



S.A.No.309 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.309 of 2007

and

M.P.No.1 of 2007

Balasubramaniam @ Karate Balasubramaniam

... Appellant

Vs.

1.Y.Vijayakumar (died)

2.Y.Mahalakshmi

3.Chalasani Suharitha

4.Akkina Gayathri

5.Yerramaneni Kalawathi

6.Yerramaneni Naga Venkata Praveen

... Respondents

[Respondents 2 to 6 brought on record as lrs of the deceased sole respondent viz Y.Vijayakumar vide court order dated 22/07/2021 made in CMP.No. 2488 2489 and 2490 of 2017 in SA 309 of 2007]



S.A.No.309 of 2006

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 07.03.2006 of the learned IV Additional City Civil Judge, Chennai, passed in A.S.No.568 of 2004, confirming the the judgment and decree dated 06.10.2004, the learned VIII Assistant, City Civil Judge, Chennai, passed in O.S.No.14771 of 1996.

For Appellants : Mr.S.B.Viswanathan
For Respondents : Mr.V.Ravi [R.2, R.5 & R.6]
: R.1 [Died]
: R.3 and R.4 [not ready in notice.]

JUDGMENT

The defendant who has been unsuccessful in both the Courts below is the appellant before this Court challenging the judgement and decree passed in OS.No.14771 of 1996 by the VIII Additional City Civil Court, Chennai which is confirmed by the IV Additional City Civil Court, Chennai in AS.No.568 of 2004. The brief facts are as follows and the parties are referred to in the same ranking as before the Trial Court.



2. The plaintiff had died pending the appeal and his legal representatives have been brought on record. They shall collectively be known as the plaintiff.

3. The plaintiff had filed the above referred suit for the following reliefs:-

a) Permanent injunction restraining the defendants, his men, agents, servants or anybody claiming through him from any manner interfering with the possession to the land, comprised in R.S.No.3956/2, extent of 1 ground 1600 sq.ft. demolition of existing compound wall or making further construction in the suit property more fully described in the Schedule to the plaint.

b) Directing the defendants to pay the cost of the suit

c) Granting such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.



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4. The property in question is herein below described as follows:-

SCHEDULE

Piece and parcel of land bearing Plot No.7, R.S.No.3956/2 at Greenways Road, Adyar, Madras, 600020 in the registration Sub-District of Mylapore bounded :-

On the south by : Plot no.8 width 80 feet

On the West by : Plot Nos.9 and 17 -Width 50 feet

On the North by : Plot No.6 - Width 80 feet

On the East by : 40 feet road - width 50 feet Area 1 ground and 1600 sq.ft.

5. It is the case of the plaintiff that he had purchased the property under a registered sale deed dated 29.05.1970 which is a vacant land situate in R.S.No.3956/2 measuring an extent of 1 ground 1600 Sq.ft. for valuable consideration from one Mr.AL.CT. Chidambaram Chettiar. The property in question was in his possession since the date of the purchase (29.05.1970).



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6. The Urban Land Tax Authorities had addressed a notice to the plaintiff to file necessary information required under the Urban Land Tax Act in respect of the above property vide their letter dated 25.09.1979. The plaintiff has also furnished the requisite statement under the provisions of Tamil Nadu Urban Land Tax Act, 1966, regarding the property in question. The Assistant Commissioner, Urban Land Tax, Alandur at Adambakkam by his proceedings dated 18.03.1977 granted exemption after inspecting the suit property.

7. The plaintiff would further state that in or about 1974, he had put up a compound wall on the 3 sides of the suit property. Recently, just a week before the filing of the suit, certain unauthorized persons had made an unlawful attempt to trespass into the property. Therefore, to avoid another attempt, the plaintiff commenced construction work for putting up the compound wall on the 4th side as well. The defendant being a politically influential person along with his henchmen attempted to unlawfully encroach upon the plaintiff's property. Immediately, after this incident, the plaintiff approached the local police on 23.09.1995. The police officials



advised the plaintiff to file a written complaint against the defendant and the same was also given but however the police officials were reluctant to take up the complaint and it is with great difficulty that the plaintiff had received an acknowledgment for his complaint. Even after the complaint was given the police officials admitted their inability to take action against the defendant and evaded by stating that it was a civil case. Therefore, left with no other alternative the plaintiff has come forward with the suit in question.

8. The defendant would submit that the property bearing Plot No. 7, Door No.19, East Avenue, Kesavaperumalpuram, Chennai comprised in R.S.No.3956/2 which has been sub-divided as 3956/42 measuring an extent of 4000 Sq.ft. originally belonged to the City Co-operative Housing Society Limited, Adyar. The plot was purchased by Mrs.B.Chandrakala from the above Society and she was in peaceful possession and enjoyment of the same. At this juncture, the plaintiff had fabricated the sale deed and approached the police authority to put him in possession. The police authorities called for the records and found that the sale deed belonged to Plot No.7. By producing the above said documents the plaintiff claimed his right over the property.



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9. The defendant would further deny the ownership pleaded by the plaintiff and would contend that the owner of the suit property is one B.Chandrakala. When she was out of station it was the plaintiff who had attempted to encroach into the property and therefore, Meenakshi, the mother-in-law of Chandrakala had lodged a complaint. The police have stated that the matter was of a civil nature. She, therefore, filed a suit for injunction before the XIV Assistant Civil Civil Court, Chennai in OS.No.6948 of 1995 and obtained an order of injunction against the plaintiff. The said Chandrakala is none other than the wife of the defendant. The suit ought to have been filed against Chandrakala. However the same was wrongly instituted against this defendant. The suit was originally instituted on the file of this Court in C.S.No.1489 of 1995 and it was thereafter transferred to the City Civil Court, Chennai due to some administrative reasons.

10. The learned VIII Assistant Judge had framed the following issues;

1. Whether the plaintiff was entitled to a permanent injunction.?



2. To what relief?

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11. The plaintiff's power agent had examined himself as P.W.1 and one T.Anandan as P.W.2 and marked Ex.A.1 to Ex.A.8. On the side of the defendant, the defendant had examined himself as D.W.1 and one R.Mani as D.W.2 and marked Ex.B.1 to Ex.B.14.

12. The learned Assistant Judge on examining the evidence both oral as well as documentary observed that the plaintiff had proved his title and possession over the suit property. The defendant had not claimed a right over the suit property as owner but had only come forward with a case that it belonged to his wife. However, the wife of the defendant had not impleaded herself in the suit and nor had she subjected herself to cross-examination. Therefore, the suit was decreed.

13. Challenging the said judgement and decree the defendant had filed A.S.No.568 of 2004 on the file of the VI Additional Judge City Civil, Court, Chennai. The learned Judge had confirmed the Judgement and decree of the Trial Court and dismissed the appeal.



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14. Challenging this concurrent Judgment and Decree the appellant has moved the present appeal. In the above suit, the notice had been ordered by this Court on 08.03.2007.

15. The learned counsel for the appellant would submit that the suit has to be dismissed since the plaintiff has not submitted himself for cross examination and it is his power agent who has been examined on his behalf. He would further submit that there is a comprehensive suit pending in which the plaintiff has sought for a declaration of title, declaring the sale deed dated 31.10.2004 and registered as Document No.3084 of 2004 which was executed by the defendants 5 to 7 in favour of the defendants 1 to 3 as not valid and binding upon the plaintiff and for an injunction restraining defendant or his men, agents or servants from putting up any further construction in the land bearing Plot No.7, Greenways Road, Adyar, Chennai -60020, also bearing Door No.19, (Plot No.7) East Avenue, Kesavaperumalpuram, Chennai - 600028.



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16. He would further submit that the very prayer would show that the suit property is not a vacant site and that there are constructions being put up in the suit property and therefore, he would submit that the plaintiff has come to Court suppressing the true facts. The Courts below have not considered these issues and therefore the judgement and decree of the Courts below deserve to be set aside.

17. Per contra, Mr.V.Ravi, learned counsel appearing on behalf of the defendants/respondents 2, 5 and 6 would submit that the property in question is a vacant site and the plaintiff has produced the sale deed in his favour which is of the year 1970. The defendant who pleads that his wife has a registered sale deed in her favour has not produced the same. That apart, the plaintiff has proved possession of the property by filing documents, Ex.A.7. The documents that have been produced on the side of the defendant are all subsequent to the institution of the suit. He would therefore seek to have the appeal dismissed.

18. Heard the counsels on either sides.



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19. The plaintiff has come forward with a case that he has purchased the property under a registered sale deed Ex.A.6. He would also submit that the property has been enclosed with a compound wall on 3 sides barring one side and when there was a threat to the possession, the plaintiff commenced construction work for putting up the compound wall on the 4th side as well but the defendant with his henchmen prevented the plaintiff from proceeding further. The defendant who has stated that his wife has purchased the property in the year 1968 has neither filed the sale deed nor examined his wife. Therefore, he has kept away the best evidence.

20. Both the Courts below have concurrently considered the evidence on record and decreed the suit filed by the plaintiff. No Substantial question of law have been made out, consequently, the Second Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

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To

- 1.The IV Additional City Civil Judge, Chennai.
- 2.The VIII Assistant, City Civil Judge, Chennai.



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and

M.P.No.1 of 2007

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(1/3)

C.M.P.No.13670 of 2022

in



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P.T.ASHA, J.,

The above petition is filed by the 2nd respondent/plaintiff for return of Ex.A.6 which is the original sale deed dated 29.05.1970 registered as Document No.1031 of 1970 with SRO, Mylapore in suit OS.No.14771 of 1996.

2. The petitioner herein had filed the suit for a declaration that they are the owners of the rear part of the suit property and for a recovery of possession. The suit was decreed on 06.10.2004 and against which the 1st respondent herein had filed an appeal in A.S.No.568 of 2004 on the file of the VII Additional Judge City Civil Court, Chennai. The learned Judge had dismissed the appeal which was challenged by the 1st respondent herein before this Court in the above Second Appeal.

3. The above Second Appeal has also been dismissed by a judgment and decree dated 15.12.2022. The plaintiffs have now requested return of the said document since in another suit OS.No.8683 of 2019, on the file of the XVI, Additional Judge, City Civil Court Chennai, the defendants had questioned the availability of the original sale deed.

4. Considering the above request and taking into account the fact that the appeal filed by the defendant has been dismissed, the said petition is allowed and the document is returned.

5. The Registry is directed to return the document to the petitioners as the petitioners have filed a certified copy of the said Exhibit along with this petition and the certified copy shall be substituted for the original.

15.12.2022

(2/3)

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C.M.P.No.21822 of 2022

in



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P.T.ASHA, J.,

The learned counsel for the petitioner submits that he is not pressing the petition and has also made an endorsement to that effect.

2. In view of the submission made by the learned counsel for the petitioner and the endorsement so made, this Civil Miscellaneous Petition is dismissed as not pressed.

15.12.2022
(3/3)

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