



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.930 of 2008

Mariappan

... Appellant/Respondent/Plaintiff

Vs.

M.Selvam

... Respondent/Appellant/Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.10.2007 made in A.S.No.30 of 2003 on the file of the Sub Court, Periyakulam, reversing the judgment and decree dated 31.01.2003 made in O.S.No.38 of 2002 on the file of the District Munsif Court, Andipatti.

For Appellant : Mr.R.Surianarayanan

For Respondent : No appearance

JUDGEMENT

The plaintiff in O.S.No.38 of 2002 on the file of the District Munsif Court, Andipatti is the appellant in this second appeal. The plaintiff filed the said suit seeking permanent injunction for restraining the defendants from interfering with his possession and enjoyment of the suit property. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.The plaintiff examined himself as P.W.1 and three other witnesses were examined on his side. Exs.A1 to A5 were marked. The first defendant/respondent examined himself as D.W.1 and one Manikandan was examined as D.W.2 and Exs.B1 to B4 were marked.

3.After considering the evidence on either side, the trial Court by judgment and decree dated 31.01.2003 decreed the suit. Aggrieved by the same, the first defendant filed A.S.No.30 of 2003 before the Sub Court, Periyakulam. By the impugned judgment and decree dated 05.10.2007, the appeal was allowed and the decision of the trial Court was set aside and the suit came to be



dismissed. Challenging the same, this second appeal has been filed.

4.The second appeal was admitted on the following substantial question of law:-

"Whether the first appellate Court is right in allowing the appeal and dismissing the suit by observing that possession cannot be determined only on the basis of Exs.A3 and A4, which are the best evidence to show possession and enjoyment of the plaintiff?"

5.Though the respondent was served through Court notice and his name is also printed in the cause list, there is no appearance on his behalf.

6.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial Court.

7.I carefully considered the said contentions advanced by the learned counsel appearing for the appellant and went through the evidence on record. According to the plaintiff, the suit property is his ancestral property. There is no dispute that against the appellant's father namely, Karuppanamaniyan, the respondent herein namely, Selvam filed O.S.No.107 of 1996 before the District Munsif Court, Andipatti, in respect of the suit property. The suit schedule in O.S.No.107 of 1996 is as follows:-

"S.No.778/7 at Thimmarasanayakkanur Village, Andipatti Taluk, Periyakulam, Madurai District to an extent of 14 cents vacant site. The description of the suit schedule is as follows:-

*'South to Kambathadiayan Perumal's land
East and North to the street,
West to S.Perumal Konar's land.'"*

8.The suit was dismissed on 14.10.1997. No appeal was filed against the judgment and decree and the said decision has become final. The said suit was for declaration as well as injunction. The relief of declaration was denied. It was further found that Selvam failed to establish his possession over the suit property. The said judgment and decree have been marked in the present proceedings by the appellant herein as Exs.A1 and A2. I compared the present suit schedule with the suit schedule in O.S.No.107 of 1996. They are one and the same. The plaintiff has marked Exs.A3 and A4 which are chitta and adangal for fasli year 1387. The



defendant had also marked Ex.B4/chitta for the fasli year 1394. But this Ex.B4 was marked as Ex.A4 in the earlier suit and the same was rejected. The case of the respondent was that he purchased the suit property from one Nallathambi. The said Nallathambi is said to be the brother of Ayyanar Konar, whose name figures in the joint patta, which was marked Ex.B3. The trial Court has rendered a finding that it has not been shown as to how the respondent's vendor Nallathambi acquired title over the suit property. When the case of the respondent that he is the owner of the suit property and his claim that he is in possession was already negatived in the earlier suit filed by him, a contra view could not be taken in the present case, moreso, when the plaintiff had filed Ex.A3 and A4. The trial Court had correctly approached the issues. The first appellate Court erred in not taking note of Exs.A1 and A2. Exs.A3 and A4 should have been construed in the light of Exs.A1 and A2. Failure to do so had vitiated the impugned judgment and decree. I therefore answer the substantial question of law in favour of the appellant. The second appeal is allowed. The impugned judgment and decree is set aside and the decision of the trial Court is restored. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Sub Judge, Periyakulam.
- 2.The District Munsif, Andipatti.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A. (MD)No.930 of 2008
30.09.2021