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S.A.No.836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.836 of 2023

Parimalam

... Appellant

-Vs-

1.Madras Medical Mission,
An institution represented by its
Honorary Secretary : Mr.K.V.George
Office at Kuzhuvari Road,
Ganapathy Chettykulam, Kalapet,
Pondicherry – 605 014.

2.Electricity Department, Pondicherry,
Represented by its Superintending Engineer – 1
Office of Electricity Department (Main),
Pondicherry – 605 001.

3.Oulgaret Municipality
A local authority,
Represented by its Commissioner,
Office at Second Cross Street,
Jawahar Nagar, Boomianpet,
Pondicherry – 605 005.

4.Union of India
Represented by its Chief Secretary,
Government of Pondicherry,
Office at “Chief Secretariat”,
Goubert Avenue (Beach Road),
Pondicherry – 605 001.



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5. Vedhavalli
6. Durairaj
7. Jeyaramamurthy
8. Sivaraman

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 29.10.2022 made in A.S.No.17 of 2007 on the file of the Court of the learned Additional Sub Court, Puducherry, by reversing the judgement and decree dated 13.02.2007 made in O.S.No.748 of 2001 on the file of the Court of the learned District Munsif Court, Puducherry.

For appellant : Mr.V.Raghavachari, Senior Counsel,
for Mrs.Srimathi.V

For R1 : Mr.R.Rana Prithvi
for M/s.BFS Legal

JUDGMENT

Aggrieved by the dismissal of the suit in O.S.No.748 of 2001 by the learned I Additional District Munsif, Pudhucherry, insofar as it related to the relief of declaration, the plaintiff had filed an appeal before the Additional Sub Court, Puducherry, in A.S.No.17 of 2007 and the learned Sub Judge had also confirmed the



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judgment and decree of the Trial Court.

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2. The facts which have given rise to the filing of this second appeal are hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed the above referred suit for the following reliefs.

(i) declaring that he is the absolute owner of the 'B' schedule mentioned property;

(ii) a permanent injunction restraining the defendants, their men or agents from interfering with the peaceful possession and enjoyment of the 'B' schedule property by the plaintiff; and

(iii) Costs of the suit;

2.2. The relief claimed is with reference to 'B' schedule property. It is the case of the plaintiff that the large extent of land



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described in the 'A' schedule was owned by one Visvanatha Gounder of Periakalapet, he having purchased the same under a registered sale deed dated 12.09.1973. Visvanatha Gounder was in possession and enjoyment of 'A' schedule property till his death and on his death, his widow Vedhavalli and four sons viz., Durairaj, Jayaramamurthy, Sivaraman and Jayaraman who are arrayed as the defendants 5 to 9 herein, were in possession and enjoyment of 'A' schedule property.

2.3. The plaintiff would submit that under the sale deed what was conveyed to Visvanatha Gounder was an extent of 18 ares 20 centiares which is equivalent to 34 kuzhis. However, as per the settlement records, the said Visvanatha Gounder was in enjoyment of 20 ares which is equivalent to 37 kuzhis 6 veesams. Thereafter, the plaintiff had sold 'A' schedule property measuring 18 ares 20 centiares which is equivalent to 34 kuzhis to the first defendant under a registered sale deed dated 27.09.1999 and retained the



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property measuring 3 kuzhis 6 veesams in the south east corner of the 'A' schedule property which has been described as 'B' schedule property. This 'B' schedule property was conveyed to the plaintiff by the defendants 5 to 9 under a registered sale deed dated 06.07.2000. The plaintiff has been in possession and enjoyment of 'B' schedule property since then.

2.4. While so, the plaintiff would submit that in the late hours of 31.10.2001 at around 10 p.m., the third defendant started to fill up red soil in 'B' schedule property. Immediately on coming to know about this, the plaintiff rushed to the spot and stopped the said illegal activity. The plaintiff would submit that she is taking steps to construct a house in 'B' schedule property and in this background, the illegal acts of the defendants are causing great hardship and inconvenience to the plaintiff. The defendants 1 to 4 are trying to grab the 'B' schedule property from the plaintiff by force and violence. Therefore, the plaintiff had come forward with



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the suit in question.

2.5. The first defendant had filed a written statement *inter alia* contending that the larger extent of the suit property measuring an extent of 18 ares and 20 centiares equivalent to 34 kuzhis originally belonged to one Gunapoosaniammal which she later sold to Viswanatha Gounder. To the east of the suit 'A' schedule property, originally, a cart track was available to reach the adjoining villages. However, during resurvey, that property was recorded in the name of the plaintiff's father without any title. Even in the plaintiff's sale deed, the 'B' schedule property was not shown as it belongs to Viswanatha Gounder or defendants 5 to 9. In fact, the 1st defendant gave his property in the extent of 30 x 60 feet to facilitate laying of the road by the Municipality. The defendants 5 to 9 insisted them to purchase the 'B' schedule property. But, since the property belongs to Oulgarte Commune, he refused. So, the plaintiff who is the wife of 6th defendant and daughter-in-law of 5th defendant and sister-in-law of 7th and 9th defendants, created the



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documents themselves without any title or possession. Therefore, the 1st defendant prayed to dismiss the suit with costs.

2.6. The second defendant filed a written statement which was adopted by the 4th defendant. It is their contention that both the 2nd and 4th defendants are not necessary parties to this suit. There is no iota of truth in the allegation of the plaintiff that they are trying to put up electric poles. In fact, the Government of Pondicherry sanctioned high tension supply to the first defendant at Kalapet. But, except the sanction, no works were done in field and no steps have been taken to fix the poles. Further, no notice under Section 80 of C.P.C. was issued to them. Therefore, they prayed for the dismissal of the suit.

2.7. The 3rd defendant filed a written statement *inter alia* contending that they proposed to develop the road adjacent to the PIMS in Kanagachettikulam by widening the existing Municipality



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road from 8 meters to 20 meters. As per the direction of the Government, the Municipality has started the work with the contractor. Even the PIMS has shifted the fencing on the eastern boundary by leaving 8 meters width. Further, the Municipality stated that the pre-suit notice was not issued to them. Since the suit property is worth several lakhs of rupees, this Court does not have pecuniary jurisdiction. Therefore, he prayed to dismiss the suit.

TRIAL COURT:

3. On the basis of pleadings, the Trial Court had framed the following issues.

“(1)Whether the plaintiff is the absolute owner of the B schedule property?

(2)Whether the plaintiff is entitled for permanent injunction as prayed for?

(3)Whether the suit is bad for mis-joinder of necessary party?



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(4)Whether the suit has been properly valued by the plaintiff and correct Court fees has been paid by him?

(5)Whether the B schedule land belonging to Ozhukurai Commune?

(6)Whether the plaintiff's vendor had in possession of the B schedule property?

(7)To what reliefs, are the parties entitled?"

4. The plaintiff had examined herself as P.W.1 and marked Exs.A1 to A7. On the side of the defendants, the first defendant's representative, Anand, was examined as D.W.1 and Exs.B1 to B4 were marked. The Assistant Engineer of the Electricity Board viz.,Prem Kumar Doss was examined as D.W.2 and marked Ex.B5 through him.

5. The learned Judge, on considering the evidences on record, dismissed the suit without costs.



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LOWER APPELLATE COURT:

6. The said judgment and decree was taken up on appeal before the Subordinate Judge, Puducherry, in A.S.No.17 of 2007. The learned Judge, by his judgment and decree dated 29.10.2022, partly allowed the appeal, taking into account the fact that the plaintiff had proved her possession of 'B' schedule property and also taking into account the contention of the third defendant that 'B' schedule property is a cart track and they are willing to lay the road since the revenue records stand in the name of the original owner Visvanatha Gounder and his vendors. The learned Judge also held that till such time, the possession of the plaintiff has to be protected. The appeal was partly allowed confirming the judgment of the Trial Court with reference to the relief of declaration and granting injunction restraining the defendants 1 to 4 from trespassing into the peaceful possession and enjoyment of 'B' schedule property by the plaintiff. However, it was also clarified



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that the judgment would not stand in the way of the defendants taking steps to rectify the revenue records.

7. Challenging the same, the plaintiff is before this Court.

8. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

9. Extensive arguments were made by the learned Senior Counsel appearing on behalf of the counsel for the appellant, to state that right from the time of Visvanatha Gounder, they were in enjoyment of the entire extent of 37 kuzhis though the sale deed in favour of Visvanatha Gounder was only for an extent of 34 kuzhis. He would submit that the possession of the property by the plaintiff has not been disputed by any of the defendants and therefore, both the Courts below have granted decree for injunction but dismissed



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the suit. He would submit that the title of the property cannot be held in a vacuum, since as on date, there is no document of title with reference to 'B' schedule property, except the possessory right. He would further submit that the defendants have not claimed any right to the extent of 37 kuzhis 6 veesams.

10. Before proceeding to discuss the grievances in the judgment under appeal, this Court first attempted to identify and locate 'B' schedule property. The contention of the plaintiff is that 'B' schedule property is situate on south east corner of 'A' schedule property. The 'A' schedule property has been described by the following boundaries.

On the East by Rathina Kuppusamy dry land;

On the West and North by cart track; and

On the South by Pillaiyar Koil Manyam Land.

10.1. The 'B' schedule property which is stated to be in the



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south east corner is described by the following four boundaries.

On the North by cart track;

On the West by road; and

On the South and East by lands belonging to the first defendant.

10.2. A mere perusal of these boundaries would clearly show that 'B' schedule property is not situate in the south east corner of 'A' schedule property.

11. That apart, the said Visvanatha Gounder who is the predecessor-in-title to both the first defendant as well as the plaintiff, had purchased 'A' schedule property under Ex.B3 – sale deed dated 12.09.1973 from one Gunapoosaniammal. The property is situate in R.S.No.10/6 and the property that has been sold is an extent of 34 kuzhis within specified boundaries. Therefore, 'B' schedule property was not conveyed to Visvanatha Gounder.



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However, under the sale deed dated 06.07.2000 in favour of the plaintiff, the legal heirs of the said Visvanatha Gounder would submit that the entire schedule of the property had been purchased by them under the sale deed dated 12.09.1973. As already stated, under the sale deed dated 12.09.1973, only an extent of 34 kuzhis has been conveyed and this land has been conveyed earlier in point in time to the first defendant by the legal heirs of the said Visvanatha Gounder under a registered sale deed dated 27.09.1999. Therefore, the predecessor-in-title of the plaintiff did not have any right by way of title deeds to 'B' schedule property, but, she has been in enjoyment of the same. Therefore, the Lower Appellate Court has rightly allowed the appeal in part and granted injunction. I see no reason to disagree with the judgment of the Lower Appellate Court.

Accordingly, this second appeal stands dismissed since the appellant has not made out any substantial question of law. No



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costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

ssa

To

- 1.The Additional Sub Court, Pudhucherry.
- 2.The I Additional District Munsif, Puducherry.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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