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S.A. No.976 c



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM :

THE HON'BLE MR. JUSTICE N. SENTHILKUMAR

**S.A. No. 976 of 2016
and C.M.P. No.19905 of 2016**

1. G. Shanmugam
 2. S. Rathinammal
- ... Appellants/ Appellants/ Defendants

Vs.

Vasanthan ... Respondent/ Respondent/ Plaintiff

Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 01.06.2016 made in A.S. No.45 of 2013 on the file of the I Additional District and Sessions Court, Vellore, Vellore District confirmed the Judgment and Decree dated 31.01.2013 made in O.S. No.162 of 2002 on the file of the learned District Munsif, Vellore, Vellore District.

For Appellants : Mr. K. Kathiresan

For Respondent : Mr. R. Rajarajan

JUDGMENT

This second appeal has been filed by the unsuccessful defendants

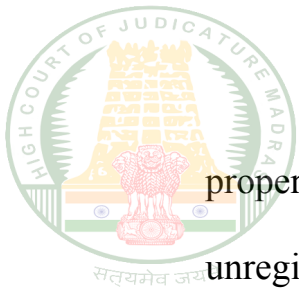


challenging the concurrent finding of the Courts below, decreeing the suit filed by the plaintiff seeking permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and mandatory injunction directing the defendants to remove cut stone foundation unlawfully raised in the CDBH area of the plaint plan and to remove the small wall put up by the defendants in the suit property.

2. For the sake of convenience, the parties are referred according to their litigative status and rank before the Trial Court.

2.1 The brief facts leading to the filing of this appeal are as follows:

2.2 The suit scheduled property is a poramboke land, situated in the hill foot in Sathuvachari on the south of Phase II area of Tamil Nadu Housing Board. Originally, the defendants constructed huts in the said poramboke land and then put up constructions in the encroached area. In the year 1988, the defendants offered the present suit property area, which is in the northern portion of the property originally encroached by the defendants to the plaintiff by receiving a sum of Rs.10,000/- and allowed the plaintiff to live in the suit



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property. The defendants acknowledged the same by entering into an unregistered sale deed dated 31.01.1990 executed by the second defendant in favour of the plaintiff. From that date onwards, the plaintiff is in exclusive possession and enjoyment of the suit property and subsequently, the plaintiff had removed the hut and constructed a open terraced building and she is living there. The plaintiff further stated that, she left three and half feet of land on the eastern side and one and half feet open space on the southern side of her building in the suit property, with a view to raise compound wall. But, the defendants, at a later point of time began to claim right over the three and half feet space, which has been left by the plaintiff. The defendants by trespassing the said three and half feet space, have dug a pit for four feet. It is further stated that the defendants have no manner of right or title to claim any portion of the suit property, which they have alienated to the plaintiff, hence, she has filed a suit seeking permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and also sought for mandatory injunction for removal of the cut stone foundation and small wall put up by the defendants in the suit scheduled property.

2.3 The first defendant filed a written statement, which has been

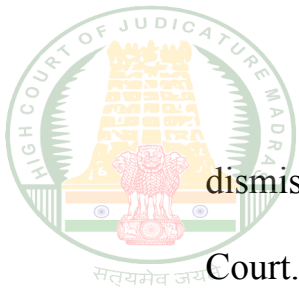


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adopted by the second defendant, stating that the defendants have been residing in the area for over a period of 35 years and the plaintiff is the cousin sister of the second defendant. With a view to help the plaintiff, the second defendant has offered part of her house in the year 1990 to the extent of 24.5 feet east to west and 30 feet north to south. It is further stated that during the process of laying roads by the Sathuvachari Panchayat, a portion of the land, in the occupation of the plaintiff was carved out, hence there is no open space either on the east or south of the area, which is in possession of the plaintiff. The defendants denied the allegations levelled against them and prayed for dismissal of the suit.

2.4 The Trial Court after hearing both sides and upon perusal of averments made in the plaint and the written statement, framed necessary issues and after appreciating the evidence placed on record, decreed the suit as prayed for.

2.5 Aggrieved over the decree and judgment, the defendants have filed an appeal before the learned I Additional District and Sessions Judge, Vellore. The lower Appellate Court after hearing both sides framed necessary points for determination. Considering the evidence adduced on both sides,



dismissed the appeal by confirming the decree and judgment of the Trial Court.

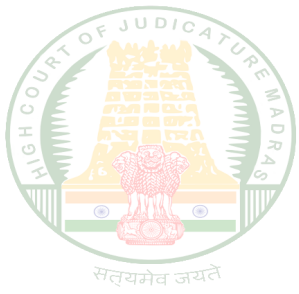
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3. Aggrieved over the judgment and decree of the lower Appellate Court, the appellants/ defendants have preferred this appeal.

4. This Court after considering the representation on both sides, admitted the appeal by framing the following substantial question of law:

a) Have not the Courts below committed an error of law in granting a decree based upon a unregistered sale deed over the suit property which is a poramboke land especially when the appellants are in possession?

5. The learned counsel appearing for the appellants/ defendants would submit that the Courts below failed to appreciate the evidence adduced on the side of the defendants, more particularly, the Courts below have not considered that only the superstructure was sold out, the unregistered sale deed dated 03.01.1990 marked as per Ex.A.1. He also submitted that the prayer of mandatory injunction is not maintainable in respect of the suit property constructed. Therefore, he prayed to set aside the judgment and decree of the Courts below.



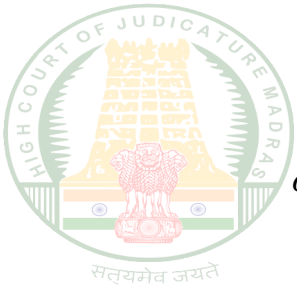
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6. The learned counsel appearing for the respondent/ plaintiff would submit that both the Courts below have properly appreciated the evidence placed on record and decreed the suit in favour of the plaintiff, therefore, he prayed to confirm the judgment and decree of the Trial Court and the first Appellate Court.

7. I have considered the submissions made on both sides and perused the entire materials available on record.

8. The Trial Court after hearing both sides and upon perusal of the averments both in the plaint and the written statement, framed the following issues:

- 1. Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for?*
- 2. Whether the plaintiff is entitled for the relief of mandatory injunction as claimed for?*
- 3. Whether the plaint is liable to be rejected on the ground of non-joinder of necessary parties?*
- 4. Whether there is no cause of action for filing the suit by the plaintiff?*
- 5. Whether there is any other relief that can be granted in favour*

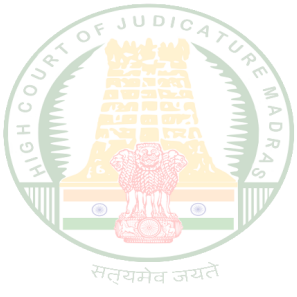


of the plaintiff?

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9. Before the Trial Court, the plaintiff was examined as P.W.1 and Exs.A.1 to A.30 were marked and the Advocate Commissioner one Anbarasan was examined as P.W.2 and through him Advocate Commissioner Report was marked as Ex.C.1. On the side of the defendants, the first defendant was examined as D.W.1 and no documents were marked. The unregistered agreement of sale was entered between the plaintiff and the defendants with regard to the suit property on 31.01.1990 and the same has been marked as Ex.A.1. The property tax receipts, electricity consumption charge receipts and copy of the complaint given by the plaintiff before the police station were also marked as exhibits before the Trial Court. The report of the Advocate Commissioner was marked as Ex.C.1. The relevant portion of the observations made by the Trial Court is extracted hereunder.

”தாவா சொத்து ஆதியில் வடக்கு-தெற்கு 30 அடிஇ கிழக்கு-மேற்கு 24 ½ அடி மனுவில் உள்ளது. அளக்கும் போது கிழக்கு மேற்கு 20.8 அடி. இதில் வடக்கு தெற்கு மேற்புறம் 28.8 அடி. கீழ்புறம் 28 அடியும் கட்டிடம் கட்டப்பட்டுள்ளது. வடக்கு தெற்கு மேல்புறம் 28.2 கீழ்புறம் 28 அடி கொண்ட அளவாக உள்ளது. மனுதாரர் வழக்கில் கூறியுள்ள கிழக்கு – மேற்கு 24 ½ அடியில் மனுதாரரின் வீடு 20.8 அடியும், மீதமுள்ள 3 ¾ அடி எதிர்மனுதாரர் வசம் ஆணையாளர்



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வரைபடத்தில் உள்ளவாறு அமைந்துள்ளது. இந்த 3 3/4 அடியில் எதிர்மனுதாரர் உட்பட்ட இடத்தில் உள்ளது. இது ஆணையாளர் வரைபடத்தில் சிவப்பு நிறத்தில் குறிக்கப்பட்டுள்ளது. இதில் பிரதிவாதிகள் புதிதாக கட்டப்பட்ட கம்பவுண்ட் சுவர் மனுதாரர் வீட்டை ஒட்டி கட்டப்பட்டுள்ளது. மனுதாரர் வீட்டின் சமையல் அறையில் கிழக்கு நோக்கி உள்ள ஜன்னல் எதிர்மனுதாரர் கட்டியுள்ள அறையில் மூடப்பட்டுள்ளது. இது ஆணையாளர் வரைபடத்தில் மனுதாரர் சமையலறை ஜன்னலை ஒட்டி கட்டப்பட்டுள்ள அறை பச்சை வண்ணத்தில் கட்டப்பட்டுள்ளது என்று ஆணையர் தன் அறிக்கையில் மிக தெளிவாக குறிப்பிட்டுள்ளார்.”

10. The Trial Court after examining the documents filed by the plaintiff has come to the conclusion that the defendants have encroached upon the property belonging to the plaintiff, which has been shown in the Advocate Commissioner's Report i.e., Ex.C.1. Further the Trial Court held that, as per Ex.A.1 - unregistered sale agreement the defendants have no right over the encroached portion of the suit scheduled property, hence there is a cause of action, since the defendants have made an encroachment in the property, which was in possession of the plaintiff/ respondent herein. The Trial Court decreed the suit in favour of the plaintiff.

11. The defendants challenging the judgment and decree of the Trial Court filed an appeal before the learned I Additional District and Sessions

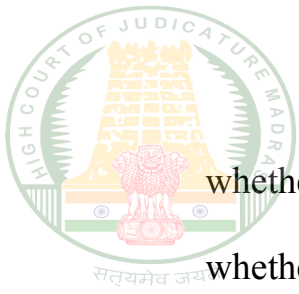


Judge, Vellore. The first Appellate Court after considering the judgment of the Trial Court and the grounds of appeal, framed the following points for consideration.

- 1. Whether the Trial Court was correct in deciding there was no evidence showing some portion of land under occupation of plaintiff taken over by the Panchayath to lay cement road?*
- 2. Whether the Trial Court was correct in deciding that there is sufficient cause of action?*
- 3. Whether the Trial Court was correct in deciding the suit was not affected for non-joinder of necessary parties?*
- 4. Whether the appeal has to be allowed?*

12. The First Appellate Court while answering the points, concurred with the findings rendered by the Trial Court and confirmed the judgment and decree of the Trial Court. Hence the present appeal.

13. Admittedly, in this case, the plaintiff and the defendants are relatives and the documents, which has been relied upon by the plaintiff is an unregistered sale agreement dated 31.01.1990, which shows that the second defendant has sold a portion of her land, which runs east to west 24 and half feet and north to south 30 feet. Therefore, the only point for consideration is

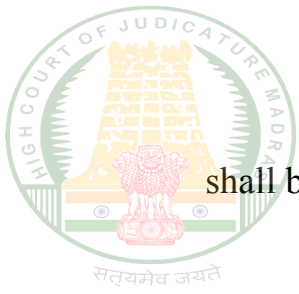


whether the defendants have any right over the suit scheduled property and whether they are in continuous possession and peaceful enjoyment of the same.

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14. Admittedly, the suit property is a Government poramboke land and there is no title for both the plaintiff and the defendants herein. The Hon'ble Supreme Court in ***Rame Gowda vs. M. Varadappa Naidu and Ors. [(2004) 1 SCC 769]***, has categorically held that, even in case of trespassing, the person must actually be in possession of the property for some period. Admittedly, the plaintiff has been in possession of the suit scheduled property. Therefore, based on the evidence adduced, both the Courts below had rightly decreed the suit in favour of the plaintiff. This Court finds that, there is no need for any interference in the concurrent findings rendered by the Courts below. The substantial question of law framed by this Court, while admitting this appeal is answered in favour of the plaintiff/ respondent.

16. In view of the above, this second appeal is dismissed and the judgment and decree of the learned I Additional District and Sessions Judge, Vellore in A.S.No.45 of 2013 dated 01.06.2016 is hereby confirmed. Consequently, connected civil miscellaneous petition stands closed. There



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shall be no order as to cost.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

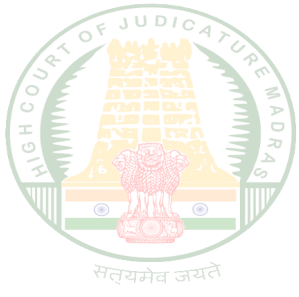
To:

1. The Section Officer,
VR Section,
High Court, Madras.

N. SENTHILKUMAR, J.

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