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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.191 of 2010

and

M.P.No.1 of 2010

Vivekananthan

...Appellant

Vs.

1. M. Vasanthi

2. Marayya Naickar

...Respondents

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 11.06.2008 passed in A.S. No.65 of 2007, on the file of the Principal Sub-ordinate Court, Gobichettipalayam, reversing the decree and judgment dated 11.10.2007 passed in O.S. No.119 of 2003, on the file of the District Munsif Court, Satyamangalam.

For Appellant : Mr. S. Kamadevan
for Mr.T.Murugamanikkam

For R1 : MS. R. Meenal

For R2 : Given up

JUDGMENT

The appellant is the first defendant in O.S.No.119 of 2003 on the file of the District Munsif Court, Sathyamangalam and first respondent in A.S. No.65 of 2007 on the file of the Principal Subordinate Court, Gobichettipalayam.

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

3. The case of the plaintiff in nutshell:

The plaintiff purchased the suit properties by means of a registered sale deed dated 24.01.2003 (Ex.A1) and has been in possession and enjoyment of the same by cultivating the suit properties as evidenced by extracts of chitta and Adangal (Ex.A3 and Ex.A4). The patta (Ex.A2) also stands in the name of the plaintiff. While so, the defendants, without any semblance of right over the suit properties, are attempting to trespass into



the same and hence the suit for a permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

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4. The suit was resisted by the defendants on the following grounds.

- 1) The suit properties, except S.F. No.619/13 of Kuthialathoor village, Erode are in possession of the defendants since 1950.
- 2) A division of the said properties was made during 1993 among the family members of the defendants through a registered partition deed dated 25.04.1993 (Ex.B1) by which the first defendant became entitled to the suit properties.
- 3) The plaintiff does not have any title over the suit properties.
- 4) The plaintiff obtained chitta and adangal from the revenue authorities suppressing the real facts.

The defendants, therefore, prayed for dismissal of the suit.

5. The trial court, framed the following issues and additional issue.

- 1) Whether the plaintiff is entitled for a permanent injunction as prayed for by her.
- 2) To what relief is the plaintiff entitled?

Additional issue.

- 1) Whether the sale deed dated 24.01.2003 is true and valid?

6. In the trial court, the plaintiff examined herself and 5 other witnesses and marked Ex.A1 to Ex.A7. The first defendant examined himself and two other witnesses and marked Ex.B1. Ex.X1 to Ex.X13 were also marked through the revenue officials and third parties. After full contest, the learned District Munsif, Sathyamangalam, dismissed the suit on the following grounds.

- 1) The plaintiff has not established her title over the suit properties.
- 2) The defendant has filed a registered partition deed (Ex.B1) which is not reflected in the Encumbrance Certificate (Ex.A7).
- 3) Merely because the name of the plaintiff is found in all the revenue records, it cannot be inferred that the plaintiff is the absolute owner of the suit properties.
- 4) The plaintiff has not also established her possession over the suit properties.

7. However, the first appellate court allowed the appeal in



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A.S. No.65 of 2007 filed by the plaintiff on the following grounds.

- 1) The plaintiff has established her possession over the suit properties by adducing Ex.A1 to Ex.A7 and Ex.X1 to Ex.X8.
- 2) The plaintiff has better title and possession over the suit properties than the defendants.
- 3) The registered partition deed (Ex.B1) filed by the first defendant, without title deeds, is a self serving document.
- 4) The power of Attorney holder Sugunan (P.W.5) had executed the sale deed (Ex.A1) in favour of the plaintiff based on Ex.X9 to Ex.X11, Powers of Attorney executed by the original owners in his favour.
- 5) The first defendant has not also established possession over the properties allotted to him through Ex.B1.
- 6) There is no necessity to give a finding with regard to additional issue No.1 framed by the trial court since the suit was filed by the plaintiff only for a bare injunction based on her possession.

The first appellate court, thus, decreed the suit filed by the plaintiff.

8. Aggrieved over the decree and judgment of the first appellate court dated 11.06.2008, the Second Appeal is filed by the first defendant.

9. Notice of motion was ordered and after several adjournments, the case was posted for hearing today.

10. At the outset, it may be observed that the suit was filed by the plaintiff for a bare injunction. In order to establish her possession, the plaintiff relies on her sale deed (Ex.A1) as well as patta (Ex.A2) and extracts of chitta (Ex.A3) and adangal (Ex.A4). The plaintiff has also examined the power of attorney holder of her vendor as P.W.5. The P.W.5 has spoken about the execution of Ex.A1 in favour of the plaintiff and also filed Ex.X9 to Ex.X11, which are general power of attorney executed in favour of P.W.5, by Palaniammal, Srinivasan, Muruga Mudaliar and Ammasai, the owners. The said Ammasai has been examined as P.W.4 on the side of the plaintiff. The patta books Ex.A5 to Ex.A7 coupled with Ex.X1 to Ex.X8 proves that the plaintiff and her predecessors in title were in continuous possession over the suit properties. In fact, the first appellate court had recorded a finding that the plaintiff had proved her possession over the suit properties by adducing



acceptable evidence. This finding of the first appellate court is based on evidence on record. The trial court on the contrary had gone beyond the scope of the suit, which is simpliciter a suit for bare injunction and had given a finding that the sale deed in favour of the plaintiff is not true and valid. No doubt, it is true that the plaintiff who has filed the suit should prove her case to the hilt and in a suit for bare injunction title of the plaintiff can be gone into incidentally. But the trial court mainly has gone into the title of the plaintiff and had also framed an issue with regard to the validity and genuineness of the sale deed Ex.A1 in favour of the plaintiff. The trial court, after observing that the plaintiff has not proved the identity of the persons mentioned in Ex.A1, has dismissed the suit though, in the instant case, the plaintiff has proved her possession over the suit properties by adducing acceptable evidence.

11. Mr.S. Kamadevan, learned counsel for the appellant contended that when the defendants have denied the title of the plaintiff, the plaintiff did not amend the prayer, seeking for a declaration of her title to the suit properties and that the first appellate court had wrongly decreed the suit filed by the plaintiff on an assumption that the plaintiff has better title and possession than the first defendant. It is to be pointed out that the first defendant, except filing a registered partition deed (Ex.B1), did not adduce any other documents to show that he is the absolute owner of the suit property. The title deeds have not been produced. He has not also filed any evidence to show that he is in possession of the suit properties. Therefore, mere denial of title of the plaintiff in the written statement is not sufficient to hold that the plaintiff ought to have amended the suit prayer and included the prayer of declaration of title. It is not also the case of the first defendant that he filed a petition seeking for cancellation of patta issued in favour of the plaintiff before the revenue authorities concerned. He did not also seem to have raised any objection at the time of issuance of patta in favour of the plaintiff. As rightly observed by the first appellate court, Ex.B1 is a self serving document and the plaintiff has got possession over the suit properties as is evidenced by the documents adduced by her. All the observations of the trial court are based on mere conjectures and surmises and the trial court has raised doubts with regard to the identity of persons mentioned in Ex.A1 and held that Ex.A1 is not true and valid. Identity of persons found in Ex.A1 was not even questioned by the first defendant as is evident from the line of cross examination of the plaintiff (P.W.1) and the plaintiff was not even called upon to prove the same. As already observed, the trial court had gone beyond the scope of the suit. On the contrary, the first appellate court analysed the evidence on



record, threadbare, and had given a clearcut finding that the plaintiff is in possession of the suit properties. The first appellate court has given cogent reasons for arriving at the same and there is no necessity for reproducing the same here except by mentioning that all the observations made by the first appellate court are based on sound reasoning. Therefore, I do not find any substantial question of law involved in this second appeal and hence, the second appeal deserves to be dismissed.

12. In the result,

- 1) The Second Appeal is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.
- 2) The decree and judgment dated 11.06.2008 passed by the Principal Sub-ordinate Judge, Gobichettipalayam, in A.S. No.65 of 2007 are upheld.
- 3) The decree and judgment dated 11.10.2007, passed by the District Munsif, Sathyamangalam, in O.S. No.119 of 2003, are set aside.

Sd/-

Deputy Registrar (CCAA)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Sub-ordinate Judge,
Gobichettipalayam,
2. The District Munsif,
Sathyamangalam,
3. The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.R.Meenal, Advocate, S.R.No.43327

S.A.No.191 of 2010

SPD(CO)

RGA(15/11/2021)