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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08 - 06 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 81 of 2015

and

M.P. No. 1 of 2015

- | | |
|---|---------------------------|
| 1. Chockalingam | |
| 2. Ganesan | .. Appellants/Plaintiff |
| Vs. | |
| 1. Narayanasamy | |
| 2. Arumugham | |
| 3. Gaja | |
| 4. Ramadoss | |
| 5. Rose | |
| 6. Thiruverkadu Township
Rep. by its Executive Officer
at Thiruverkadu Village
Saidapet Taluk
Chengalpet District | |
| 7. The Chairman
Special Grade Township
No. 6 Sivan Koil Street
Thiruverkadu
Saidapet Taluk
Chengalpet District | .. Respondents/Defendants |

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.11.2004 passed by the Subordinate Judge, Poonamallee, in A.S. No. 27 of 2004 confirming the judgment and decree passed by the District Munsif, Poonamallee, in O.S. No. 1724 of 1988 on 29.09.2003.

For Appellants : Mr. K.S. Gnanasambandan

For RR 1 to 5 & 7 : No appearance

For R 6 : Mr. K. Mohandass

JUDGMENT

The plaintiffs who were non-suited by the concurrent findings of the Courts below as regards their prayer for permanent injunction



restraining the defendants from removing the fencing and trespassing into the western portion of the suit property and also restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property in any manner, challenge the same by way of the present Second Appeal.

2. The plaintiffs claim to have purchased the suit property situate in S. No. 23/1 in Sundaracholapuram Village, Sriperumputhur Taluk, under Ex. A.1 sale deed dated 10.6.1970 from one Appasamy Reddiar and his son Pachai Reddiar. The suit filed by the unsuccessful plaintiffs before the Courts below was based on the allegation that the defendants who are the residents in the suit village threaten to pass through the suit site claiming right of passage. Claiming that the suit property was never used as a passage at any point of time and that the defendants have no right to use the western portion of the suit property as a pathway, the plaintiffs filed the suit for permanent injunction.

3. Resisting the suit, the first defendant filed written statement adopted by the defendants 2 to 5, stating that the suit property is a grama natham land and there is a way, which is the only passage leading to burial ground and is in use since immemorial. According to the defendants, the suit for bare injunction without seeking relief of declaration of title is not maintainable and sought for dismissal of the same.

4. The seventh defendant filed a separate written statement contending that the western portion of the suit property was used as a public road by the villagers to reach the Cremation Ground. According to the seventh defendant, the said road is maintained by the Thiruverkadu Township and the plaintiffs have got no manner of right over the same and prayed for dismissal of the suit.

5. Before the trial Court, the second plaintiff examined himself as P.W.1 besides examining P.W.2 and P.W.3 and marked Exs. A.1 to A.10. To nullify the case of the plaintiffs, the first defendant examined himself as D.W.1 besides examining five more persons as D.W.2 to D.W.6 and marked the copy of voters list as Ex. B.1. Apart from this, Exs. X.1 to X.6 were marked as Government side Exhibits besides the Court Exhibits, viz., Exs. C.1 and C.2.

6. The trial Court, on consideration of the evidence adduced by the parties and the submissions made by the learned counsels, by judgment and decree dated 29.09.2003, finding that the plaintiffs have no valid title over the suit property, dismissed the suit for permanent injunction. The appeal filed by them in A.S. No. 27 of 2004 before the Lower Appellate Court / Subordinate Judge, Poonamallee, also met the same fate. Aggrieved by the same, the plaintiffs filed the instant Second Appeal before this Court in S.A. No. 81 of 2015.



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7. The point that arises for determination in this Second Appeal is whether the plaintiff is entitled to the relief of permanent injunction as sought for in the absence of any valid title over the suit property.

8. Heard the learned counsel appearing for the parties and perused the records.

9. From the materials available on record, it is seen that the suit has been filed with regard to 32 cents of land in Survey Number 23/1 of Sundaracholavaram Village. Admittedly, of the total 32 cents, the plaintiffs had purchased only 8 cents and the same is also evidenced by Ex. A.1 sale deed dated 10.6.1970. However, they claim to be in possession and occupation of the entire 32 cents. Even during the course of cross-examination, the second plaintiff, who was examined as P.W.1, has also admitted that he has not produced any documentary evidence in support of his claim that he is in possession and enjoyment of the additional 24 cents in S. No. 23/1. There is a pathway on the suit property which is evidenced by Exs. X.1 to X.6. Ex. X.3 is the Register of Roads and Ex. X.5 is the Contract Certificate. It is also seen that the said road was laid for the purpose of the villagers to approach the burial ground. Earlier, there seems to be an arrangement between the appellants / plaintiffs and the respondents / defendants as per which the appellants agreed to leave the western side of the suit property enabling the villagers to use the property as battai poramboke. Therefore, it is admitted by both parties that the appellants / plaintiffs are in use and occupation of the eastern side of the battai. The report of the Commissioner Ex. C.1 also corroborates the same wherein he has noted that there was a signboard showing the way of the burial ground.

10. Further more, the appellants also have not filed any objection to the report and plan of the Commissioner. When there is a cloud cast upon the title of the plaintiffs and in the absence of any evidence to establish possession of the entire extent of 32 cents in S. No. 23/1, the plaintiffs / appellants, having established the ownership only over the 8 cents of land, cannot claim relief of injunction without the prayer for declaration of title. Admittedly when the suit property is used for the villagers to reach the burial ground, the plaintiffs cannot have any exclusive right over the same.

11. In my opinion, the courts below have clearly recorded a finding on the claim of title to the suit property. This being a Second Appeal filed under Sec.100, C.P.C., against the concurrent judgments, no substantial question of law would arise for consideration. I do not find any reason to differ from the



concurrent finding rendered by the courts below. The point is answered accordingly.

For the foregoing reasons, the judgments and decrees of the Courts below are confirmed and the Second Appeal is dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Subordinate Judge
Poonamallee
2. The District Munsif
Poonamallee
3. The Record Keeper
V.R. Section
High Court
Madras

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S.A. No. 81 of 2015