be construed to be a licensee or to be in permissive occupation. Hence, she is only a trespasser and her possession is unauthorised one. When once her possession is unauthorised one, it is always open to the statutory body to remove such an unauthorised occupation without issuance of any notice, especially in the public interest.

8. In this case, the eviction is sought for only on the ground that the location of the bunk shop causes hindrance to the movement of the general public. Hence, the Courts below have rightly dismissed the said suit finding that the original plaintiff, is not entitled for a decree of permanent injunction. Even assuming that

the original plaintiff is a licensee, the licence is for the individual, in whose name, it had been granted. There is nothing on record to show that the licence had been transferred in the name of Somu, the deceased appellant herein. When the licence was not transferred in the name of the deceased appellant herein, as such, his legal heir cannot maintain this Second Appeal as if she has got any right. In the absence of any licence in the name of the deceased appellant herein, his legal heir cannot have any right to challenge the action of the respondent municipality in removing the bunk shop. Hence, there is absolutely no merit in this Second Appeal.

9. When the judgment was delivered, Mr. Sankaran, Standing Counsel for the respondent herein was also present and informed the Court that the eviction proceedings should not be carried away pursuant to the judgment of the lower Court in A.S. No. 53 of 1995, since the learned counsel, for the appellant herein had given a telegram to the respondent herein on 8.4.2000, which is as follows:

C.M.P. No. 4386 of 2000 for injunction in Second Appeal 511/2000 pending High Court in respect of bunk shop at Vellore Bus Stand admeasuring 6 feet 10 inches. Any action to dismantle the same will be viewed seriously including contempt of Court. Details follows.

10. On the same day, learned counsel for the appellant also sent a letter in his letter pad, which is as follows:

Sub.: Notice with respect to the pendency of SA. 511 of 2000 against A.S. No. 53 of 1995 on the file of the High Court of Chennai - reg.

Filed by Ponnu - Appellant Vs. The Commissioner, Vellore Municipality

It is hereby informed you that the Second Appeal in A.S. No. 511 of 2000 is pending on the file of the Honourable High Court of Chennai against the order passed in AS. No. 53/1995 dated 29.10.1999 filed against you by Mr. P. Somu with respect to the bunk shop at Vellore bus stand admeasuring to an extent of 6 feet 10 inches. In the S.A. a Civil Miscellaneous Petition in C.M.P. 4386/2000 for interim injunction against you is also pending.

I came to understand that you are seriously taking steps to dismantle the above said bunk shop. Hence, I am hereby informing you that any such hereby action will be seriously viewed by the Court of law including contempt of Court.

In view of the telegram and the letter, the officials of the respondent did not proceed.

11. When the Second Appeal has been taken on file and waiting for admission on the substantial question of law, it is not known as to how the learned counsel for the appellant herein sent the telegram as well as the letter to the municipality stating that C.M.P. 4386 of 2000 for injunction is pending. Only if the appeal is admitted and notice is ordered to the respondent, the matter is said to be pending before this Court. Till then, the matter waits for admission and it cannot

be considered to be a pending matter. At the worst, it can be counted for the arrears and not for anything else.

12. Nowadays, it has become the order of the day that by merely filing the petition before this Court, counsel for the petitioner sends notices to the respondent not to proceed further, thereby totally stalling the execution of either the order of the lower Court or any other impugned order. This is too unfair on the part of the counsel and clearly establishes as to how much they identify themselves with their client. This attitude of sending notices to the other side just after filing the matter before this Court or keeping the matter pending after numbering it, would amount to coerce the respondent not to proceed with the implementation of the impugned order, even though there is no prohibition issued by this Court. This cannot be tolerated. The authorities should insist for the production of the copy of the stay order, if not on the same day, at least after two or three days and if no such copy of the interim order is produced, they should proceed with the implementation of the impugned order or the other side is at liberty to execute the order of the lower Court. Even in the case of limited stay, the authorities or the lower Courts should insist for the copy of the order of extension of the interim orders. If no order is produced, the respondents or the Courts below are entitled to proceed further.

13. This Court came to know that in many subordinate Courts, the counsel produces the letter from his counterpart about the filing of the appeal or the revision and the grant of interim stay by this Court, when actually there is no interim order. By producing such letters, the counsel insists for the adjournment of the cases and prolongs the matter without producing the copy of the interim order for months together. When the Presiding officers insist, then, they find fault with the Presiding officers. In order to avoid such a situation, it is necessary for this Court to give certain guidelines for the Courts below.

14. In fact, in this case, this Court was about to issue contempt notice against the counsel. As the counsel offered his apology and taking into consideration of the fact that he is three years old in the Bar, the same was dropped. Accordingly, the Second Appeal is dismissed. Consequently, the above C.M.P. is also dismissed.