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S.A.No.349 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.349 of 2018
and C.M.P.No.9724 of 2018

Nabi Fathima Bee

.. Appellant

-Vs.-

1. Abdul Alee Khan

2. Nanima Bee @ Raziya bee

.. Respondents

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the Judgment and Decree of the Subordinate Court at Tiruttani, dated 13.03.2018 in A.S.No.41 of 2014 confirming the judgment and decree of the District Munsif Court at Tiruttani, dated 29.09.2011 in O.S.No.2 of 2008.

For Appellant : Mr.V.Manohar
for Mr.A.Ilaya Perumal

For Respondents 1 & 2 : Mr.C.B.Santhosh Kumar

JUDGMENT



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The plaintiff is the appellant before this Court challenging the concurrent dismissal of her suit for permanent injunction.

2. The facts in brief are narrated herein below and the parties are referred to in the same ranking as before the Trial Court.

(i) The plaintiff has filed O.S.No.2 of 2007 on the file of the District Munsif, Tiruttani for a permanent injunction restraining the defendants, their men, agents, servants or anyone claiming under them from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

(ii) It is the case of the plaintiff that she is the absolute owner of the suit property. The suit property was described as an extent of 104 sq.mtrs, approximately, out of 313 sq.mtrs., in which, two houses are constructed, comprised in Old Survey No.194, New Village Survey No.233/30, Sathrunjayapuram Village, Tiruttani Taluk, Tiruvallur District. She would submit that both herself and her husband had made improvements in the



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property by reclaiming the uneven land and developing the site for occupation. The Revenue Records and other documents stand in her name.

She would further submit that she been in continuous possession and enjoyment of the property for over 20 years.

(iii) While so, the defendants, who are the recent purchasers of the adjacent property, attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. The plaintiff would submit that since her husband is living in Chennai, she does not have any male support and therefore, the defendants were taking advantage of the same. The plaintiff had issued a legal notice on 30.08.2007, but the the defendants, who had received the said notice, did not come forward to rectify their mistakes. Therefore, the suit has been filed.

3. (i) The first defendant had filed a written statement, which was adopted by the second defendant, in which, they had denied the allegations contained in the plaint and submitted that the suit property itself had not been properly described. The schedule of property does not contain either the



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measurements or the extent, including the type of construction. They would submit there are three houses constructed in the larger extent of the suit schedule property. Out of these houses, the plaintiff has a right and title to the house with an Asbestos sheet roof. The 1st defendant has right and title to thatched roof house and the 2nd defendant was allotted a tiled roof house. They would submit that three houses were originally owned and possessed by one Nasi Hussain Sahib, who had settled the property by way of an oral gift to his two sisters, Mahaboob Bee and the plaintiff. A joint patta was issued in the name of the said Nabi Hussain Sahib in the year 1993, since then they have been in enjoyment of their respective shares.

(ii) The said Mahaboob Bee had sold the thatched roof house and the vacant portion under a registered Sale Deed dated 27.02.2006 to the first defendant and he has been in possession and enjoyment of the same. Defendants 1 and 2 had thereafter obtained separate Pattas in respect of their respective portions. The first defendant would further submit that it was he, who had arranged the marriage of the plaintiff's daughter, Kasim Bee. Thereafter, at the request of the said Kasim Bee, she was permitted to stay in



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the thatched house temporarily on the tacit understanding that the said Kasim

Bee would vacate the premises as and when requested by the first defendant.

However, the said Kasim Bee started asserting ownership over the same.

When the first defendant requested her to vacate the premises, she failed to do so. Therefore, the plaintiff was agitated by the same and therefore, she has come forward to file a suit with ulterior motive.

4. The learned District Munsif, Tirutani had framed the following issues:

1. Whether the plaintiff or Kasim Bee have no right or title over the thatched roof house?

2. Whether the said Kasim Bee is residing only under permissive possession and not on her own right?

3. Whether the suit is bad for non-joinder of necessary party?

4. Whether the plaintiff is entitled to the relief as prayed for?

5. To what relief if any, the plaintiff is entitled to ?

5. The plaintiff had examined herself as P.W1, and two other witnesses



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and marked Exs.A1 to A10. On the side of the defendants, first defendant was examined as D.W1 and one Natarajan was examined as D.W2 and Exs.B1 to B5 were marked. An Advocate Commissioner was appointed and he has filed his report and rough sketch as Exhibits, which have been marked as Exs.C1 and C2. Thereafter, the learned District Munsif, on considering the evidence and record, ultimately dismissed the suit.

6. Challenging the dismissal of the judgment and decree of the trial Court, the plaintiff had filed an appeal in A.S.No.41 of 2014 on the file of the Subordinate Court, Tiruttani. The learned Subordinate Judge had also confirmed the judgment and decree of the trial Court and dismissed the appeal. Challenging the same, the plaintiff is before this Court.

7. When the matter had been listed before this Court, this Court had ordered notice to the respondents. The respondents had entered appearance through counsel.

8. Heard the learned counsels on either side and perused the materials available on record.



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9. The plaintiff has filed a suit for permanent injunction. In her pleadings, she had clearly and categorically stated that she is in enjoyment of an extent of 104 sq.mts, in which, there were two houses. However, in the schedule of property, there is no such reference to the houses. That apart, the suit schedule does not contain any measurements or boundary description to show the situation of the 104 sq.mts which the plaintiff claims she is in possession. The defendants, in their written statement, have stated that the larger extent of the suit property. consists of 3 houses, one is an asbestos sheet roof which belonged to the plaintiff, the thatched roof one belonged to the 1st defendant and the tiled roof one belonged to the 2rd defendant. Such description is not found in the schedule of property to the plaint. The suit is one for a bare injunction. The defendants' case is that they had put the plaintiff's daughter in possession of the property that had been allotted to the first defendant, namely, the thatched roof house and that the said Kasim Bee, the daughter of the plaintiff was refusing to vacate the premises and claiming an independent right to the same. The statement made in the written statement has not been rebutted by the plaintiff by filing a reply statement.



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Both the Courts below have held that the plaintiff has not chosen to file any Revenue Records to prove the continued possession of the suit property. It is needless to state that in the case of a suit for bare injunction, the person seeking the order of injunction, has to show the continued possession and enjoyment of the said property, which in the instant case, is lacking. That apart, the description of property does not give a correct description. The suit property had also not been defined within the boundaries, so as to enable the Court to identify the property in question.

10. Therefore, the Courts below have rightly rejected the suit and I see no reason to interfere with the same. The appellant has also not made out any substantial question of law warranting interference of this Court. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2022

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To

1. The Subordinate Judge, Tiruttani

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2. The District Munsif, Tiruttani,
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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