



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.731 of 2014

1.Narayanasamy

2.Balakrishnan

3.Sekar ... Appellants / Appellants / Defendants

Vs.

1.Pandiyaraj

2.Chinnan @ Chinnasamy ... Respondents/ Respondents /
Plaintiffs

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 19.11.2013, made in A.S.No.20 of 2011 by the learned Subordinate Judge, Theni, confirming the judgment and decree, dated 10.01.2011, made in O.S.No.167 of 2005 by the learned District Munsif cum Judicial Magistrate, Andipatti.

For appellants ... Mr.S.Kadarkarai

For respondents Mr.K.Govindarajan

JUDGMENT

The unsuccessful defendants in the suit for injunction are the appellants.

2.The suit property is an extent of 17 cents in Survey No.888/3A2 with specific boundaries. The plaintiffs had filed Exs.A1 to A4 to substantiate his title in the suit property. The suit property originally belonged to one Mannarsamy @ Raja Mannar Naidu and after his death, it devolved on his son Kuppusamy. After the death of Kuppusamy, his daughter by name Navaneethammal had inherited the same. The plaintiffs appeared to have purchased the suit property under Ex.A1 from the Power Agent of the said Navaneethammal on 11.10.2004. The defendants are only adjacent owners of the suit property. As the defendant was attempting to disturb the peaceful possession of the plaintiff, the suit was filed for bare injunction.



3. Both the Courts below have concurrently held that the plaintiffs are entitled for decree and accordingly, decreed the suit.

4. At the time of admission, the following substantial questions of law were framed for determination:

a) It is not on error apparent on law that the suit for bare injunction is not maintainable, without the prayer for declaration, when the title of the suit property is in dispute?

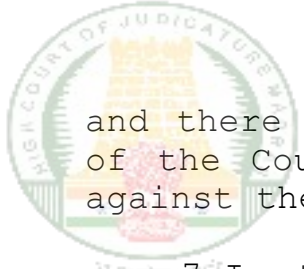
b) Whether the Courts below are correct in decreeing the suit for bare injunction, when the plaintiff has failed to establish her case by furnishing the correct particulars as to the description of the property, since the eastern boundary of the property belongs to the appellants/defendants father Palanichamy, in which the respondent/plaintiff has no right?

c) Whether the lower appellate Court is correct in dismissing the appeal without appreciating the revenue records marked as additional documents at the appeal stage filed by the appellants in Exs.B8 to B12, wherein the appellants/defendants is entitled to 1 Acre of land in Survey No.888/3A and the plaintiffs/ respondents cannot have any right in the said property?

d) Whether the findings of the Courts below are vitiated in law by the failure to consider the entire evidence on records and by the failure to apply the correct principles of law?"

5. The defendants are the adjacent owners possessing about one acre of land. Though they have produced Exs.B3, B4 and B5, admittedly, they are not relating to the suit property. DW3, who was examined on the side of the defendants, had specifically admitted that he has got no connection with the suit survey numbers and there is no connection between the lands of the plaintiffs and defendants. In fact, DW4 had admitted that he does not even know the survey number of the suit property.

6. When it is admitted that the defendants have got no right or title over the suit property and they have got no intention of disturbing the possession of the plaintiffs, the injunction granted in favour of the plaintiffs is correct. Only based on the admission of the defendants, the Courts below have decreed the suit in favour of the plaintiffs. When the ownership of the plaintiffs are not denied by the defendants and the possession is ~~admitted~~ ^{not in dispute}, they cannot have any objection for grant of a decree of injunction in favour of the plaintiffs. Hence, the Courts below have concurrently held in favour of the plaintiffs



and there is no reason to interfere with the concurrent findings of the Courts below. Thus, the questions of law are answered against the defendants.

7. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Theni.
2. The District Munsif cum Judicial Magistrate,
Andipatti.
3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.K.Govindarajan , Advocate in SR No. 79927
+ 1 cc TO Mr.S.Kadarkarai , Advocate in SR No. 79800

gcg

AE/SKN RSK/SAR2/05.10.2017/3P/6C

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