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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.1357 OF 2007

AND

M.P. NO.1 OF 2007

Suppathal

...Appellant/
Respondent/Plaintiff

Vs.

K. Mani

...Respondent/
Appellant/Defendant

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 21.02.2006 passed in A.S. No.213 of 2005, on the file of the II Additional Subordinate Judge -cum- Appellate Authority Coimbatore, reversing the judgment and decree dated 08.09.2005 passed in O.S. No.1837 of 2000, on the file of the II Additional District Munsif Court, Coimbatore.

For Appellant	:	Mr. M. Baskar
For Respondent	:	Mr. A.E. Ravichandran for M/s. Usha

JUDGMENT

The appellant Suppathaal is the plaintiff in O.S.No.1837 of 2000 on the file of the II Additional District Munsif, Coimbatore. She filed the suit for a permanent injunction restraining the respondent/defendant from interfering with her peaceful possession and enjoyment of the suit property.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.



3. The suit property as described in the plaint is a vacant land bearing Site No.10, S.F.No.534/1 Agrahara Samakulam Village, Coimbatore North, within the boundaries stated therein.

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4. The case of the plaintiff is that the suit property was assigned in her favour by Tahsildar, Coimbatore, on 30.12.1994 (Ex.A1) and that since then she has been in possession and enjoyment of the same. Her further contention is that the defendant, who does not have any right over the suit property, attempted to trespass upon the suit property on many occasions and one such attempt was made on 04.08.2000 and the same was successfully prevented by her. She, therefore, filed the suit against the defendant for bare injunction.

5. The suit was resisted by the defendant on the following grounds:

- a) The suit property is the property of the defendant's sister Paapathi.
- b) The said Paapathi permitted the defendant to occupy the suit property.
- c) The allegation of the plaintiff that the defendant attempted to trespass upon the suit property is absolutely false.
- d) In fact, the defendant put up a thatched shed in the suit property and has been in possession and enjoyment of the same.
- e) It is only the plaintiff who attempted to dispossess the defendant on 04.08.2000 and based on the complaint given by the defendant, the police warned the plaintiff.
- f) Subsequently, on 31.08.2000 similar attempt was made by the plaintiff with rowdy elements and the police again intervened on the complaint by the defendant. The plaintiff gave a written tender of pardon.
- g) There is no cause of action for filing the suit.

Therefore, the defendant prayed for dismissal of the suit.

6. The trial court after framing appropriate issues and after full contest, decreed the suit filed by the plaintiff vide its decree and judgment dated 08.09.2005 and also directed the defendant to remove all the construction put up by her in the suit property.

7. Aggrieved over the same the defendant filed an appeal in A.S. No.213 of 2005 before the II Additional Subordinate Court, Coimbatore. The learned II Additional Subordinate judge vide



his decree and judgment dated 21.02.2006 reversed the findings recorded by the trial court and dismissed the suit filed by the plaintiff.

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8. Aggrieved over the same the present second appeal is filed by the appellant/plaintiff on the following substantial question of law.

"Whether the court below is right in dismissing the suit by not accepting the settled law that possession follows title more particularly when the appellant proved both the possession and the title to the suit property?"

9. The trial court, mainly based on the Assignment Patta Ex.A1 issued in favour of the plaintiff, had held that the plaintiff is in possession of the suit property. A perusal of Ex.A1 shows that the suit property was assigned in favour of the plaintiff by Tahsildar, Coimbatore, on 30.12.1994. One of the conditions attached to Ex.A1 patta is that the assignee must put up a house in the property assigned in her favour within six months from the date of issuance of the same. In the plaint, the plaintiff had specifically averred that she was residing with her son at Athipalayam Village and that she wanted to put up a hut in the suit property. Her another contention is that the defendant on several occasions attempted to dispossess her from the suit property and one such attempt was made on 04.08.2000. It is in evidence that on two occasions i.e., on 04.08.2000 and 31.08.2000 the defendant lodged a complaint against the present appellant/plaintiff before Kovilpalayam Police Station contending that the plaintiff attempted to remove the construction put up by the defendant in the suit property and that at the intervention of the police it was prevented. This was not specifically denied by the plaintiff in her deposition. The Sub Inspector of police, Kovilpalayam Police Station, was examined on the side of the defendant and she has clearly spoken to about the complaints given by the defendant on 04.08.2000 and 31.08.2000. The Sub Inspector of police had also contended that since the plaintiff gave a written tender of pardon (Ex.A3), the complaints given by the defendant were closed. Absolutely, there is no reference about Ex.B1 to Ex.B3 in the plaint.

10. Mr. M. Baskar, learned counsel appearing for the appellant contended that when the plaintiff has filed the suit stating that she has been in possession and enjoyment of the suit property and the trial court has also decreed the suit, the first appellate court should not have reversed the findings recorded by the trial court. His specific contention is that the



entire plaint should be read in whole. He relied on the decision in Palaniammal Vs. Pechimuthu & Others reported in (1991) 31 MLJ 1. In that case the plaintiff upon finding the defendants trespassing into the suit property lodged a complaint against them before the police. Though the defendants had been warned by the police, they started putting up construction and immediately the plaintiff filed a suit for permanent injunction and for a mandatory injunction against the defendants. It was not the case where the defendants encroached upon the property and squatted on the same for some time and thereafter, began to construct thereon. The fact that the defendants were putting up the construction in the suit property was also specifically mentioned in the plaint. In such circumstances, it was held that the plaintiff need not seek declaration of title to the suit property and for recovery of possession. The facts of the present case are entirely different. In the case on hand, the plaintiff had averred in the plaint that the defendant attempted to trespass into the suit property on various dates including 04.08.2000 and 31.08.2000. As already observed it was only the plaintiff who attempted to dispossess the defendant from the suit property. The plaintiff except filing Ex.A1 has not adduced any evidence to show her possession over the suit property. In fact the trial court had found the defendant in possession of the suit property and directed the defendant to remove the construction put up by him within one month from the date of decree.

11. The plaintiff who has filed the suit for bare injunction must prove her possession over the suit property by adducing acceptable evidence. In the instant case, the plaintiff had not adduced any evidence to hold that she is in possession of the suit property. Apart from that, the plaintiff has not also come to court with clean hands. She has not narrated the events that took place on 04.08.2000 and 31.08.2000 as is seen from Ex.B1 and Ex.B3 and from the evidence of D.W.2 in her plaint. In the circumstances, the plaintiff is not entitled to get the equitable relief of permanent injunction restraining the defendant from interfering with her possession and enjoyment of the suit property and accordingly, the substantial question of law is answered against the appellant.

12. In the result,

- i. the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. the decree and judgment dated 21.02.2006 passed in A.S. No.213 of 2005, on the file of the II Additional Subordinate Judge cum Appellate Authority, Coimbatore, are upheld.



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iii.the decree and judgment dated 08.09.2005 passed in O.S. No.1837 of 2000, on the file of the II Additional District Munsif, Coimbatore, are set aside.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. The the II Additional Subordinate Judge, Coimbatore
2. The II Additional District Munsif, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr. A.E. Ravichandran, Advocate, S.R.No.53268

S.A.No .1357 of 2007

SJ(CO)
PM/15/11/2021