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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

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THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.1534 OF 2011

AND

M.P.NO.1 OF 2011

A.Govindaraj

... Appellant/Plaintiff

Vs.

M.Vasu

... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 25.07.2011 passed in A.S.No.57 of 2010, on the file of the II Additional Subordinate Judge, Salem, reversing the decree and judgment dated 10.12.2009 passed in O.S.No.1113 of 2008, on the file of the Principal District Munsif, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondent : Ms.Zeenath Begum

JUDGMENT

The appellant is the plaintiff in O.S. No.1113/2008 on the file of the Principal District Munsif, Salem. He filed the suit for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit properties in Survey No.213/8 and Survey No.213/2 of Vazhapadi Sub Division, Salem District, measuring 38 cents and 10 cents respectively.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The minimum facts that are required for the disposal of the present appeal are as follows:



The plaintiff is the son of one Angamuthu and the defendant is the son of one Muthusamy. Angamuthu and Muthusamy are brothers. According to the plaintiff there was a partition between the two brothers (Angamuthu and Muthusamy) in which survey No.213/8 measuring 38 cents and survey No.213/2 measuring 10 cents were allotted to the share of his father Angamuthu and that as per the oral partition between his brothers and sisters, he is in the possession and enjoyment of the suit properties. It is further contended by the plaintiff that the defendant is attempting to interfere with his possession and enjoyment of the aforesaid properties (suit properties). Therefore, he filed the suit for a bare injunction.

4. The defendant in his written statement admitted the title and possession of the plaintiff in respect of the land in survey No.213/8. However, he contended that the plaintiff has not proved the oral partition between his brothers and sisters and therefore, the suit filed by him is not maintainable and that he should have sought for the relief of declaration of title to the suit property. It is also averred that survey No.213/2 was not allotted to the share of the plaintiff's father. Therefore, the defendant prayed for the dismissal of the suit.

5. The trial court after framing necessary issues, decreed the suit in favour of the plaintiff vide its decree and judgment dated 10.12.2009 on the ground that there is no dispute over survey No.213/8 and that since the Village Administrative Officer of Vazhapadi village, (who was examined as P.W.4), and the defendant admitted the plaintiff's possession over the suit property in survey No.213/2 measuring 10 cents, the plaintiff is entitled for a decree of permanent injunction against the defendant in respect of both the suit properties.

6. Aggrieved over the same, the defendant preferred an appeal in A.S. No.57 of 2010 before the II Additional Sub Court, Salem. The first appellate court, after analyzing the evidence on record came to a conclusion that the evidence of the Village Administrative Officer of Vazhapadi cannot be considered for any purpose since the plaintiff did not adduce any evidence to show his possession over survey No.213/2 and in any event no decree of injunction can be granted in respect of survey No.213/2 as it is a water body belonging to the Government. The first appellate court, therefore, reversed the findings of the trial court and dismissed the suit filed by the plaintiff.

7. Aggrieved over the decree and judgment of the first appellate court, the present second Appeal is filed by the appellant/plaintiff.



8. Notice of motion was ordered to the respondent and after several adjournments, the case was posted for hearing today. In the grounds of Memorandum of Second Appeal, the appellant has raised the following substantial questions of law.

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- 1) Whether the lower appellate court is correct in dismissing the suit in its entirety especially when the respondent/defendant admitted the title of the appellant as far as R.S. No.213/8 of the suit property is concerned?
- 2) Whether the relief of permanent injunction could be granted based on possession irrespective of title as far as R.S. No.213/2 of the suit property is concerned?
- 3) Whether the relief of declaration is always necessary especially when the title of the appellant is admitted by the respondent as far as one item of suit property is concerned?
- 4) Whether the relief of permanent injunction could be granted against the third party based on possession even if the appellant is an encroacher?
- 5) Whether the lower appellate court is correct in dismissing the suit especially when the appellant did not claim any relief against the Government as far as R.S. No.213/2 is concerned?

9. Heard Mr. R. Nalliyappan, learned counsel appearing for the appellant and Ms. Zeenath Begum, learned counsel appearing for the respondent.

10. Mr. R. Nalliyappan, learned counsel for the appellant contended that the defendant did not deny the possession of the plaintiff over the land in survey No.213/8 measuring 38 cents, but however contended in his written statement that the plaintiff alone is not entitled to the entire land in survey No.213/8 as he has brothers and sisters and that they have not been added as parties to the suit. According to the learned counsel for the appellant, there was an oral partition between the plaintiff and his siblings and survey No.213/8 measuring 38 cents fell into the plaintiff's share and the defendant cannot question the same. He therefore, contended that the plaintiff is entitled for a permanent injunction in respect of survey No.213/8. He fairly conceded that since survey No.213/2 is a water body, the plaintiff cannot claim possession over the same.

11. Per contra, Ms. Zeenath Begum, learned counsel for the respondent contended that the plaintiff's suit for bare injunction without a prayer for declaration of title is not



maintainable when there is a cloud over the title of the plaintiff. It is also contended that no documentary evidence was adduced to show that the plaintiff is in possession of 10 cents in survey No.213/2. It is her further contention that since survey No.213/2 is admittedly a water body, the plaintiff cannot encroach upon the said land. Reliance was also placed on the decision of a Division Bench of this Court in Sivakasi Region Tax Payers Association vs. The State of Tamil Nadu, rep. by its Secretary to Government & others reported in [2008] 4 LW 415, in which it is held that no obstruction can be created by the encroachers or even by the Government in a water body. She, therefore, prayed for the dismissal of the present second appeal. According to her there is no substantial question of law involved in the present appeal.

12. At the outset, it may be observed that though the defendant had averred in the written statement that the plaintiff alone cannot claim title and possession over survey No.213/8 measuring 38 cents as there are other co-sharers (plaintiff's brothers and sister), he admitted the plaintiff's possession over the said land during the course of cross examination. He did not claim any right over the property in Survey No.213/8. The first appellate court had properly analysed the evidence on record and had come to a conclusion that there is no necessity for granting an order of injunction in favour of the plaintiff in respect of survey No.213/8. The plaintiff also did not adduce any documentary evidence to show that he is in possession of survey No.213/2, which is a water body. As rightly pointed out by the learned counsel for the respondent no one can encroach upon the water body. All the observations made by the first appellate court are based on evidence and by no stretch of imagination they can be said to be perverse. In view of the abovesaid reasons, I hold that there is no substantial question of law involved in the present appeal. Therefore, the second appeal deserves to be dismissed.

13. In the result,

- 1) The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- 2) The decree and judgment dated 25.07.2011 passed in A.S. No.57 of 2010, on the file of the II Additional Subordinate Judge, Salem, is upheld.
- 3) The decree and judgment dated 10.12.2009 passed in O.S. No.1113 of 2008, on the file of the Principal District Munsif, Salem, is set aside.



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4) The suit in O.S. No.1113 of 2008 is dismissed with costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

bga

To

1. The II Additional Subordinate Judge, Salem.
2. The Principal District Munsif, Salem.
3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.17374

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.17399

S.A.No.1534 of 2011

VG-II (CO)
CT(25/05/2022)