



S.A.(MD)No.1209 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.1209 of 2008

and

M.P.(MD)No.1 of 2010

A.Palrayan

...Appellant

-Vs-

K.Kaspar (Died)

2.Leena Poonkodi

3.Helan Sahayarani

... Respondents

(Respondents 2 and 3 were impleaded as legal representatives of the deceased sole respondent vide order of this Court, dated 18.02.2022 in C.M.P.(MD)No.9327 of 2021)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 29.07.2008 made in A.S.No.74 of 2007 on the file of the Subordinate Court, Ramanathapuram confirming the judgment and decree, dated 21.03.2007 made in O.S.No.24 of 2005 on the file of the District Munsif-cum-Judicial Magistrate, Rameswaram.

For Appellant :Mr.V.Nagarajan



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For Respondents :Mr.J.M.Hassanul Bazari

JUDGMENT

The defendant in the suit is the appellant. The deceased sole respondent herein filed a suit for bare injunction. The suit was decreed by the trial Court and the first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the defendant has come by way of this Second Appeal.

2.When the Second Appeal is pending, the sole respondent passed away and his legal representatives were brought on record as respondents 2 and 3.

3.According to the respondent/plaintiff, the suit property described as “ABCDEFGHA” in the plan appended with the plaint as well as the property of the defendant described as “ABCDKJIA” in the plaint plan originally belonged to one Anthony. There was a partition among the heirs of Anthony on 29.06.1924. The property of the defendant described as “ABCDKJIA”



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was allotted to the share of Anthony Pitchai in the partition deed, as item No.

3. He bequeathed the said property in favour of the defendant's father, Anthony Sundaram, by way of a Will. After the death of the defendant's father, Anthony Sundaram, the defendant had been in enjoyment of the above suit property. The property of the plaintiff on the southern side was allotted to the share of plaintiff's father, Selvanayagam in 29.06.1924 partition deed. After the death of his father, the plaintiff has been in possession and enjoyment of the same by constructing a house in the suit property and raising various trees. The defendant and others filed a suit for declaration of their title over the suit property on the northern side in O.S.No.71 of 2000 and the said suit was dismissed. However, the common pathway on the eastern side of the plaintiff's property was declared as common pathway between the parties. The defendant attempted to interfere with the plaintiff's property on the south side of *mattaiveli* (palm leaves fence) and hence, the plaintiff was constrained to file a suit for bare injunction.

4.The defendant filed a written statement and disputed the plan appended with the plaint. The defendant also filed a rough plan, which was



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marked as Ex-B1 and based on the same, he claimed right over the property on the northern side separated by a *mattaiveli*. The defendant claimed that he has right over the property described as “ABCDEA” in the plan and the plaintiff's predecessor-in-title, Selvanayagam, had no right over the same. The defendant also claimed that the entire property has not been in enjoyment of the plaintiff at any point of time. Thus, disputing the possession of the plaintiff over the suit property claimed by him, the defendant sought for dismissal of the suit.

5.Before the trial Court, the plaintiff was examined PW-1 and 11 documents were marked as Ex-P1 to Ex-P11. On behalf of the defendant, he was examined as DW-1 and the plan appended with the written statement was marked as Ex-B1. The Advocate Commissioner's report and plan were marked as Ex-C1 and Ex-C2.

6.The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff was entitled to a decree for bare injunction and decreed the suit as prayed for. Aggrieved by



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the same, the defendant filed an appeal in A.S.No.74 of 2007 on the file of the Subordinate Court, Ramanathapuram. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the appellant is before this Court.

7.The learned Counsel for the appellant vehemently contended that the plaintiff failed to prove his title as well as the possession over the property on the south of *mattaiveli* and therefore, the Courts below committed a serious error in granting a decree for injunction. The learned Counsel further contended that the plan appended along with the plaint is not correct and the Courts below ought to have taken into consideration the plan submitted by the defendant along with the written statement and the decree passed by the Courts below based on the plan submitted by the plaintiff is not correct. The learned Counsel further submitted that in view of the cloud over the title of the plaintiff over a portion of the property over which he claimed right, the suit for bare injunction without a prayer for declaration is not maintainable.

8.The plaintiff filed a suit for bare injunction based on his possession



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over the suit property. He claims right over the property described as “ABCDEFGHA” in the plaint plan marked as Ex-A1. According to the plaintiff, there is a *mattai* fence in the line “ABCD” and the property on the southern side of ABCD *mattai* fence belongs to him and the property on the north of the ABCD *mattai* fence is in enjoyment of the defendant. Disputing the plan appended with the plaint, the defendant along with the written statement filed his own plan and the same has been marked as Ex-B1. Both the plaintiff and the defendant have not given any measurement in the plans appended with the respective pleadings. But however, there is no much difference between the plans filed by the plaintiff and the defendant.

9. Though the learned Counsel for the appellant submitted that the defendant has got right till ED end in EX-B1 plan, a perusal of the same would suggest that there is a fence in “LMND” line, which is a continuation of the fence in “LABC” line surrounding the property of the defendant. In this regard, it would be appropriate to refer to the evidence of the defendant, as DW-1. In his evidence, he deposed as follows:



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□நான் அனுபவம் செய்யும் சொத்திற்கு தெற்கே உள்ள சொத்து செல்வநாயகம் என்பவருக்கு ஒதுக்கப்பட்டது.. தாவா சொத்திற்கு வடக்கே உள்ள சொத்தை நாங்கள் மட்டை வேலி வைத்து அடைத்து அனுபவம் செய்து வருகிறோம். தாவா சொத்திற்குள் வாதியின் வீடு இருக்கிறது. அதில் கிணறு மற்றும் மரங்களும் இருக்கிறது. வாதி அனுபவிக்கும் சொத்தில் ஆங்காங்கே கருவேப்பிலை மரங்கள் இருக்கிறது. அந்த மரங்கள் மூலம் வாதி கருவேப்பிலை வியாபாரம் செய்து வருகிறார் என்றால் சரியல்ல”

10.A perusal of the above admission of DW-1 would indicate that the property of the defendant lies on the northern side and the property of the plaintiff lies on the southern side. The property of the defendant is divided with the property of the plaintiff with *mattaiveli* (a fence made of palm leaves). Therefore, there is a clear admission in the evidence of DW-1 that his property is encompassed with *mattai* fence and the property of the plaintiff is situated on the south of *mattai* fence. He also admitted that in the property on the southern side of *mattai* fence, the plaintiff's house, well and trees are available and the trees are being possessed and enjoyed by the plaintiff. In view of the categorical admission of DW-1 that the plaintiff is having the property on the south of *mattai* fence, the Courts below rightly came to the conclusion that the plaintiff is entitled to the suit property, which lies on the south of the *mattai* fence, which was shown as “LMND” in the



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defendant's plan and “ABCD” in the plaintiff's plan. The Courts below came to the conclusion that the plaintiff was in settled possession of the property on the southern side of the *mattai* fence and he was entitled to decree for injunction to protect his possession. The said conclusion is based on proper appreciation of oral and documentary evidence available on record, especially the admission of DW-1 and the same requires no interference while exercising the jurisdiction under Section 100 of CPC. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Subordinate Judge, Ramanathapuram.
- 2.The District Munsif-cum-Judicial Magistrate, Rameswaram.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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