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S.A.No.949 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.No.949 of 2014
and C.M.P.Nos.17825 & 17826 of 2017
and M.P.Nos.1 & 2 of 2014 and 1 & 2 of 2015

1.Union of India,
Rep. By its Secretary, Finance Ministry,
Government of India, New Delhi.

2.The Commissioner of Customs
and Central Excise,
Government of India, Puducherry.

... Appellants

Vs.

1.Anandan

2.The Collector (Revenue)
Government of Pondicherry,
Pondicherry.

.. Respondents

PRAYER: Second Appeal filed under Section 100 of the C.P.C., against the judgment and decree dated 27.06.2014 received by the appellants on 21.07.2014 passed by the learned Principal Sub Judge at Pondicherry in A.S.No.3 of 2014 dismissing the appeal of the appellants herein and by confirming the judgment of the learned Principal District Munsif, Pondicherry passed in O.S.No.1508 of 2006 dated 17.01.2014.



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For Appellants : Mr.K.Mohanmurali
For R1 : Mr.I.Joseph
For R2 : Mr.G.Djearany
Government Advocate (Pondicherry)

J U D G M E N T

The Second Appeal is filed against the judgment and decree dated 27.06.2014 made in A.S.No.3 of 2014 on the file of the learned Principal Sub Judge at Pondicherry in dismissing the appeal of the appellants herein and by confirming the judgment of the learned Principal District Munsif, Pondicherry passed in O.S.No.1508 of 2006 dated 17.01.2014.

2. The appellants are the 1st and 2nd defendants, 2nd respondent is the 3rd defendant and 1st respondent is the plaintiff in the suit. The learned counsel appearing for the appellants confines to his argument that all these letters to be marked as sought in C.M.P.No.16210 of 2024 are in reference to Survey No.391/8 part, which even according to the 1st respondent herein, is not a subject matter before the Trial Court as well



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as before the Lower Appellate Court, this submission is recorded.

Originally, the suit was filed for bare injunction by the 1st respondent herein before the Principal District Munsif Court of Puducherry. The schedule of the properties are as follows:-

“புதுவை ரிடி. புதுவை சப்.ரிடி, புதுவை முனிசிப்பாலிட்டிவைச் சேர்ந்த நெலியார்பேட்டை கொமயூன் பஞ்சாயத்திற்குட்பட்ட, உழருதை கிராமம் உப்பளத்தில் கநாஸ்தர் நெ.152 பிடி, 173 பிடி, 174 பிடி, 175, 153 பிடி, 154 பிடி, ரீ.சர்வே நெ.392/2பிடி, 390/3பிடி, வார்டு-எப், பிளாக் நெ.7, டவுன் சர்வே நெ.1ல் அடங்கிய 12135 சதுர அடி அளவுள்ள காலிமனை மட்டும்.

இதற்கு சக்குபந்தி சிமென்ட் ரோட்டிற்கு தெற்கு காம்பவுண்ட் சுவர் போடப்பட்ட காலிமனைக்கு கிழக்கு, பிளாட் நெ.26, 27ம் கொண்ட மனைகளுக்கு மேற்கு தார் ரோட்டிற்கு வடக்கு இதற்குட்பட்டது.”

3. The case was filed by the plaintiff who is a first respondent herein, contending that, originally the suit property belongs to one Singaravelu Naicker through a French Will dated 23.02.1916. The



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properties enumerated in the suit schedule properties and the adjacent property was also maintained by one Muthalu, who was the relative of the grandmother of the 1st respondent/plaintiff. The said Singaravelu Naicker has donated the suit scheduled property on 29.02.1980 to Muthalu. From the said date, the said Muthalu was in possession and enjoyment of the suit property without any hindrance. The said Muthalu was in continuous enjoyment of the suit property and the said suit schedule property was sold to the 1st respondent/plaintiff vide sale deed dated 01.04.2004 for a sum of Rs.1,00,000/-. Though the sale deed was sold for a sum of Rs.1,00,000/- on 01.04.2024, the said sale deed was not registered. The claim of the 1st respondent/plaintiff is that the title was passed on from the said Muthalu to the 1st respondent/plaintiff who is in continuous possession of the property without any hindrance. The appellants/defendants 1 and 2 in the suit viz., Union of India represented by its Secretary, Finance Minister, Government of India, New Delhi and the Commissioner, Customs & Central Excise and Government of India, Gubert Avenue, Puducherry are the appellants herein. Both the appellants/defendants are making an attempt to trespass into the peaceful



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possession and enjoyment of the 1st respondent/plaintiff's property with a valid title and by virtue of the continuous possession and by way of a sale deed. It is seen that the said Muthalu has obtained this property by way of a French Will dated 23.02.1916 and the title was passed on to the 1st respondent/plaintiff by way of a sale deed dated 01.04.2004 for a sale consideration of Rs.1,00,000/-.

4. The appellants/defendants filed their written statement before the Trial Court disputing Ex.A1 which is the sale deed in favour of the 1st respondent/plaintiff dated 01.04.2004 and Ex.A2 is the document dated 29.02.1980, the settlement deed in favour of Muthalu by Singaravelu Naicker.

5. The Trial Court had formulated four issues, which are as follows:-

“1.Whether the plaintiff is in possession of the suit property?

2.Whether the allotment of the suit property by the 1st



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defendant to the 2nd defendant is true?

3. Whether the plaintiff is entitled for permanent injunction as prayed for in the suit?

4. To what relief the plaintiff is entitled? ”

During trial, the 1st respondent/plaintiff was examined as P.W.1 and he has marked 7 documents as Exs.A1 to A7. Ex.A1 is the Sale deed and Ex.A2 is the settlement deed executed by Singaravelu Naicker in favour of Muthalu, which goes unchallenged before the Lower Court. The suit was decreed in favour of the plaintiff as prayed for and the Trial Court has come to the conclusion that the defendants have not chosen to examine any of their witnesses and have not marked any document to establish their case and did not cross examine the 1st respondent.

6. The Trial Court considered Ex.A3, which is the encumbrance certificate dated 23.09.2004 in respect of the suit property. A perusal of Ex.A3 would show that there are innumerable transactions between the said Singaravelu Naicker and other persons and the said Singaravelu Naicker has sold a larger extent of the suit property and it is also evident



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that the said Singaravelu Naicker has settled a portion of the said property to an extent of 21 Kuzhees (12,132 Sq.Ft) to one Muthalu which is evident from Ex.A2. The 1st respondent/plaintiff has purchased the above said suit property to an extent of 21 Kuzhees 1 Veesam (12,132 Sq.Ft) through Exs.A1 and A2.

7. The 2nd appellant has contended that the Government of Puducherry has allotted the schedule mentioned property to the 2nd appellant/2nd defendant on 05.10.1993 and from that date, the 2nd appellant/2nd defendant was in continuous enjoyment and possession of the schedule mentioned property. After 13 years from the date of allotment No.7358/C1/93 dated 03.08.1993, the 2nd appellant/2nd defendant has not produced any piece of evidence before the Trial Court.

8. Taking this into consideration, the I Appellate Court has come to the conclusion that the 2nd appellant has not produced any document to establish before the Trial Court that they possess these lands in these particular Survey Number or to show that the said land was given to the



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2nd respondent by way of producing any documents before the Trial Court and in the absence of any evidence marked, either oral or documentary, confirmed the judgment and decree of the Trial Court dated 17.01.2014 passed in O.S.No.1508 of 2006.

9. Challenging the same, the present Second Appeal has been filed by the 1st and 2nd appellants.

10. Heard the learned counsel appearing for the appellant, learned counsel for the 1st respondent as well as the learned Government Advocate appearing for the 2nd respondent and perused the entire materials available on record.

11. While admitting the Second Appeal, this Court was pleased to frame the following substantial question of law:-

“When the plaintiff has filed the suit for bare injunction against the defendants and after filing a detailed written statement denying the title and



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enjoyment of the suit property by the plaintiff, whether it is legally permissible on the part of the Trial Court to decree the suit, when there is no prayer for declaration of title of the suit property? ”

12. The facts are not in dispute. The only point for consideration is whether the 1st respondent/plaintiff has made out the case that he was in continuous possession and whether the possession was disturbed in any manner. It is crystal clear that the 1st respondent/plaintiff was admittedly in possession of suit scheduled property in Survey Nos.392/2 part and 390/3 part, which is not disputed by the appellants herein, before the Trial Court as well as before the I Appellate Court. In the absence of any material before the Trial Court, the same has been confirmed by the I Appellate Court. When the appellants have not chosen to examine themselves to establish their case, or to mark any document to substantiate that they are the title owners of the suit scheduled property, the bare injunction suit filed by the 1st respondent/plaintiff cannot be disturbed. The substantial question of law framed in this Second Appeal



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is in favour of the 1st respondent and it is answered accordingly.

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13. It is made clear that the 1st respondent/plaintiff's prayer itself is with regard to Survey Nos.392/2 part and 390/3 part and the petition in C.M.P.No.16120 of 2024 filed by the appellants to mark certain documents which refers to Survey No.391/8 part is not in dispute before the Trial Court, the I Appellate Court and before this Court.

14. The 2nd respondent would only contend that the land was allotted to them by way of a letter dated 03.08.1993 on 05.10.1993. Though the 2nd respondent contends that the property was allocated to them on 05.10.1993, they have not marked any document before the Trial Court as well as before the Appellate Court for establishing a case that the land was allocated to them. The 2nd respondent has not even made any attempt before the lower Court to show that the said lands were allocated to them. A mere pleading in the written statement or by way of counter by the 2nd respondent herein will not strengthen the case. In the absence of any specific pleadings before the Trial Court and in the absence of any



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specific issues framed there on, this Court cannot go on any factual possession in favour of the 2nd respondent.

15. In view of the same, the Second Appeal fails and the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

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Index :Yes/No
gsa

To

- 1.The Principal Subordinate Judge,
Pondicherry.
- 2.The Principal District Munsif,
Pondicherry.



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