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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.764 of 2012
and M.P.No.1 of 2012

Palaneeswari ... Appellant/Appellant/Defendant

Vs.

1. A.Krishnamoorthy (died)
2. K.Charles Vijayaraj
3. P.Leena Jasmine
4. K.Shobana Britto
5. K.Praveena
(died on 22.11.2011) leaving behind
her only minor daughter K.Reenish
D/o.Karthick Rep. by her Natural
Guardian father Mr.Karthick)

(R2 to R5 are impleaded as the legal
representatives of the deceased
1st respondent vide Order of this Court,
dated 01.09.2021 made in CMP No.
13613 of 2021 in SA No.764 of 2012)

... Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 14.03.2012 in A.S.No.356 of 2011 on the file of the learned VI Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree, dated 20.06.2011 in O.S.No.8579 of 2008 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.Ramana Reddy

For Respondent : Ms.Vijaya Baskar (for R2 to R4)

J U D G M E N T

The unsuccessful defendant is the appellant before this Court. The plaintiff filed a suit for permanent injunction on



the basis of title derived by him by way of a registered sale deed, dated 15.11.1972.

2. The property originally belonged to one V.Raju and the plaintiff's vendor Annakili ammal, W/o. Kathirvelu has purchased the same from him under the registered sale deed, bearing document No.1686 of 1963. Subsequently, the plaintiff purchased the property which is measuring an extent of 2.5 cents by way of a registered sale deed, dated 15.11.1972 bearing registration No.3082 of 1972, registered at the office of the Sub Registrar Office, Saidapet. As the defendant was attempting to interfere with her possession, the plaintiff filed a suit.

3. In the written statement, the defendant claimed that the plaintiff taking advantage of the vacant portion of the property, is attempting to grab the same. The vacant portion which was allotted to her husband who is the elder brother of the plaintiff viz., late A.Dakshinamoorthy, and he had been in continuous possession thereafter by her. Hence, she prayed for dismissal of the suit.

4. At trial, the plaintiff has examined himself as P.W.1 and Exs.A1 to A7 were marked. On the side of the defendant, she examined herself as D.W.1 and one Thanthoni was examined as D.W.2 and Exs.B1 to B20 were marked.

5. The trial Court upon framing appropriate issues and consideration of the evidence on record, decreed the suit in favour of the plaintiff. Aggrieved, the defendant preferred an appeal before the learned VI Additional Judge, City Civil Court, Chennai. The first appellate Court on a re-appreciation of the evidence of record, concurred with the findings of the trial Court and confirmed the same. Aggrieved over the same, the defendant is before this Court.

6. The following substantial question of law was framed by this Court on 07.11.2012 at the time of admission:

"Whether the Courts below have committed an error in granting the relief of injunction when the defendant does not dispute the title of the plaintiff in respect of the property purchased by him and on the other hand contends that there was no attempt made by the defendant to trespass upon any portion of the plaintiff's property and the



plaintiff tries derive the defendant by providing incomplete description of the property regarding which the relief has been sought for?"

7. According to the learned counsel for the appellant/defendant, the entire property measuring around 1 ½ grounds belonged to one Appadurai who is the father-in-law of the appellant/defendant and father of the plaintiff and his brothers. At partition, a portion was allotted to the defendant's husband A.Dakshinamoorthy who is the elder son of Appadurai and elder brother of the respondent/plaintiff. Taking advantage of the wrong identification of property, the plaintiff is trying to grab over and above 2 ½ cents.

8. In reply, the learned counsel for the respondent / plaintiff would submit that he sought for permanent injunction only with respect to his property measuring about 2 ½ cents. The appellant/defendant is residing in Govindarajapuram 2nd street in different door no, whereas the suit property situates in Govindarajapuram 1st street. Without properly identifying and understanding the exact location of the house, she unnecessarily interfered with his possession.

9. Admittedly, the plaintiff had proved his title by virtue of the registered sale deed and he is entitled to be in possession of 2 ½ cents which he purchased. Insofar as the identification of the property, the parties have to file a comprehensive suit for declaration of title, which according to the learned counsel for the appellant, was filed in O.S.No.6131 of 2016 and he is in the process of restoring the same. Therefore, it is open to the parties to work out their remedy in the manner known to law.

10. Insofar as the present Second Appeal is concerned, the concurrent findings of the Courts below that the plaintiff is entitled to be in possession of 2½ cents, in the considered opinion of this Court, does not warrant interference. The plaintiff is entitled to injunction as prayed for, following the principle of possession follows title. Further, this Court, while answering the question of law framed, leaving it open to the parties in respect of the portion of the property with which the plaintiff does not claim any title.



11. Therefore, this Court finds no merits in the Second Appeal and accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vum
To

1. The VI Additional Judge,
City Civil Court, Chennai.

2. The XVIII Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.V.Ramana Reddy, Advocate Sr.54879

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srg 07/06/2022