



S.A.No.1591 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 14.06.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

S.A.No.1591 of 2001

Karuppayee

... Appellant

vs.

- 1.Ganesan (died)
- 2.Balasubramanian
- 3.Kumar
- 4.Sudha
- 5.Premkumar

(R4 and R5 are brought on record as LR's of the deceased 1st respondent vide Court order dated 07.07.2020 in C.M.P(MD)Nos.2182, 2183 and 2186 of 2020 in SA.No.1591 of 2001)

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 24.11.2000 in A.S.No. 187 of 1999 on the file of the Principal District Court, Pudukkottai, confirming the Judgment and decree dated 28.06.1996 made in O.S.No. 875 of 1992 on the file of the Additional District Munsif Court, Pudukkottai.



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For Appellant : Mr.J.Anand Kumar

For Respondents : No appearance

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JUDGMENT

The appellant is the plaintiff. The respondents are the defendants. The appellant/plaintiff filed the suit in OS.No.875 of 1992 on the file of the Additional District Munsif Court, Pudukottai for permanent injunction restraining the respondents/defendants from interfering with her peaceful possession and enjoyment of the suit property. The said suit was dismissed after trial on merits. Therefore, the appellant/plaintiff filed an appeal in AS.No.187 of 1999 before the Principal District Court, Pudukottai. The lower Appellate Court after hearing the appeal, dismissed the appeal on merits and confirmed the Judgment and Decree passed by the Trial Court. Therefore, the appellant/plaintiff filed the present appeal before this Court.

2. The brief facts of the case of the appellant/plaintiff as per the plaint filed by her before the Trial Court is that the suit property originally belonged to her father and after demise of her father, she constructed a tiled house and coconut leaves thatched roof shed within



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the suit property. The thatched roof shed made by the coconut leaves is situated on the southern side of the suit property along with the tiled house bearing Door No.43. The respondents/defendants attempted to construct thatched roof house on the southern portion of the suit property which belongs to the appellant/plaintiff on 09.12.1991 and the same was prevented by her. The respondents/defendants never enjoyed the thatched roof shed made by the coconut leaves situated near the tiled house. The southern portion of the suit property exclusively belongs to the appellant/plaintiff and since the respondents/defendants tried to interfere with her possession, she has filed the suit for permanent injunction.

3. The case of the respondents/defendants in brief as per the written statement filed by them is that the appellant/plaintiff never enjoyed the coconut leaves thatched roof shed situated on the southern portion of the suit property. The suit pathway is situated in S.No.6784 near Kovilpatty Pidari Temple. The father of the respondents/defendants constructed a house in the southern portion near the northern side of the road and also enjoyed the two tamarind trees situated on the southern portion of the suit property. The second respondent/second defendant is



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in possession and enjoyment of the coconut leaves thatched roof shed in Door No.42/1 along with the coconut trees situated on the southern portion. The appellant/plaintiff is not entitled to permanent injunction as prayed for in the plaint in respect of coconut leaves thatched roof shed situated in the southern side of the suit property.

4. After completing the pleadings, the Trial Court framed the following issues based on the pleadings.

"1. Whether the father of the plaintiff enjoyed the suit properties by fencing with palm leaves in the year 1944?

2. Whether the defendants tried to construct a building in the suit property on 29.07.1992?

3. Whether the plaintiff is not entitled to any property on northern side of the road as stated by the defendants?

4. Whether the father of the defendants is in possession and enjoyment of the 2310 square feet land in the southern side of the property?



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5. Whether the plaintiff is entitled to get permanent injunction against the defendants as sought for in the plaint?

6. What are the other reliefs?"

5. The Trial Court framed two additional issues as follows.

"1. Whether the Municipality is a necessary party to the suit?

2. Whether the Door No.42/1 situated in TS.No.6784 is in possession and enjoyment of the defendants?"

6. In order to prove the case, on the side of the appellant/plaintiff, four witnesses were examined as PW1 to PW4 and five documents were marked as Exs.A1 to A5. On the side of the respondents/defendants, one witness was examined as DW1 and seven documents were marked as Exs.B1 to B7.

7. After trial, the Trial Court appreciated the oral and documentary evidence and dismissed the suit. Therefore, the appellant/plaintiff filed an appeal before the Principal District Court, Pudukkottai. Pending Appeal, a Commissioner was appointed and the Commissioner's Report



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was marked as Exs.C1 and C2. The lower Appellate Court also, after considering the materials and re-appreciating the evidence, dismissed the appeal. Therefore, the present appeal.

8. While admitting the Second Appeal, this Court has formulated the following substantial question of law.

"Whether the Courts below ought to have decreed the suit atleast insofar as the tiled house portion of the suit property. Since the plaintiff had produced convincing documentary evidence in respect thereof which had been wholly ignored."

9. The learned counsel appearing for the appellant/plaintiff would submit that the suit property originally belonged to the father of the appellant/plaintiff and the father of the appellant/plaintiff enjoyed the entire extent of the suit property by fencing the same with palm leaves. After the death of the appellant/plaintiff's father, the appellant/plaintiff constructed a tiled house in the southern portion of the suit property, which is Door No.43 and adjacent to the tiled house, she also put up a coconut leaves thatched roof shed and enjoyed the entire suit property by



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paying tax. The relevant documents have been marked as Exs.A1 to A5

and in order to substantiate her case, she examined four witness and therefore, the appellant/plaintiff proved her case through oral and documentary evidence. Even though the respondents/defendants did not have any right in the suit property and they are not in possession and enjoyment of the same, they tried to put up a house in the place where the coconut leaves thatched roof shed was situated and therefore, their action was prevented. However, the respondents/defendants are continuously trying to obstruct the appellant/plaintiff without any right or title whatsoever. Therefore, the appellant/plaintiff has no other option except to file the suit for injunction restraining the respondents/defendants from interfering with her peaceful possession and enjoyment of the suit property. The learned counsel appearing for the appellant/plaintiff would submit that though the respondents/defendants have admitted that the appellant/plaintiff constructed a tiled house in Door No.43, both the Courts below failed to appreciate the same and dismissed the suit in toto. Atleast, decree could have been granted in respect of tiled house in Door No.43 situated in the suit property. Therefore, the appeal has to be allowed and the respondents/defendants have not proved they have right and title over the suit property. Though they have contended that the suit



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property is a rock poromboke, they have not produced any document to that effect and whatsoever documents filed by them are not related to the suit property.

10. Heard the learned counsel appearing for the appellant/plaintiff. Perused the materials available on record. Despite sufficient opportunity being given, there is no representation on behalf of the respondents/defendants. Since the appeal is pending from the year 2001, this Court after hearing the learned counsel appearing for the appellant/plaintiff, decided to answer the substantial questions of law.

11. The appellant/plaintiff has filed the suit for permanent injunction against the respondents/defendants with regard to the suit property. The appellant/plaintiff has stated that in the southern portion of the suit property, there is a tiled house and adjacent to that she has put up a coconut leaves thatched roof shed, which are in her possession and enjoyment. She has also stated that the above tiled house and coconut leaves thatched roof shed are situated in Door No.43.



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12. A perusal of the materials available on record shows that Door No.43 covers only the tiled roof house which belongs to the appellant/plaintiff. The respondents/defendants also have no dispute regarding the tiled roof house in Door No.43 belonging to the appellant/plaintiff. The only disputed area is the coconut leaves thatched roof shed in the southern portion of the suit property. According to the appellant/plaintiff, the coconut leaves thatched roof shed is covered in Door No.43, whereas, the case of the respondents/defendants is that the coconut leaves thatched roof shed is covered in Door No.42/1 and the same is in their possession and enjoyment.

13. A reading of the pleadings shows that the appellant/plaintiff claims exclusive right and possession over the suit property through her father and according to her, after the demise of her father, she has put up the tiled roof house and coconut leaves thatched roof shed and has been in possession and enjoyment of the same. The respondents/defendants have produced tax receipt and other documents relating to the tiled roof house and they specifically claim that the coconut leaves thatched roof shed is covered in Door No.42/1. There is no material evidence to show that Door No.43 covers the coconut leaves thatched roof shed. When the



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respondents/defendants claim that they paid the tax for the coconut leaves thatched roof shed in Door No.42/1 and they are in possession and enjoyment of the same, the appellant/plaintiff has not chosen to amend the plaint for declaration. The appellant/plaintiff has also not proved that she only put up the coconut leaves thatched roof shed and the land situated in that shed is in her possession and enjoyment for time immemorial from the life time of her father. It is settle law that the plaintiff has to prove her case on her own strength. She cannot take advantage of the weakness of the respondents/defendants case. In this case, the appellant/plaintiff has not produced any proper evidence to prove her possession and enjoyment of the coconut leaves thatched roof shed. Consequently, the appellant/plaintiff failed to prove that the respondents/defendants attempted to dispossess her from the coconut leaves thatched roof shed.

14. The appellant/plaintiff has filed the suit for bare injunction. The first item of suit property is the tiled house situated on the southern side of the suit property in Door No.43. The second item of the suit property is the coconut leaves thatched roof shed which is also situated on the southern portion of the suit property. As far as the first item is



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concerned there is no dispute at all that it is in possession and enjoyment of the appellant/plaintiff. As discussed above, the appellant/plaintiff has not proved that the respondents/defendants tried to interfere with her peaceful possession and enjoyment of the second item and tried to put up a house therein. Therefore, the Trial Court has rightly appreciated the evidence and dismissed the suit. The lower Appellate Court has marked Commissioner's Report as Ex.C1 and Ex.C2, rightly re-appreciated the evidence and found that the appellant/plaintiff has not substantiated her case in respect of the possession and enjoyment of the suit property insofar as item No.2 is concerned and dismissed the Appeal.

15. Now, the appellant/plaintiff has stated that the respondents/defendants have not denied the right of the appellant/plaintiff insofar as the possession and enjoyment of the first item of the suit property and hence, the Courts below atleast could have granted decree in respect of that alone. The appellant/plaintiff has not even pleaded that the respondents/defendants tried to interfere with her possession and enjoyment of the first item of the suit property. The appellant/plaintiff's specific plea is that the respondents/defendants tried to dispossess her from the second item of the suit property. In the



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absence any pleading in the plaint with regard to the first item of the suit property and in view of the fact that the appellant/plaintiff admitted that the respondents/defendants only interfered with her possession and enjoyment of the coconut leaves thatched roof shed, this Court finds no perversity in appreciation and re-appreciation of evidence by both the Courts below. Therefore, the substantial question of law is answered against the appellant/plaintiff and in favour of the respondents/defendants.

16. In the result, this Second Appeal is dismissed and Judgment and Decree passed by the trial Court as well as the first appellate Court are confirmed. No costs.

14.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes

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To
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- 1.The Principal District Court, Pudukkottai
- 2.The Additional District Munsif,
Pudukkottai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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