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S.A.No.788 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.788 of 2023
and
C.M.P.No.24770 of 2023

K.Devaraj

... Appellant

Vs.

1. M.Kanagaraju
2. M.Indrani

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 25.07.2023 in A.S.No.32 of 2020 passed by the learned II Additional Sub Judge, Coimbatore, reversing the judgment and decree of O.S.No.884 of 2011 dated 31.01.2020 passed by the learned III Additional District Munsif Court, Coimbatore.

For appellant	: Mr.V.Raghavachari,Senior Counsel for Mr.V.S.Senthilkumar
For respondents	
For R1	: Mr.T.K.S.Gandhi
For R2	: Not ready in notice

JUDGMENT



The plaintiff, who has been unsuccessful before the Lower Appellant Court, has filed the above second appeal.

2. The facts are set out hereinbelow with the parties being referred to as plaintiff and the defendant before the Trial Court.

FACTS OF THE CASE:

2.1. The suit in O.S.No.884 of 2011 has been filed by the plaintiff on the file of the learned III Additional District Munsif Court, Coimbatore, for permanent injunction restraining the defendants, their men, agents, personnel, staff, henchmen and others from disturbing the peaceful possession and enjoyment of the suit schedule property by the plaintiff.

2.2. It is the case of the plaintiff that the suit property, along with the adjacent properties, belonged to late Chinnaswami who died intestate in the year 1946. The said Chinnaswami had left behind him surviving his sons viz., C.Krishnan, C.Narayanan and C.Sitaraman, who



were enjoying the properties jointly.

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2.3. Thereafter, the first son of late Chinnaswami viz., C.Krishnan has filed a suit for partition of the properties of his father and a preliminary decree was passed on 12.02.1963 allotting 1/3rd share to the said C.Krishnan. Thereafter, on 27.08.1963, a final decree was passed in I.A.No.706 of 1963 allotting the property marked as A, A1 and E, E1 in the Commissioner's report therein, to the said C.Krishnan and possession was also delivered under him in execution proceedings in E.P.R.No.326 of 1964. The property was recorded as bearing Old Door Nos.15/13, 14, 15 and 16 and new door nos.24, 25 and 26. The possession of the property was also delivered on 29.05.1964 to him.

2.4. The said C.Krishnan died intestate on 19.10.1970, leaving behind him his first wife's son viz., K.Devaraj (the plaintiff herein) and the first wife daughters viz., Kannammal and Nagarathinam, second wife Vengammal and her son K.Kumar. On the death of the said C.Krishnan, his legal heirs were jointly enjoying the suit property.



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2.5. Sitaraman, the third son of late Chinnaswami was allotted the portions marked as D and D1 in Commissioner's report in I.A.No.706 of 1963. Sitaraman died on 11.10.1998, leaving behind his wife M.Indrani(the defendant herein). The defendant and late Sitaraman had been living separately for several years prior to his demise and in fact, proceedings to dissolve their marriage was also pending. Late Sitaraman was enjoying his property without the defendant making any claim for the property. After his demise, the defendant made a claim for the property as his wife and occupied the nearby properties.

2.6. The plaintiff would submit that he, along with the other legal heirs of the late C.Krishnan, had been enjoying the suit property, without any hindrance for several years. Thereafter, once the defendant had occupied the property, she had started disturbing the possession of the plaintiff and had also started picking up quarrel with him. It appears that the intention of the defendant was to somehow evict the plaintiff from the property and grab the said property. Thereafter, on



13.05.2011, the defendant along with the help of the hooligans, had tried to gain entry into the dwelling house of the plaintiff with ill-motive. They attempted to dispossess the plaintiff which attempt was successfully prevented by the plaintiff. The plaintiff would submit that in the light of this continuous disturbance to his possession, he has come forward with the suit for permanent injunction.

2.7. The suit was originally filed against the said M.Indrani and thereafter, the second defendant was impleaded. The first defendant M.Indrani had filed a written statement, in which, she had admitted the fact that she was not residing in Coimbatore, but, residing at Perianaickenpalayam. That apart, she would submit that her property was occupied by tenants who are residing and doing business there. The defendant would further submit that her husband's property had been illegally occupied by the third parties, it was the plaintiff who had assisted the defendant to retrieve the property after a prolonged litigation from the year 1999 to 2010. He had also given evidence in her suit in O.S.No.60 of 2001. The defendant would submit that since he



had assisted the plaintiff, he was expecting a good reward from her and since the same was not given by her, the plaintiff is enraged. The defendant would also submit that she had also taken possession of the house by initiating proceedings in E.P.No.116 of 2007 in O.S.No.60 of 2001 and she is in possession and enjoyment of the said property.

2.8. The defendant would further submit that the allegation of the plaintiff that she had quarreled and tried to dispossess the plaintiff on 13.05.2011 was absolutely false. She would submit that she has no interest over the property of the plaintiff. The defendant would submit that there is no cause of action for filing the suit and hence, sought for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues and additional issues:

“Issues:

1. இரண்டாவது கூடுதல் சார்பு நீதிமன்றத்தால் தாவா சொத்து



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அனுபவம் பிரதிவாதிக்கு கொடுக்கப்பட்டுள்ளதா?

2. வாதி அனுபவத்தில் தாவா சொத்து உள்ளதா?

3. வாதி கோரியுள்ள பிற உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

4. வாதிக்கு கிடைக்கும் இதர பரிகாரம் என்ன?

Additional issues:

1. இரண்டாவது கூடுதல் சார்பு நீதிமன்றத்தால் தாவா சொத்து அனுபவம் பிரதிவாதிக்கு கொடுக்கப்பட்டுள்ளதா?

2. வாதி அனுபவத்தில் தாவா சொத்து உள்ளதா?"

4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A3. On the side of the defendants, the first defendant had examined herself as D.W1 and marked Exs.B1 to B5 during the cross examination of P.W1 and no documents were marked during her evidence.

5. The learned Judge, on considering the evidences on record, had decreed the suit. Challenging the same, only the second defendant has filed an appeal in A.S.No.32 of 2020 on the file of the II Additional Sub Court, Coimbatore.



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LOWER APPELLATE COURT:

6. The Lower Appellate Court held that the first defendant was in possession and enjoyment of the suit property and therefore, the plaintiff is not entitled to the relief of bare injunction. That apart, the Court had taken note of the fact that the defendant had no intention to dispossess the plaintiff's possession and enjoyment of the property. In the plaint, it was stated that the defendant had attempted to trespass into the property. However, during the cross-examination, the plaintiff submitted that the property had been encroached by the first defendant. Therefore, he had not come forward with a fixed case and not entitled to injunction. Consequently, the Lower Appellate Court has reversed the judgment and decree of the Court below and allowed the appeal filed by the second defendant.

7. Aggrieved by the same, the plaintiff is before this Court.

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



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

“(i)Whether the deposition of the witness would win over the genuine documents produced before the Court?

(ii)Whether the admission made by the second respondent regarding the suit schedule property by giving her consent to grant the relief claimed for by the appellant be ignored by the Court?

(iii)Whether the Ex.A1 produced by the appellant before the Trial Court which is the final decree passed by the District Munsif Court at Coimbatore in O.S.No.1265 of 1962 by virtue of which partition has been effected and the appellant got possession of the suit schedule property not be considered as the title document of the appellant by the Court?”

DISCUSSION:

10. Mr.V.Raghavachari, Senior Counsel appearing on behalf of the learned counsel for the appellant would put forward a preliminary



contention that the first defendant, in her written statement itself, had admitted that she had no interest in the property allotted to the share of the plaintiff's predecessor and also stated that she had no objection to the suit being decreed in her evidence as D.W1. He would submit that the Lower Appellate Court has totally lost sight of this fact and has held that the first defendant has trespassed into the suit property and therefore, the suit filed for bare injunction and not suit for recovery of possession is not maintainable.

11. He would further submit that the Lower Appellate Court has also erred in coming to the conclusion that the plaintiff has not identified the property properly. Originally, the suit has been filed in Old Door Nos.15/3, 14, 15 and 16 and the first defendant had admitted the plaintiff's right to the same. He would submit that the suit has been filed only with reference to the plaintiff's father property and not the other shares. Therefore, he would submit that the judgment and decree of the Lower Appellate Court have to be set aside and the judgment decree of the Trial Court have to be confirmed.



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12. Mr.T.K.S.Gandhi, learned counsel appearing on behalf of the first respondent would submit that the plaintiff has come forward with the case that the property has been encroached upon and therefore, the suit for bare injunction is not maintainable. He would submit that during the cross-examination, the plaintiff has admitted this fact. He would further submit that the plaintiff has taken a contradictory stand in the pleading and in his evidence. In the plaint, what was stated is that only an attempt was made by the defendant to dispossess the plaintiff, whereas, during the evidence, the plaintiff has deposed that the property had been trespassed and encroached upon by the defendant. He would further submit that in the delivery notice for the execution proceedings in favour of the first defendant, the plaintiff has signed as a witness. Therefore, he would submit that the Lower Appellate Court has rightly reversed the judgment and decree of the Trial Court.

13. Heard the learned counsel on either side.

14. The suit property has been allotted to the share of the



plaintiff's father C.Krishnan in the proceedings in the partition suit in O.S.No.1265 of 1962. The final decree has also granted in the aforesaid suit in I.A.No.706 of 1963, in which, the present suit property has been allotted to the share of the plaintiff's father who was the plaintiff therein. Under this final decree proceedings, the properties were allotted to the share of the plaintiff's father C.Krishnan and his brothers. The present suit is with reference to the property that has been allotted to the share of the plaintiff's father C.Krishnan, into which property the defendants were attempting to trespass. However, the first defendant, who is the aunt of the plaintiff's paternal uncle, filed the written statement in which she has stated as follows:

“The allegation that on 13.05.2011 the defendant along with hooligans and antisocial elements tried to evict the plaintiff's property and attempted to dispossess the plaintiff is an utter falsehood. This defendant re-iterates that she is neither interested nor in noway concerned with the plaintiff or his properties.”

15. The above said stand has been reiterated by her in her



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evidence as D.W1 wherein she has submitted as follows:

“..... கிருஷ்ணனுக்கு பாத்தியப்பட்ட சொத்தில் வாதி குடியிருந்து வருவது குறித்து எனக்கு ஆட்சேபனை ஏதம் உள்ளதா என்றால் அதற்கும் எனக்கும் சம்பந்தம் இல்லை....”

and she has very clearly stated that she has no objection to the suit being decreed as follows:

“..... தாவாப்படி தீர்ப்பளிப்பதற்கு எனக்கு ஆட்சேபனை உள்ளதா என்றால் இல்லை....”

16. The first defendant has not chosen to challenge the decree passed in the suit in O.S.No.884 of 2011 and it is the second defendant, who has no right to the suit property, who has chosen to file an appeal and the appeal has been allowed on totally baseless grounds. The Trial Court has taken note of the submissions of the first defendant and has decreed the suit. The documents viz., Ex.A1 - certified copy of Advocate Commissioner's report in I.A.No.706 of 1963 in O.S.No.1265 of 1962 would clearly show that the suit property has been allotted to the share of the plaintiff's father. The first defendant had also admitted



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this fact and stated that she had no objection to the suit being decreed.

In the light of this document and the evidence of D.W.1, the appeal suit ought to have been dismissed. Therefore, the substantial question of law nos.1 and 2 are answered in favour of the plaintiff.

17. The Lower Appellate Court has totally ignored Ex.A1 which is the final decree proceedings, based upon which, the defendant would herself stake a claim to the property allotted to her husband. The Lower Appellate Court has ignored this vital document. In the light of this, the substantial question of law no.3 is also answered in favour of the plaintiff.

Accordingly, this second appeal stands allowed. Consequently, the connected C.M.P. stands closed. Considering the relationship of the parties, there shall be no order as to costs.

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

To

1. The Additional Sub Judge, Coimbatore.
2. The III Additional District Munsif, Coimbatore.
3. The Section Officer, V.R. Section, High Court, Madras.

P.T.ASHA, J.,

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