

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1208 of 2011

and

M.P.1 of 2011

and

C.M.P.No.1 of 2018

Thirumal Appellant/Plaintiff

..Vs..

1. Yesuraj
2. Jayabackyam @ Rani
3. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.
4. The Government of Tamil Nadu,
Rep. By its Tahsildar,
Coimbatore North Taluk,
Coimbatore District. Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 27.07.2009 made in A.S.No.108 of 2007 on the file of the Second Additional Sub Court, Coimbatore confirming the judgment and decree dated 09.04.2007 made in O.S.No.2135 of 2000 on the file of the second Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.N.Manokaran

For Respondents 1 to 4 : No appearance

O R D E R

The plaintiff in O.S.No.2135/2000 on the file of the second Additional District Munsif Court, Coimbatore is the appellant herein. The suit was filed seeking a decree for permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of land of an extent of 1036 sq. feet along with building bearing D.No.177, Ammankulam North, Pappanaickanpalayam, Coimbatore. The linear measurement of the property is North - South 37 feet on both sides and East

west 28.6 feet on the northern side and 28 feet on the southern side. To prove her possession, the plaintiff had relied upon an assignment made in the year 1972 by the Government.

2. The said suit was resisted by the defendants 1 & 2 contending that the plaintiff was not in possession of the entire extent of 1036 sq.feet. The specific pleading of the defendant is that the plaintiff was assigned land of an extent of 752 sq.feet only under Ex.B1 dated 31.08.1975 and she is not entitled to anything more than the said extent. In fact, the defendants had admitted the title of the plaintiff to the extent of 752 sq.feet. assigned to her under Ex.B1.

3. On the above pleadings the Trial Court framed the following issues:-

“1.வாதி கோரிய நிலத்தின் உறுத்துக் கட்டளைப் பரிகாரம் கிடைக்கத் தக்கதா-”

On consideration of the oral and documentary evidence the learned District Munsif concluded that the plaintiff had not established her title and possession of entire extent of 1036 sq.feet. The Trial Court also found that the plaintiff has not produced the assignment in her favour. The order of assignment in favour of the plaintiff was produced by the defendant. In as much as there is no dispute regarding the possession and enjoyment of 752 sq.feet of land assigned to the plaintiff under Ex.B1, the learned Trial Judge concluded that there is no cause of action for the suit and dismissed the suit.

4. Aggrieved the plaintiff took up a matter on appeal in A.S.No.108 of 2007 before the 2nd Additional Subordinate-Judge, Coimbatore. The learned Subordinate Judge after hearing the parties, framed the following points for consideration.

- 1) Whether the appeal is to be allowed or not?
- 2) What relief the appellant is entitled to?

5. The learned Appellate Judge concurred with the findings of the learned Trial Judge and dismissed the appeal. However, the learned Appellate Judge found that there is no dispute with reference to the plaintiffs possession and enjoyment of the property assigned to her under Ex.B1. In as much as the possession and title of the plaintiff to the extent of 752 sq.feet of plot under Ex.B1 was admitted by the defendants, the Appellate Judge confirmed the Judgment and decree of the Trial Court. Concurring with the view of the Trial Court that there is no cause of action for the suit.

6. At the time of admission the following Substantial Questions of Law were framed by this Court.

“(A) Whether the courts below erred in law and misdirected themselves in dismissing the suit for injunction merely on the basis of difference in extent

mentioned in Ex.B1 and suit schedule, in the absence of any other oral or documentary evidence to controvert the claim of possession of the plaintiff?

(B) Whether the suit is hit by the principle of res judicata?

(C) Whether in the absence of any specific issue as regards the title pleaded by the defendant, are the courts below right in coming into the conclusion that the plaintiff has not established her title to sustain the relief or injunction?"

7. Heard Mr.N.Manokaran, the learned counsel appearing for the appellant. The respondents in spite of service of notice are not appearing either in person or the rough counsel.

8. Mr.N.Manokaran, the learned counsel appearing for the appellant would contend that both the courts below, were not justified in dismissing the suit in entirety here to when the defendants had admitted the title and possession of the plaintiff atleast to the extent of 752 sq.feet of land. The learned counsel would further contend that the courts below were not right in going in to the factum of possession without going in to the issue regarding the title.

9. I have Considered the submissions of Mr.Manokaran and also the oral and documentary evidence that has been placed before the Court. The plaintiff sought for the relief of permanent injunction in respect of land of an extent of 1036 sq.feet along with the building thereon. The defendants in their written statement admitted that the plaintiff was assigned a particular extent of land in the year 1975 and to that extent the plaintiff is entitled to a decree. Therefore, according Mr.Manokaran, courts below should have granted the relief at least in respect of 752 sq.feet of land on the basis of the admission made by the defendants.

10. The suit is not one for declaration of title it is one for bare injunction. The cause of action for the relief of injunction is based on an attempt to interfere with the possession of the plaintiff by the defendants. Therefore, the courts below are right in concluding that in as much as the 750 sq.feet of land covered by Ex.B1 is concerned, there is no dispute between the defendants and the plaintiff and as such there is no cause of action to seek a decree of injunction, more so when the defendants admitted title and possession of the plaintiff to the extent of 752 sq.feeet land as per Ex.B1. Therefore, the first question of law does not merit

consideration.

11. The second question of law is with reference to res judicata. I am unable to see as to how res judicata would arise when the defendant has filed a suit in O.S.No.1247/2012 for declaration and for mandatory injunction to direct the plaintiff herein to remove the alleged encroachment of land and the said suit came to be decreed ex-parte decree as early as on 07.10.2003. It is also seen that the said ex-parte decree has not been set aside in a manner known to law. Further, the pleadings in the said suit are not available. Therefore, I am unable to see as to how the present suit which was filed in the year 2000 can be said to be barred by res-judicata. Hence, second question of law is answered against the appellant.

12. The third question of law relates to findings of the Courts below that plaintiff has not established her title to sustain the relief of injunction. In fact, the Trial Court found that the plaintiff has not established the title to the entire extent of land. However, the Appellate Court held that there is no dispute regarding title and possession to the extent of 752 sq.feet of land that was assigned to plaintiff under Ex.B2. Therefore, third question of law is also answered against the appellant. However, it made clear that the defendants have not questioned the title or possession of the plaintiff with regard to an extent of 752 sq.feet as per the assignment order Ex.B1.

13. In the result, the appeal fails and it is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/--

Assistant Registrar(CS IV)

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Sub Assistant Registrar

dss

To

1. The second Additional Subordinate Judge,
Coimbatore.
2. The Second Additional District Munsif,
Coimbatore.

WEB COPY

3. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

4. The Tahsildar,
Coimbatore North Taluk,
Coimbatore District.

+lcc to Mr.N.Manokaran, Advocate SR.NO.42052/18

KGK (CO)
sm:3.9.2018

S.A.No.1208 of 2011



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