

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.09.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.61 of 2007
and
MP No.1 of 2007

Valambal ... Appellant /Appellant/Plaintiff
Vs

1. Mathi
2. Ramamoorthy
3. Jaganathan
4. Packiri

... Respondents/Respondents/
Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree passed by Principal District Munsif, Mayiladuthurai in O.S. No.425 of 2003, dated 10.08.2004, confirmed by the judgment and decree passed by the Additional Subordinate Judge Mayiladuthurai in A.S. No.156 of 2004, dated 20.01.2006.

For Appellant : Mr.R.Ponnusamy
For Respondents : Mr.S. Sounthar

JUDGMENT

This Second Appeal has been challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit and the respondents are the defendants. The plaintiff filed a suit O.S. No.425 of 2003 before the District Munsif Court, Mayiladuthurai against the respondents for a bare injunction restraining the respondents from interfering with the plaintiff's possession and enjoyment of the suit B schedule property.

Brief facts leading to the filing of the instant Second Appeal

2. It is the case of the plaintiff that the respondents have encroached upon the B schedule property belonging to the plaintiff. The respondents have also filed the written statement disputing the claim of the plaintiff and stating that the suit B schedule property belongs to a Temple and the

defendants are the Lessee under the Temple.

3. The Trial Court dismissed the suit O.S. No.425 of 2003 filed by the plaintiff on the ground that there is no proper identification of the suit B schedule property by the plaintiff as seen from the description given in the schedule B to the plaint.

4. The Trial Court has further observed that no linear measurements were given by the plaintiff in the suit B schedule property. Since, there is no proper identification and the ownership of the property by the plaintiff is disputed and no documentary evidence has been filed by the plaintiff to establish her title over the suit schedule B property, the Trial Court dismissed the suit O.S. No.425 of 2003 by its judgment and decree dated 10.08.2004. Aggrieved by the dismissal, the plaintiff preferred an appeal before the Additional Sub Court at Mayilduthurai in A.S. No.156 of 2004.

5. The Appellate Court after considering the judgment and decree passed by the Trial Court also dismissed the appeal. Aggrieved by the dismissal of A.S. No.156 of 2004 by the Sub Court, Mayilduthurai, the present Second Appeal has been filed by the plaintiff.

6. This Court by its order dated 20.01.2007 issued notice to the respondents without admitting the appeal. The respondents have entered appearance through a counsel and is being represented by the said counsel, today.

7. The Substantial question of law raised by the appellant in this appeal are as follows :-

1. Whether the courts below is right in coming to the conclusion that the appellant ought to have filed suit for declaration when the defendant is in no way connected to the suit property?

2. Whether the courts below is right in coming to the conclusion that the measurement will prevail over the boundaries?

3. Whether the courts below is right in coming to the conclusion of rejecting the claim of injunction when the defendant is an encroacher?

4. Whether the courts below is right in dismissing the suit when the appellant has produced documents to prove her possession and title?

8. Heard Mr.R.Ponnusamy, learned counsel for the appellant and Mr.S.Sounthar, learned counsel for the respondents.

Submissions of the learned counsel

9. The learned counsel for the appellant would only contend that the courts below failed to take note of the fact that the land measurements given in suit Schedule B property will prevail over the boundaries. According to him, patta marked as Ex. A1 contains the measurements and it identifies the suit schedule B property. Therefore, there was no necessity for the appellant to file a separate suit for declaration to declare that the appellant is the absolute owner of the suit schedule property as observed by the courts below.

10. Per contra, the learned counsel for the respondents drew the attention of this Court to the description of the B schedule property contained in the plaint. According to him, even according to the plaintiff, the B schedule property is situated at North of Thiruvengadam Kollai, South-East and West of A schedule property. He also drew the attention of this Court to the oral evidence of PW1, the appellant herein, who has admitted that there is a Temple land North of Thiruvengadam Kollai's property, which according to him will necessarily infer that there is a Temple between the appellant's property and Thiruvengadam Kollai's property. He also drew the attention of this Court, to the observations recorded by the Trial Court after considering the oral evidence of PW1 that there is no consistency in the stands taken by the appellant. The Trial Court has observed that "PW1 in her oral evidence has denied that on the Southern side of the A schedule property, a Temple land is situated. On the other hand, she admits that on the southern side of the Temple property, one Thiruvengadam's Property is situated. This will reveal the double standard of the plaintiff".

Discussion :

11. Before the Trial Court the appellant has filed seven documents which were marked as Ex.A1 to Ex.A7 and the appellant (PW1) was examined as a witness. Excepting for filing a patta (Ex. A1), which does not contain the boundaries of the suit schedule property, no other documentary evidence has been produced by the appellant to establish the title over the suit schedule B property. The Trial Court has considered the oral and documentary evidence produced by the appellant and only thereafter has dismissed the suit O.S. No.425 of 2003.

12. The First Appellate Court in A.S. No.156 of 2004 has also rightly confirmed the findings of the Trial Court by dismissing the appeal. Since, both the courts below have considered the oral and documentary evidence available on record and only thereafter has come to the correct conclusion that the appellant is not entitled for the permanent injunction, there is no question of law much less a substantial question of law involved in this Second Appeal. The Substantial questions of law raised by the appellant in this Second Appeal does not deserve any merit and they are purely questions of fact which have already been duly considered by the Courts below in accordance with law based on the materials, documents and evidence available on record.

Conclusion :-

13. In the result, there is no merit in the Second Appeal. Accordingly, the Second Appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

vs12

To

1. The Principal District Munsif,
Mayiladuthurai.

2. The Additional Subordinate Judge,
Mayladuthurai.

3. The Section Officer

VR Section High Court Madras

+1 cc to M/s.S.Sounthar Advocate sr78712

+1 cc to M/s.R.Ponnusamy Advocate sr78670

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