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S.A.No.303 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.303 of 2021
and
C.M.P.No.6080 of 2021

T.P.Manogaran

... Appellant

Vs.

Jyothi Mahalingam

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 17.10.2019 in A.S.No.33 of 2018 on the file of the Subordinate Court, Tiruvarur, confirming the judgment and decree dated 14.03.2018 in O.S.No.52 of 2007 on the file of the District Munsif cum Judicial Magistrate, Nannilam.

For appellant

: Mr.A.Muthukumar

JUDGMENT

The defendant, who has unsuccessfully contested the suit for permanent injunction and mandatory injunction, is the appellant before this Court.



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2. The facts of the case which have led to the filing of the above second appeal are hereinbelow narrated and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The first plaintiff had filed a suit in O.S.No.52 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Nannilam, seeking an order of injunction restraining the defendants, their men or anyone claiming under them from interfering with the peaceful possession and enjoyment of the 'A' schedule property by him, for mandatory injunction directing the defendants to remove the structure put up in the 'B' schedule property after filing of the suit and the inspection of the property by the Advocate Commissioner with the Surveyor who had measured the property. The two reliefs were added by way of amendment.

2.2. It is the case of the plaintiffs that for over 78 years, the first plaintiff and her ancestors have been in enjoyment and possession of an



extent of 12 cents comprised in S.F.No.9/3 (Old.S.F.No.9/1) under a registered partition deed dated 25.03.1929. The first plaintiff's maternal grandfather Natesa Thavildharar and Muthaiya Nayanakarar, Dhandapani Nayanakarar and Kathiresa Nayanakarar had partitioned the suit property and other properties. The 'B' schedule property in this partition deed fell to the share of the first plaintiff's grandfather. He was in enjoyment of the same since then. On his demise, the property fell to the share of his only daughter Govindammal, who is the mother of the first plaintiff and after her demise, the first plaintiff, being her only daughter, became absolute owner of the same and was in enjoyment of the same since then. On 08.12.1997, the revenue records have been mutated in the name of the first plaintiff in Patta No.18.

2.3. The plaintiffs would submit that the defendant, who has his property on the west of the suit property, in the guise of constructing a house, has encroached into the passage in the suit property which belongs to the plaintiffs. He had also tried to remove the fence. On 14.06.2007, the Tahsildar, Nannilam, to whom the plaintiffs had made



an application for surveying and measuring the suit property had given notice to both the parties informing his intention to visit the property with the help of the Surveyor. The defendant refused to co-operate in the measurement process. However, on 16.07.2007, the land Surveyor had inspected the property and measured it and fixed the boundary stones. The defendants, had removed these boundary stones overnight and immediately, on the very same date, the plaintiffs had lodged a complaint with the jurisdictional police station.

2.4. While so, on 02.08.2007, the defendant took law in his own hands and put up a staircase, which constrained the plaintiff to approach this Court for the reliefs stated *supra*. Pending the suit, a settlement deed was executed by the first plaintiff in favour of the second plaintiff and the second plaintiff had been impleaded.

2.5. The defendant has filed a written statement, the sum and substance of which is *inter alia* denying the plaintiffs' claim to the suit property. He would submit that he was claiming under Muthaiya



Nayanakarar, one of the parties to the partition deed dated 25.03.1929.

He would submit that he has put up the construction only between the old eastern wall which is 1.5 feet away from the old wall.

TRIAL COURT:

3. The Trial Court had framed the following issues:

“i)Whether the plaintiff's is entitled to the relief of permanent injunction?

ii)To what other reliefs?”

4. After filing of the amended plaint and an additional written statement, the following issue had been framed.

i)Whether the settlement deed dated 05.12.2012 executed by the first plaintiff in favour of the second plaintiff is true and valid?

5. Thereafter, on 04.03.2017, the following additional issues were framed.

“i)Whether the defendants had trespassed into the



property as contended by the plaintiff? When was this done?

ii) Whether the plaintiff had entitled to the decree for mandatory injunction directing the defendant to demolish the construction put up by him? ”

6. The second plaintiff had examined himself as P.W.1 and one Balraj and Jayaraman as P.W.2 and P.W.3, respectively. Exs.A1 to A8 were marked on the side of the plaintiffs. The defendant had examined himself as D.W.1 and one Pasupathy as D.W.2 and marked Exs.B1 to B11. The Advocate Commissioner's report and plan were marked as Exs.C1 and C2 and the Surveyor report along with the plan is marked as Ex.C3.

7. Ultimately, the Trial Court, on considering the evidence on record, had decreed the suit as prayed for.



LOWER APPELLATE COURT:

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8. Challenging the said judgment and decree, the defendant had filed an appeal in A.S.No.33 of 2018 on the file of the Sub Court, Tiruvarur. The learned Judge also extensively considered the evidence on record, arguments and pleadings and came to the conclusion that the findings given by the Trial Court are correct and hence, dismissed the appeal by confirming the judgment and decree of the Trial Court.

9. Challenging the concurrent judgment and decree, the defendant is before this Court. The matter was being adjourned on several occasions and today, it has come up under the caption “adjourned admission”.

10. Heard the learned counsel for the appellant and perused the materials available on record.

DISCUSSION:

11. Both the Courts below, particularly, the Lower Appellate



Court has discussed in detail about the encroachment that has been made by the defendant by relying upon the Advocate Commissioner's report and plan – Ex.C1 as follows:

“11. இவ்வழக்கில் முதலில் ஒரு வழக்கறிஞர் செல்வி வெற்றிதிருமகள் என்பவர் ஆணையராக நியமிக்கப்பட்டு தாவா சொத்தை பார்வையிட்டு அறிக்கை மற்றும் வரைபடம் தாக்கல் செய்துள்ளார். அதன் பிறகு மீண்டும் வழக்கறிஞர் திரு. சங்கரன் என்பவர் ஆணையராக நியமிக்கப்பட்டு அவரும் தாவா சொத்தை நில அளவையர் உதவியோடு பார்வையிட்டு அறிக்கையும் வரைபடமும் தாக்கல் செய்துள்ளார். அவருடைய அறிக்கையானது நீ.ம.சா.ஆ.2 ஆக குறியீடு செய்யப்பட்டுள்ளது. அந்த அறிக்கையில் “ஆக்கிரமிப்பு மேற்படி சுவரில் 6 மீ தெற்கு வடக்காகவும், 40 செ.மீ கிழக்கு மேற்காகவும் முக்கோண வடிவில் உள்ளது” என்று கூறப்பட்டுள்ளது. அதாவது ஆணையர் அறிக்கைபடி தாவா சொத்தில் பிரதிவாதி 6 மீ தெற்கு வடக்காகவும், 40 செ.மீ கிழக்கு மேற்காகவும் முக்கோண வடிவில் ஆக்கிரமிப்பு செய்துள்ளார் என்று தெரிய வருகிறது. எனவே பிரதிவாதி ஆக்கிரமிப்பு செய்த மேற்படி பகுதியை வசப்பரிகாரம் மூலம் திரும்பப் பெற வாதி தகுதியுடையவர் ஆகிறார்.”



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12. The Lower Appellate Court has also taken note of the admission of the defendant as D.W.1, wherein, he has stated as follows:

“05.12.2012 ல் 1ம் வாதி 2ம் வாதிக்கு செட்டில்மெண்ட் எழுதி வைத்த விபரம் தெரிந்து கொண்டேன். 1ம் வாதி 30.12.2013ல் இறந்துவிட்டார் என்று தெரிந்து கொண்டேன். 30.12.2013க்கு பிறகு 2ம் வாதி தான் தாவா சொத்தில் குடியிருந்து வருகிறார்.”

13. This admission clearly shows that the property has been in the possession and enjoyment of the plaintiff and her predecessors-in-title. That apart, in the evidence, both D.W.1 – the defendant and his brother -D.W.2 deposed that they have not measured their property before its purchase and they are not aware if their vendors had also measured the same. They have also admitted that there is no document to show the wall situate in the eastern side of the property purchased by them, belongs to them or their vendors.

14. It is also seen that the construction has been put up pending the suit, which is also admitted by the parties. Therefore, the



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Courts below have considered the evidence in detail, to arrive at the conclusion that the defendant had encroached and put up the construction upon the suit 'B' schedule property and decreed the suit and I see no reason to differ with this concurrent findings of the Courts below.

Accordingly, this second appeal stands dismissed as it does not make out any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

27.02.2024

Index : Yes/No
Speaking order/non-speaking order
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To

1. The Subordinate Judge, Thiruvarur.
2. The District Munsif cum Judicial Magistrate, Nannilam.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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