



S.A.No.930 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2024

PRONOUNCED ON : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.930 of 2012

- 1.P.M.Meera Sahib
- 2.M.Rahamathullah
- 3.Moideen Rawthar (Died)
- 4.Hydhar Ali
- 5.Kamarunisha
- 6.Mohammad Hanifa
- 7.Abdul Sukkoor
- 8.Sebastiammal
- 9.Roslin Mary
- 10.Ashiammal
- 11.Munsalia
- 12.Mumtaj
- 13.Rabi Ammal
- 14.Abuthahir

...

Appellants

(A3 died, A4 already on record as LR of deceased A3.
A10 to A14 brought on record as LRs of deceased A3
vide Court order dated 11.03.2024, made in
CMP No.5525 of 2024 in S.A.No.930 of 2012)

Vs.



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- 1.A.Abdul Azeez
- 2.A.Abdul Hakkim
- 3.A.Muhammed Rafik
- 4.Mohammed Husain
- 5.Arokiamary
- 6.Selvanayagam
- 7.Arpuhasamy
- 8.Kumar

...

Respondents

Prayer:- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 16.12.2011, in A.S.No.17 of 2011, on the file of the IV Additional Subordinate Court, Coimbatore, reversing the Judgment and Decree dated 13.09.2010, in O.S.No.458 of 2005, on the file of the III Additional District Munsif Court, Coimbatore.

For Appellants : Mr.P.Valliappan, Senior Counsel
for Mr.S.M.S.Shriram Narayanan

For R1 to R3 : Mr.K.S.Vishwanathan,
for Mr.J.Rajmohan

R4 to R8 : Set exparte

JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 16.12.2011, in A.S.No.17 of 2011, on the file of the IV Additional Subordinate Court, Coimbatore, reversing the Judgment and Decree dated 13.09.2010, in O.S.No.458 of 2005, on the file of the III Additional District Munsif Court, Coimbatore.



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2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The case of the plaintiffs, in brief, is that the plaintiffs are the owners of the suit property. They have purchased the suit property by way of a sale deed dated 13.12.1989. On the eastern portion of the suit property, the defendants are in occupation of certain portions, which are situated abutting the north south Coimbatore Palghat National Highways road. The defendants have to be evicted from their occupied areas and action has to be initiated since the defendants are making attempts to put up additional construction by encroaching further into the suit property. Hence the plaintiffs filed a suit against the defendants seeking the relief of permanent injunction restraining the defendants and their men from putting up any new structures by encroaching the vacant place within the suit property.

4. The defendants filed a written statement, contested the suit and denied the allegations in the plaint. The defendants and their predecessors in title are settled long back in the property. They are tenants of the vacant site in S.F.Nos.259 & 260 for the past 45 years in Coimbatore Village. Some of the defendants put up a concrete constructions and they are in peaceful possession



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and enjoyment of the properties in their possession. The plaintiffs are not entitled to evict the defendants. Only to harass the defendants, the suit has been filed and thus, pleaded to dismiss the suit.

5. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed with cost?

2. To what other reliefs the plaintiff is entitled to?

6. Before the Trial Court, in support of the plaintiffs' case, PWs 1 & 2 were examined and 6 documents were marked as Ex.A.1 to Ex.A.6. On the side of the defendants, no witness was examined and no documents were marked. CW1 was examined and Exs.C1 & C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court found that the defendants are in occupation of some extent of the suit land, without a suit for recovery of possession, injunction cannot be granted and the plaintiffs failed to



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prove their case and dismissed the suit with a direction to the parties to bear their own costs.

8. Aggrieved over the same, the plaintiffs had preferred the First Appeal in A.S.No.17 of 2011, on the file of the IV Additional Subordinate Court, Coimbatore. The First Appellate Court, after considering the entire materials, set aside the judgment and decree of the Trial Court and allowed the appeal. Now, challenging the same, the present second appeal has been filed.

9. The second appeal has been admitted on the following substantial questions of law:

- 1. Whether the First Appellate Court has pronounced a judgment without framing necessary points for determination as contemplated under Order 41 Rule 31 of C.P.C.?***
- 2. Whether the First Appellate Court has committed an error in not considering the plea of the defendants that the present suit is an abuse of process of Court in the light of the admission made by the plaintiffs that the earlier suits for the same reliefs were filed and they were not aware of the results of those suits?***



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3. *Whether the Lower Appellate Court has rendered a perverse finding to the effect that the vacant site is in the possession of the plaintiffs, totally ignoring the plea of the plaintiffs that they are in possession of a vacant space to a width of 10 feet as the backyard of the filled up portion in the occupation of the each defendants?*

10.The learned counsel appearing for the appellants submitted that there is no cause of action for the plaintiffs to file the suit. The Trial Court, based on the evidence, observed that PW1 in his cross examination had stated that one Mumtaj and some other persons were tried to interfere with the possession of the suit properties. The said Mumtaj was not added as a party to the suit. Though it is stated during the cross examination that a police complaint was given against them, the complaint was not filed before the Trial Court and the allegations of interference caused by the defendants was not at all proved by the plaintiffs. It further observed that although the Commissioner had stated in his report that the defendants had encroached upon some extent of land belonging to the plaintiffs and Ex.C2 plan speaks about the encroachment, the plaintiffs had not come forward with a suit for recovery of possession. When the plaintiffs had come forward for a discretionary relief of injunction possession



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has to be proved by the plaintiffs. But, the plaintiffs in this case have miserably failed to prove the alleged interference caused by the defendants. In such circumstances, without a prayer for eviction, the relief of permanent injunction is declined. The Court below failed to appreciate the fact that the defendants' attempt to put up further construction was not proved by the plaintiffs. The Court below failed to see that the suit relief claimed was totally misconceived and untenable in law. The Court below is not correct in granting injunction when the plaintiffs have not established the alleged interference caused and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

11.The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and contended that plaintiffs had proved their possession and cause of action as stated in the plaint. It is evidenced from the Commissioner's report that the defendants are encroaching some portions of the land belonging to the plaintiffs. In order to prevent them from further encroachment, the First Appellate Court granted the injunction against the defendants. There is no illegality in the findings of the First Appellate Court. No ground for interference is made out. The findings is based on the evidence and facts and no substantial questions of law is involved in this case for



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interference by this Court and thus pleaded to dismiss the appeal.

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12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.On a perusal of the records and from the submissions of the learned counsel appearing for the parties, it is seen that the plaintiffs are the absolute owners of the plaint schedule property. It is evidenced by way of Ex.A1 sale deed dated 13.02.1989, Ex.A2 sale deed dated 11.06.1990, Ex.A3 sale deed dated 11.06.1990 and Exs.A4, A5 & A6 patta dated 09.02.2000. Thus, the ownership of the plaintiffs over the plaint schedule property is not disputed by the defendants. Further, on a perusal of the Commissioner's report Ex.C1 and Surveyor's plan Ex.C2, it is noticed that the Commissioner in paragraph No.4 of his report Ex.C1 had noted the encroachment made by the defendants. The prayer of the plaintiffs is that to grant injunction and to prevent the defendants from further encroachment. Admittedly, the defendants encroached some portions of the plaint schedule property. It is open to the plaintiffs to recover the encroachment portion, but, there is no reason for refusing the permanent injunction against the defendants from further encroachment.



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14. Therefore, the First Appellate Court had rightly granted the permanent injunction against the defendants from further encroachment of the plaint schedule property. The findings of the First Appellate Court is based upon the evidence and the Commissioner's report. It has not committed any error in considering the pleading of the parties. There is no irregularity or perverse in the findings of the First Appellate Court and there is no substantial questions of law involved in this case. The second appeal is not maintainable and there are no merits in the second appeal.

15. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

28.06.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No



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V.SIVAGNANAM, J.

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To

- 1.The IV Additional Subordinate Court, Coimbatore,
- 2.The III Additional District Munsif Court, Coimbatore.

Pre-Delivery Judgment made
in S.A.No.930 of 2012

28.06.2024