



S.A.No.267 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : . 09.2022

CORAM

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

S.A.No.267 of 2013

M.P.No.1 of 2013

J.Shantha

....Appellant

Vs.

Gowri

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 21.12.2012 made in A.S.No.18 of 2012 on the file of the Court of the Subordinate Judge, Nagapattinam, confirming the Judgement and decree dated 21.11.2011 made in O.S.No.92 of 2009 on the file of the Court of the District Munsif, Nagapattinam.

For Appellant : Mr.T.Dhanasekaran

For Respondent : Mr.J.Ramakrishnan
For Mr.P.J,Kothanda raman



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JUDGMENT

WEB COPY This Second Appeal has been filed by the defendant against the Judgment and decree dated 21.12.2012 made in [A.S.No.18](#) of 2012 on the file of the Court of the Subordinate Judge, Nagapattinam, confirming the Judgment and decree dated 21.11.2011 made in [O.S.No.92](#) of 2009 on the file of the Court of the District Munsif, Nagapattinam.

2. The appellant herein is the defendant in the suit in [O.S.No.92](#) of 2009 on the file of the District Munsif, Nagapattinam, filed by the respondent/plaintiff herein for the relief of permanent injunction and other consequential relief with regard to her property as described in the plaint scheduled in [S.F.No.178/22](#) with an extent of 5 cents (2184 sq.ft) shown as 'A' scheduled property in which, the defendant is said to have encroached an extent of 438 sq ft on the eastern side of the 'A' scheduled property and the said encroachment portion shown as 'B' scheduled in the suit property. The defendant also filed a written statement contending that the 'B' scheduled property belong to her and also denied that the plaintiff is not having possession of 5 cents in [S.F.No.178/22](#).



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3. On considering the both submissions, the trial Court had framed necessary issues and decreed the suit in favour of the plaintiff and also declared that the plaintiff is having title over the suit property. Aggrieved over the same, the defendant had preferred an appeal in A.S.No.18 of 2012 on the file of the Subordinate Judge, Nagapattinam, wherein, the Appellate Judge had partly allowed the appeal with regard to the relief of recovery of possession claimed by the plaintiff thereby confirming the trial Court findings and decreed suit as prayed for and set aside the trial Court findings with regard to the plaintiff's title findings rendered in favour of the plaintiff without any pleadings. Aggrieved over the same, the defendant has preferred this Second Appeal.

4. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

1) Is the Lower Appellate Court correct and justified in decreeing the suit for recovery of possession in the absence of declaration of title especially when title is disputed?

2) In a suit for ejectment is it not the duty of plaintiff to



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establish her title to the suit property and in the absence of establishment of title (for which there is no prayer) are the courts below correct and justified in decreeing the suit for recovery of possession?

3) Whether the Settlor can confer larger interest or greater extent of property, then what he got or obtained under the will-source of settlor's title and whether such a settlement is valid?

4) Whether any transfer under an unregistered settlement deed confer any title on the transferee and whether such transferee claim title on the basis of such unregistered settlement deed?

5) As the Courts below correct and justified in relying on later sub- division without notice to parties and in holding that Survey No.178/22 measures 1893 sq.ft., by defendant without any basis?

5. The learned counsel for the appellant submitted that the plaintiff is not entitled for 5 cents in Survey No.178/22 as described in the plaint



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scheduled. On the other hand, the defendant is having 5 cents which is situated on the eastern side of the plaintiff property and the same belongs to her family members by way of purchase made by her father-in-law through sale deed on 12.02.1968 as 'B' scheduled property. She further submitted that the defendant is in possession and enjoyment of the suit property ever since from the date of purchase by her family members and also as per Will executed by her husband. But, both Courts below without appreciating the title deeds produced on the side of the defendant erroneously decreed the suit in favour of the plaintiff even though the plaintiff has not produced any document to show her title over the property. Hence, she prayed to set aside the findings given by the Courts below as misconception of law.

6. Per contra, the learned counsel for the respondent submitted that the plaintiff is having possession of 5 cents in S.F.No.178/22 and the same belongs to one of her family members viz, Janakiammal, who had executed a Will in favour of her husband and his brother Saminathan to an extent of 5 cents in S.F.No.178/22. Thereafter, the said Saminathan executed a release deed in favour of the plaintiff's husband and he executed a settlement deed in favour of her/plaintiff. Based on the Ex.A1 settlement deed in respect of



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the part portion in favour of her and she is in possession and enjoyment of the suit property but the defendant had encroached the land to an extent of 438 sq ft as 'B' scheduled property. Further submitted that the plaintiff has proved her possession and she produced the title deed as well as the revenue records and the Commissioner report with the help of Surveyor. He further submitted that the trial Court had rightly declared her title and granted recovery of possession and other consequential relief in favour of the plaintiff but the defendant failed to prove her claim over the 'B' scheduled property through necessary documents. Hence, the trial Court had rejected the defendant claim. Therefore, she prayed to dismiss the second appeal.

7. Heard Mr.T. Dhanasekaran, learned counsel for the appellant and Mr.J.Ramakrishnan, For Mr.P.J,Kothanda raman, the learned counsel for the respondent and perused the materials available on record.

8. On considering the submissions made on either side, it is an admitted fact that the plaintiff is having 5 cents in S.F.No.178/22 and the defendant claimed right over the property in S.F.No.178/23 including the 'B' scheduled property. The plaintiff has produced the settlement deed under



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Ex.A1 which is a registered document through which her husband settled 5 cents in S.F.No.178/22 in favour of her. Exs.A2 to A6 are the chitta, adangal and natham Nilavari Thittam Thaya chitta and those documents reveal that the plaintiff is able to establish that by way of Ex.A1 settlement deed now the property is transferred in her name and under the settlement deed scheme, she is also paying tax for entire property and as per the field map S.F.No.178/22 was allotted to the plaintiff. Though, the plaintiff claims 5 cents in S.F.No.178/22, as per Commissioner report C1 and C2 on ground she is having only 4.43 cents (1893 sq ft) and the same was measured through Surveyor. Hence, as per the Commissioner report as well as the Surveyor report, on ground, the plaintiff is having only 1893 sq ft including the extent of 438 sq ft in 'B' scheduled property which was said to be encroached by the defendant. The said 438 sq ft the alleged encroachment portion shown as red colour in the Commissioner report which reveals that 438 sq ft encroached by the defendant admittedly which is now in the occupation of the defendant. Hence, through the Commissioner report the plaintiff is able to establish that the extent of 438 sq ft as "B" scheduled property was encroached by the defendant and enjoyed the same along with her property in S.F.No.178/23 argued that the Courts below had rightly



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appreciated the revenue records as well as the commissioner report.

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9. But the defendant claimed that she is having 5 cents in [S.F.No.178/23](#) including 438 sq ft which proves her possession through Ex.B2 to B4. Ex.B2 is the original sale deed executed by one Krishnasamy Nayudu in favour of the defendant's father-in-law and Ex.B4 is the release deed executed by one of the legal heirs of the said Ramaiah Nayudu in favour of the defendant. Though, the defendant has not produced any document to show that on ground she is in possession and enjoyment of 5 cents described in the title deed under Exs.B2 and B3, the defendant has admitted that the property in [S.F.No.178/22](#) belongs to the plaintiff. Furthermore, she has not taken any steps to show that 'B' scheduled property including 438 sq ft belongs to her. Which measuring the property through Surveyor at the time of Commissioner inspection. Hence, the Courts below rightly concluded that the defendant failed to establish that the extent of the land including 438 sq ft in 'B' scheduled property belongs to her and the same is situated in [S.F.No.178/23](#). On the other hand, the revenue records as well as the Commissioner report reveals that the defendant had encroached the property of the plaintiff to an extent of 438 sq ft in survey No.178/22.



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10. Accordingly, the plaintiff is the absolute owner of 5 cents on ground including 438 sq ft encroached by the defendant without any title deed, hence, the Courts below rightly granted the relief of recovery of possession with regard to 'B' scheduled property in favour of the plaintiff. The question of law one is answered.

11. Even in a suit for bare injunction, when the plaintiff is able to establish her right over the property by producing the concrete material evidence of title deed, the Court can incidentally decide the title even though no prayer for declaration of title over the property by paying separate court fee. It is settled proposition of law and the case on hand is one such kind wherein the plaintiff has not prayed for relief of declaration with regard to her title over the property but she produced the title deeds and revenue records through which she prima facie established her title to the property and also through the Commissioner report with the help of Surveyor report reveals that she proved the encroachment made by the defendant. Hence, the Courts below rightly appreciated the evidence adduced on the side of the plaintiff and concluded that about 'A' scheduled property and the Court incidentally decided that the plaintiff is having right



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and title over the property but the trial judge erroneously granted relief of declaration and the same was set aside by the appellate judge as no specific prayer. But in respect of title of the plaintiff, as discussed above incidentally the court is empowered to decide about the title and as per revenue records found that 'A' scheduled property belongs to her including the extent of 438 sq ft encroached by the defendant, even though there is no relief of declaration specifically prayed for in the suit.

12. As discussed above, the Court can incidentally decide the title by relying on the document adduced by the plaintiff. Hence, the Court below has rightly appreciated those aspects with regard to the title of plaintiff, which needs no interference the issues No.2 is answered accordingly.

13. Issue Nos.3 and 4, the document is registered one and the plaintiff is having 5 cents as mentioned in the document but on ground as per measurement 1893 sq ft (including said 438 sq ft) and the same was accepted by the plaintiff. Therefore, she has not claimed more extent. Then on ground i.e., 1893 sq ft. Therefore, the objection raised by the defendant to that effect is unsustainable. Ex.A1 is not an unregistered document as



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alleged by the defendant. Accordingly, issue Nos.3 and 4 are answered.

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14. Accordingly, the Second Appeal is dismissed as no merits. Though the trial Judge had granted the relief of declaration without prayer and the same was set aside by the Appellate Judge, in A.S.,No,18 of 2012. Thereby, the finding of A.S.No,18 of 2012 is confirmed. Consequently, with regard to recovery of possession suit in O.S.No.92 of 2009 on the file of the District Munsiff, Nagapattinam is decreed. Consequently, connected miscellaneous petition is closed..

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To

- 1.The Subordinate Court, Nagapattinam.
- 2.The learned District Munsif, Nagapattinam.
- 3.The Section Officer,
VR Section.



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T.V.THAMILSELVI, J.

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