



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

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THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

S.A. (MD)No.118 of 2021

and

C.M.P. (MD)No.1887 of 2021

WEB COPY

A.Chinnaramu	:Appellant/Appellant/2 nd Defendant
1.A.Nagarajan	Vs. :1 st Respondent/1 st Respondent/ Plaintiff
2.P.Muthu	:2 nd Respondent/2 nd Respondent/1 st Defendant

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree, dated 24.03.2020 passed in A.S.No.06 of 2019 on the file of the Subordinate Court, Periyakulam, Theni District, confirming the judgment and decree, dated 22.11.2018 passed in O.S.No.78 of 2015 on the file of the District Munsif Court, Periyakulam, Theni District.

For Appellant

:Mr.R.Shankar Ganesh
for M/s.Dictum Law Firm

JUDGMENT

The second defendant in O.S.No.78 of 2015 is the appellant.

2.The suit was laid by the plaintiff/first respondent seeking a permanent injunction restraining the defendants from interfering with his possession of suit 'A' and 'B' schedule properties; declaration of his title in respect of suit 'B' schedule property; and recovery of possession of 'B' schedule property after removal of the construction put up by the defendants. According to the plaintiff, the suit 'A' schedule property belongs to him and the same was let out to the first defendant for having a brick kiln in the year 2010. The first defendant, who was doing business by establishing brick kiln in the suit property, in the course of the business, put up a construction measuring about 16½ feet north south by 17 ½ feet east west shown as suit 'B' schedule property for the purposes of accommodating the workers employed by him in the brick kiln. The first defendant vacated the premises on 13.02.2014. While doing so, he did not remove the superstructure put up by him and the second defendant had occupied the same. Since the second defendant did not comply with the demands of the plaintiff to vacate and hand over the possession of the said construction, the plaintiff was constrained to sue for the above relief.

3.The suit was resisted by the defendants contending that the offending construction is not situated in S.No.336/1, which belongs to the plaintiff. According to the defendants, the construction is



situated in S.No.336/2, which is classified as poramboke and the first defendant had sold the same to the second defendant under an unregistered sale deed. It was also contended that the plaintiff had settled a portion of the property in favour of his wife, and therefore, he does not have the absolute title to the suit property. Hence, the suit filed by the him seeking declaration of title and permanent injunction and recovery of possession is not maintainable.

4.At trial, the plaintiff was examined as PW-1 and Ex-A1 to Ex-A6 were marked. One Chellapandian was examined as DW-1 and the second defendant examined himself as DW-2. There was no documentary evidence filed on behalf of the defendants. A Commissioner was appointed pending suit and his report and Surveyor plan was marked as Ex-C1.

5.Upon a consideration of the evidence on record, the learned trial Judge concluded that the plaintiff, having settled a portion of the property on his wife, is not entitled to seek declaration of his title and consequential permanent injunction. The learned Trial Judge, however, found that the offending construction is situated within S.No.336/1, which admittedly belongs to the plaintiff. The learned Trial Judge relied upon the Commissioner's report in support of his conclusion that the offending construction, removal of which is sought for, is situated in the suit 'A' schedule, ie., in S.No.336/1. The fact that the second defendant did not choose to examine the Commissioner or the Surveyor was also taken note of by the trial Court in coming to the conclusion that the Commissioner's report reflects the correct position as on ground. On the aforesaid findings, the trial Court, while rejecting the reliefs of declaration and injunction, decreed the suit for recovery of possession. On the objection of the second defendant that the wife of the plaintiff, who is also entitled to a portion of the property, has not been impleaded, the trial Court concluded that it is open to one co-owner to seek recovery of possession, as against the trespasser. Aggrieved by the said decree and judgment, the second defendant preferred an appeal in A.S.No.6 of 2019. The learned Appellate Judge, upon a re-consideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Hence, the second appeal.

6.I have heard Mr.R.Shankar Ganesh, learned Counsel appearing for the appellant.

7.Mr.R.Shankar Ganesh, learned Counsel appearing for the appellant would vehemently contend that once it is found that the plaintiff is not the absolute owner of the property, the Courts below were not right in granting the decree for recovery of possession. He would also fault the Courts below that brushing aside the objection regarding the maintainability of the suit for declaration in the absence of one of the co-owners. He would



further contend that only a very negligible portion of the construction is situated in S.No.336/1 and therefore, the Courts below were not right in granting a decree for recovery of possession as prayed for.

8.I have considered the submissions of the learned Counsel appearing for the appellant.

9.I am unable to agree with his contentions. As regards the claim for possession, it is the specific defence of the second defendant that the offending construction is put up in S.No.336/2, which has been classified as poramboke land. The title of the plaintiff to S.No.336/1 was, in fact, conceded. The Commissioner's report and Surveyor's plan demonstrate that the offending construction is situated in S.No.336/1 and not in 336/2, as claimed by the second defendant. Once it is found that the offending construction is over the plaintiff's property, the plaintiff, as a co-owner, is entitled to recover the possession of the property. May be, he cannot seek a decree for declaration and injunction, but, at the same time, he can seek recovery of possession from a trespasser on behalf of the other co-owner also.

10.The co-owner is not a stranger. She happens to be the wife of the plaintiff. The plaintiff had executed a settlement deed in her favour in respect of a portion of the property, that by itself, would not denude the plaintiff of his right to seek recovery of possession. Despite his best efforts, the learned Counsel for the appellant is unable to demonstrate that the Courts below were overlooked some vital evidence in coming to the conclusions, that they have reached.

11.I do not see any question of law, much less a substantial question of law, in order to enable me to entertain the appeal. The appeal, therefore, fails and it is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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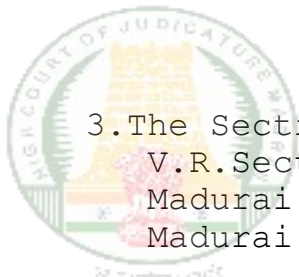
Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Periyakulam, Theni District.

2.The District Munsif, Periyakulam, Theni District.



3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.DICTUM LAW FIRM, Advocate (SR-8562[F] dated 03/03/2021
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S.A.(MD)No.118 of 2021
01.03.2021

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