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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2022

Pronounced on : 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.S.Nos. 629 & 630 of 2018

And

C.M.P.Nos. 27812, 27801 & 27805 of 2019

A.S.No. 629 of 2018

1. T. Subramani
2. S.Mallika
3. S.Varlakshmi
4. S.Gokulnath

... Appellants/Plaintiffs

(appellants 2 and 3 declared as major and their mother and next friend S.Mallika discharged from the guardianship vide Court order dated 26.07.2018 made in C.M.P. Nos. 11101 to 11104 of 2018 in A.S.SR.No. 86081 of 2017)

Vs

1. K.Jayapaul
T.Rajagopal (Deceased)
2. Smt. R.Dharani
3. Smt. R.Manonmani
4. R.Udayakumar

... Respondents/Defendants

PRAYER:-

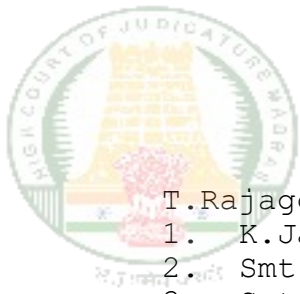
Appeal filed under order 41 Rules 1&2 and Section 96 of CPC, against the decree and judgment dated 28.07.2017 in OS.No.12564 of 2010 (CS.No.349 of 2000) on the file of XVI Additional Judge, City Civil Court, Madras.

A.S.No. 630 of 2018

1. S.Mallika
2. T.Subramani

... Appellants/Defendants

Vs



T.Rajagopal (Deceased)

1. K.Jayapaul
2. Smt. R.Dharani
3. Smt. R.Manonmani
4. R.Udayakumar

... Respondents/Plaintiffs

PRAYER: Appeal filed under Order 41 Rules 1 & 2 CPC and Section 96 of CPC, against the Judgment and Decree dated 28.07.2017 passed in O.S.No. 12862 of 2010 (C.S.No. 876 of 2004) (O.S.No. 4829/1995) on the file of the XVI Additional Judge, City Civil Court, Madras.

For Appellants
in both A.S.Nos. : Mr. D.Nellaiappan

For RR 1 to 4 in
both A.S.Nos. : Mr. A.N.Sivaprakasam

COMMON ORDER

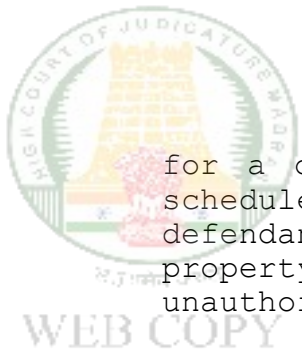
The plaintiffs in O.S.No. 12564 of 2010 on the file of the XVI Additional City Civil Court, Chennai, which suit had been originally filed as C.S.No. 349 of 2000 before the Original Side of the Madras High Court are the appellants in A.S.No. 629 of 2018.

2. They are the defendants in O.S.No. 12862 of 2010 also on the file of the XVI Additional City Civil Court, Chennai, and owing to the suit being decreed, they had filed A.S.No. 630 of 2018.

3. The respondents in both the appeal suits, are the defendants in O.S.No. 12564 of 2010 and the plaintiffs in O.S.No. 12862 of 2010.

4. Joint trial was conducted by the XVI Additional City Civil Court, Chennai, in both O.S.No. 12564 of 2010 and O.S.No. 12862 of 2010. By a common Judgment and Decree dated 28.07.2017, O.S.No. 12564 of 2010 was partly decreed and O.S.No. 12862 of 2010 was decreed.

5. O.S.No. 12564 of 2010 / C.S.No. 349 of 2000 had been filed by the plaintiffs therein / appellants in A.S.No. 629 of 2018, seeking a Judgment and Decree, declaring that they are the absolute owners of 'A' schedule property given in the plaint and



for a declaration that the defendants are trespassers of 'B' schedule property in the plaint and for a direction against the defendants to handover vacant possession of the 'B' schedule property and for damages at the rate of Rs.2,000/- per month for unauthorised occupation of 'B' schedule property and for costs.

6. The 'A' schedule property in the plaint was land and building measuring 1 ground and 22 sq.ft., namely, 2422 sq.ft., at Door No. 56, Ellaiamman Koil Street, previous Door No. 15 /2 Gandhi Street, Chennai - 600 033 and the 'B' schedule property was a part of 'A' schedule property measuring 1600 sq.ft., in Old Door No. 34, Gandhi Street, Chennai - 600 033.

7. O.S.No. 12862 of 2010 had been filed by the respondents in both the appeals, seeking a Judgment and Decree for permanent injunction from interfering with their peaceful possession of property at Gandhi Street, Door No. 34, Chennai - 600 033 measuring 53' x 43' or 2279 sq.ft.

8. The learned Trial Judge by a common Judgment had partly decreed O.S.No. 12564 of 2010 granting declaration of title to 679 sq.ft., alone and had dismissed the suit with respect to the declaration that the defendants are to be declared as trespassers with respect to 'B' schedule property and therefore to handover vacant possession.

9. With respect to O.S.No. 12862 of 2010, the learned Trial Judge had decreed the suit for permanent injunction with respect to 1600 sq.ft.

10. Questioning the Judgment and Decree in both the suits, the Appeals have been filed. No appeal has been filed by the defendants in O.S.No. 12564 of 2010.

O.S.No. 12564 of 2010:

11. The plaintiffs claimed that the father of the first plaintiff M.Thambiran Naicker was holding land measuring 1 ground and 22 sq.ft., in Door No. 15/2, Gandhi Street, West Mambalam Village, Chennai -33, as owner from 1948 till his death on 14.03.1968. The plaintiffs are his legal representatives. There were settlement proceedings before the settlement Tahsildar between him and one Pushpavathy Ammal and finally, it was stated that patta was granted in the joint names with respect to the said property. Pushpavathy Ammal died in 1990. After the death of Thambiran Naicker, the plaintiffs continued to possess the property. It had been stated that it has two door numbers, door No. 81 in Ellaiamman Koil Street and Door No. 34 in Gandhi Street. They had also put up construction and built houses. It was stated that the second defendant had trespassed



into a portion measuring 1600 sq.ft., of the property claiming to be the son Pushpavathy Ammal. He had earlier filed O.S.No. 4829 of 1995 on the file of the VII Assistant City Civil Court, Chennai, against the second plaintiff and had obtained an exparte order of injunction on 16.08.1996 in I.A.No. 9478 of 1995. With the help of the first defendant he trespassed into the property.

12. The plaintiffs filed C.M.A.No. 1550f 1996 which was dismissed and then filed C.R.P.No. 17569 of 1998 which remanded the issues back to the first Appellate Court for fresh disposal on merits.

13. Claiming that the defendants are in unlawful possession of 1600 sq.ft., of land together with building, the suit had been filed seeking declaration of title to the entire 2422 sq.ft., of land and for consequential declaration that the defendants are in unlawful occupation of 1600 sq.ft., and for their eviction and for damages for such unlawful occupation.

14. In the written statement, the averments stated in the plaint were denied. It was claimed that it were the plaintiffs who were in unlawful possession. The second defendant had authorised the first defendant by a registered power of attorney to administer the property. It had been stated that the second defendant was the absolute owner of the entire property and that it was the plaintiffs who were trespassers.

15. It was claimed that the property had been originally purchased by the mother of the second defendant, Puspavathy Ammal by a registered sale deed dated 26.02.2021 and later, she executed a Will in favour of the second defendant, in which Letters of Administration had been granted by this Court in O.P.No. 783 of 2019. It was stated that the father of the first plaintiff had encroached into the property. It was therefore stated that the suit should be dismissed.
O.S.No. 12862 of 2010:

16. This suit had been filed seeking permanent injunction with respect to the same property measuring 2279 sq.ft., (53 feet x 43 feet), at door No. 34, Pillaiyar Koil @ Gandhi Street, West Mambalam, Chennai - 600 033. The plaintiffs claimed that the said property had been originally purchased by the mother of the first plaintiff Pushpavathi Ammal by a registered sale deed dated 26.02.2021. She then executed a Will which was also registered dated 07.04.1987 in favour of the first plaintiff. Thereafter, on her death on 29.08.1990, the plaintiffs have been in continuous possession. They have been paying taxes. One Thambiran Naicker had taken possession on the southern side of the property. There were proceedings before



the Tahsildar with respect to patta since both had applied for patta. Finally, joint patta was granted. Pushpavathi Ammal was granted patta for 1 ground and 22 sq.ft., instead of 2279 sq.ft., (53' x 43') and the name of Thambiran Naicker was also included. Complaining threat of dispossession, a police complaint had also been given.

17. Claiming to be in possession, the suit was filed seeking permanent injunction restraining the defendants from interfering with peaceful possession.

18. A written statement was filed on behalf of the defendants wherein they claimed that their father Thambiran Naicker was in possession of the property and had also put up construction and the property was also assessed to tax by the Corporation of Madras. Patta No. 93 had also been issued. It had been stated that the suit property belongs to them. They had also obtained electricity service connection. It had also been stated that the plaintiffs have no right over the property. It had also been stated that the plaintiffs are attempting to usurp the property. It was therefore stated that the suit is not maintainable and that the suit should be dismissed.

Issues:

19. The following issues were framed on the basis of the pleadings in both the suits:-

"(i) Whether the plaintiffs are the absolute owners of the suit 'A' schedule property?;

(ii) Whether the plaintiffs are entitled for consequential declaration that the defendants 1 and 2 are trespass in the suit schedule B property?;

(iii) Whether the plaintiffs are entitled for recovery of possession from the defendants 1 and 2 regarding the suit 'B' schedule property?;

(iv) Whether the plaintiffs are entitled for damages at the rate of Rs.2,000/- p.m., for the use of B schedule property from 27.8.1998?

(v) Whether the plaintiffs in O.S.No. 12862 of 2010 are entitled for permanent injunction restraining the defendants not to interfere with the peaceful possession and enjoyment of the



suit schedule property?; and

(vi) To what other relief, the plaintiffs and defendants are entitled?"

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The Trial:

20. During trial, the plaintiffs in O.S.No. 12564 of 2010 were directed to lead evidence in both the suits. The first plaintiff T.Subramani was examined as PW-1 and he marked Exs. A-1 to A-20. Among them, Ex.A-1 was a mortgage deed dated 30.04.1964, Exs. A-2, A-5 to A-9, A-12 were property tax, demand notices and receipts, Ex.A-7 was water tax receipt, Exs.A-14 and A-15 were electricity payment receipts; Ex.A-10, A-18 and A-19 were extracts from permanent / town survey land register and copy of town survey settlement register and the order passed dated 29.06.1967 by the enquiry Tahsildar.

21. On the side of the defendants, the second defendant T.Rajagopal was examined as DW.1 and the first defendant K.Jayapal was examined as DW-2. They marked Exs. B-1 to B-35. Ex.B-1 was the sale deed dated 26.02.1921, Ex.B-2 was the Will of Pushpavathy Ammal, Ex.B-3 was the order of Letters of Administration granted by the Madras High Court, Exs. B-4, B-5, B-6, B-13 and B-34 were property tax demand notices and receipts, Ex.B-28 was the Urban Land tax payment receipt, Exs.B-31 and B-32 were water taxes receipts, Exs. B-7, B-8, B-9 and B-10 were documents relating to the settlement proceedings where enquiry was conducted by the Tahsildar, Exs. B-16, B-17 and B-18 were documents relating to O.S.No. 5435 of 1995 and Ex.B-25 was a certified copy of the Town Survey Settlement Register. During the course of the trial, an Advocate Commissioner had also been appointed and his report was filed Ex.C-1 and the Copies of two sketches were marked as Exs. C-2 and C-3.

The findings of the trial Court:-

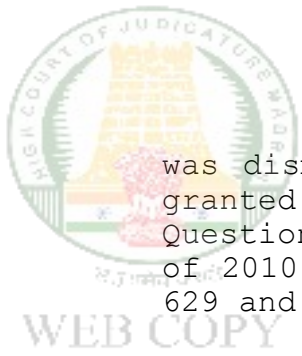
22. The learned XVI Additional City Civil Court, Chennai, first took up issue No.1, namely, whether the plaintiffs were the absolute owners of the entire piece of land. It was observed that Pushpavathy Ammal had purchased the property by a sale deed dated 26.02.1921. She then executed a registered Will in favour of her son the 2nd defendant. She died on 29.08.1990. During her lifetime, the father of the 1st plaintiff, Thambiran Naicker came to possess a portion of the land on the southern side of the property. They both applied patta. The Tahsildar conducted an enquiry. He passed an order on 10.06.1960. He stated that Pushpavathy Ammal was entitled for patta with respect to 53 x 43 sq.ft., of land and Thambiran Naicker was entitled for patta with respect to the adjacent land. But patta was issued for 1 ground 22 sq.ft., instead of



53 x 43 sq.ft., (2279 sq.ft.,) of land. However, the legal heirs of Thambiran Naicker continued to be in possession of their portion of land. It was also observed that the defendants were in possession of a portion measuring 1600 sq.ft. Both the parties had filed property tax receipts, water tax receipts to prove possession.

23. The learned Trial Judge made particular reference to Ex.A-10, land extract from the Permanent/Town Survey Land Register. It was issued on 17.05.1990. It was stated that the property in field No. 69, Municipal Door No. 81, Ellaiamman Koil Street, measuring 1 ground 22 sq.ft., was in the name of the first plaintiff T.Subramani and his brother Selvaraj. The adangal was in the name of Thambiran. Ex.A-4 was the notice from the Corporation issued in the name of the first plaintiff. That was bearing Door No. 34, Gandhi Street which is the only document with a Door number in Gandhi Street. The report of the settlement Tahsildar was marked as Ex.A-19. It was stated that Thambiran had purchased the properties from Devarajulu Reddy on 15.12.1949. Pushpavathy Ammal claimed to have purchased the entire property by sale deed dated 13.05.2021. The settlement Tahsildar held that both Pushpavathy Ammal and Thambiran Naicker were entitled for grant of patta. Ex.B-1 is the title deed of Pushpavathy Ammal. She had purchased 2279 sq.ft. The plaintiffs though claimed through a sale by Devarajulu Reddy. They had not filed that document of title. There was a partition between Thambiran and his brothers in Ex.B-11 dated 17.06.1949. The land allotted to his brother Kanniappan Naicker was purchased by Thambiran by Ex.B-12. It was observed that the plaintiffs claimed title through Exs. A-10, A-18 and A-19 that they are entitled 1 ground 22 sq.ft. Door number given was Door No.81. In Ex.A-1 mortgage deed, it was found that Thambiran was entitled to 836 sq.ft. There was also another suit in O.S.No. 5435 of 1994. That was dismissed for non prosecution. An application filed to restore was also dismissed. The Judgment therein was marked as Ex.B-17. Both the names of Thambiran and Pushpavathy Ammal are found in the settlement register.

24. The learned Judge then examined the report of the Advocate Commissioner. It was found that the house of the plaintiffs was facing Ellaiamman Koil Street and house of the defendants was facing Gandhi Street. It was found that the property of the defendants measured 1600 sq.ft., and it was held that therefore, the plaintiffs are in possession of the remainder 679 sq.ft. It was then found that under Exs.B-1 and B-2, defendants were entitled to 2279 sq.ft. They were however in possession of 1600 sq.ft., alone. In view of these facts, the suit was partly decreed only with respect to the remainder portion, namely, 679 sq.ft. The plaintiffs were be granted declaration of title for the said are of land and building. It



was dismissed for the remainder land. Permanent injunction was granted in favour of the defendants with respect to 168 sq.ft. Questioning that common Judgment, the plaintiff in O.S.No. 12564 of 2010 /defendants in O.S.No. 12862 of 2010 have filed A.S.Nos. 629 and 630 of 2018.

Point for consideration:

25. The points which arise for consideration under Order 41 Rule 31 are as follows:-

(i) whether in the face of a finding of fact on enquiry by the Tahsildar in settlement proceedings that joint patta has to be issued to Thambiran Naicker and Pushpavathy Ammal, the trial Judge was correct in adopting the report of the advocate Commissioner that the plaintiffs / legal heirs of Thambiran are in possession of 679 sq.ft., and the defendants/legal heirs of Pushpavathy Ammal are in possession of 1600 sq.ft?

(ii) whether the plaintiffs can be consequently granted the relief of declaration of title with respect to 679 sq.ft., in the absence of any title documents produced during the course of evidence.

(iii) whether the plaintiffs are in possession of a larger area than 679 sq.ft., and whether any relief is to be granted to them.

(iv) whether the defendants are in possession of 1600 sq.ft., or to a larger area as claimed by them.

The Points answered:-

26. The discussion on the aspects relating to the points over lap and therefore, they are taken up together for consideration adjudication and determination.

27. There are two suits, O.S.No. 12564 of 2010 filed by the plaintiffs seeking declaration of title and for a further declaration that the defendants are in unlawful possession of an area of 1600 sq.ft., in the suit property which according to the plaintiffs totally measures 2422 sq.ft. The defendants therein had filed the second suit in O.S.No.12862 of 2010 seeking permanent injunction to protect possession of the same property but which according to them totally measures 53 x 43 sq.ft., which is 2279 sq.ft.

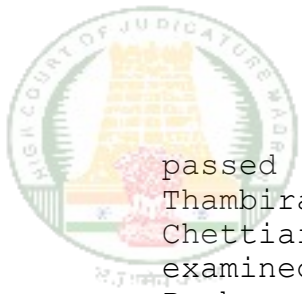


28. Joint trial was conducted in both the suits. The plaintiffs in O.S.No. 12564 of 2010 led evidence and their witnesses were termed plaintiff's witnesses. The defendants in O.S.No. 12564 of 2010 then led adduced evidence and their witnesses were termed as defendants' witnesses.

29. The brief facts are that the defendants claimed that Pushpavathy Ammal mother of the 2nd defendant Rajagopal, had purchased the suit property which has two entries, one from Gandhi Street and another from Ellaiamman Koil street in West Mambalam, Chennai, by a registered sale deed dated 26.02.1921. In the sale deed, the property was given as measuring 53 x 43 ft., equal to 2279 sq.ft. She continued to be in possession. It was stated that subsequently one Thambiran Naicker, who was the father of the 1st plaintiff had encroached into a portion of the property on the south western side. There were disputes between the two of them. They both applied for patta. Proceedings were initiated by the Settlement Officer. Joint patta was granted to both of them. This was objected by Pushpavathy Ammal. Thereafter patta was granted in her name for 2422 sq.ft., and in the name of Thambiran Naicker for the adjacent land. The disputes did not end, necessitating the filing of the aforementioned two suits by their legal heirs.

30. The suits have been transferred, renumbered and finally joint trial commenced and ended. The learned trial Judge had discussed about the appointment of an Advocate Commissioner during the course of trial, who measured the property of the defendants and found that they were in possession of 1,600 sq.ft. The Commissioner was not permitted to measure the property of the plaintiff. The learned trial Judge therefore held that the plaintiffs must be declared to be in possession of the remainder of 2279 sq.ft., and after deducting 1600 sq.ft., had granted a decree in favour of the plaintiff for title for 679 sq.ft. The defendants were granted a decree of permanent injunction with respect to the 1600 sq.ft., in their occupation. The plaintiffs have filed two appeals questioning the findings on the aforementioned common Judgment in both the suits.

31. It is the contention of the plaintiffs that Thambiran Naicker was holding land to an extent of 2422 sq.ft., from 1948 till his death on 14.03.1968. The 1st plaintiff T.Subramani and his another son T.Selvaraj, survived him. T.Selvaraj died leaving behind his wife and minor children, who are the 2nd to 4th plaintiffs. The minor children have now attained the age of majority. The plaintiffs claimed that they held the property as absolute owners. Even during the lifetime to Thambiran Naicker, there were proceedings before the Settlement Thasildar Ex.A-19 is the order dated 29.06.1967



passed by the Tahsildar. In the said order, he observed that Thambiran Naicker had purchased the property from one Devarajulu Chettiar. Both Thambiran Naicker and Pushpavathy Ammal were examined. Their statements were recorded. He also observed Pushpavathy Ammal had declared that she does not claim any right over the property enjoyed by Thambiran Naicker.

32. The learned counsel for the appellant placed strong reliance on the said order and the statement since it affirmed that Thambiran Naicker was also in lawful possession.

33. The plaintiffs also produced as documents to evidence possession, property tax, demand notice as Ex.A-2, notice from the Corporation of Madras as Ex.A-4, property tax collection receipts as Ex.A-5, water supply tax receipts as Ex.A-7, property tax arrears receipts as Ex.A-9, property tax challon as Ex.A-12, electricity payment receipts as Ex.A-14, and A-15. It was emphasised that these documents established that they were in physical possession of the property.

34. The defendants also produced documents to show their possession, namely, property tax receipts as Exs. B-4 and B-5, assessment and collection of tax for buildings and lands as Ex.B-13, certified copy of town survey settlement register as Ex.B-25. They also produced the sale deed in favour of Pushpavathi Ammal as Ex.B-1, the will executed by Pushpavathi Ammal as Ex.B-2, the order granting Letters of Administration by the Madras High Court as Ex.B-3, and the final order passed by the Settlement Thasildar as Ex.B-8.

35. A careful consideration of all these documents would show that the plaintiffs and the defendants are in possession of two separate portions in one larger area. The frontage of the properties are in two streets, Gandhi Street and Ellaiamman Koil Street. There is only one document Ex.A-4 to show the address of the plaintiffs as 34, Gandhi Street. Every other document produced by the plaintiffs reflects the address of the plaintiff at 81, Ellaiamman Koil Street. No credence can be given on that one stray document, Ex.A-4.

36. The Advocate Commissioner had given his report and sketches which have been marked as Exs. C-1, C-2 & C-3.

37. In the Judgment, the learned Trial Judge had considered all these documents and had also observed from the sketches as presented by the Advocate Commissioner that there is a gap or pathway dividing the two properties. The two properties are both distinct and separate. It was therefore held by the learned trial Judge that both the plaintiff and the defendants are in exclusive possession of two separate



properties with boundaries and a stretch of land between the two properties. The frontage of the property of the plaintiffs is at Ellaiamman Koil Street and the frontage of the property of the defendants is at Gandhi Street.

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38. Though patta was granted for 2422 sq.ft., the learned trial Judge also found as fact the said area was an error and therefore, relied on the measurements given in sale deed of Pushpavathi Ammal of the year 1921 wherein it had been stated that Pushpavathi Ammal had purchased property measuring 43 ft., x 53 ft. It was also observed that though the plaintiffs claim title from Thambiran Naicker, who claimed title from Devarajulu Chettiar that sale deed in favour of the Thambiran Naicker had not been produced as a document. It was therefore concluded that Thambiran Naicker had encroached on to the property, crystalised his possession and built small thatched houses and thereby, asserted his right to possess.

39. During the settlement proceedings, the reality of separate possession by both Pushpavathy Ammal and Thambiran Naicker was recognised and joint patta was granted.

40. However, since the two properties are different and since the defendants traced their title from the sale deed Ex.A-1 and the Will Ex.A-2 and since the Advocate Commissioner had found as a fact that the defendants are in possession of 1600 sq.ft., the learned trial Judge had granted a decree for permanent injunction restraining interference with the defendants possession of the said 1600 sq.ft., and had thus partly decreed O.S.No. 12862 of 2010, granting protection of possession to only 1,600 sq.ft., instead of 2279 sq.ft.

41. The remainder 679 sq.ft. was held to be in the possession of the plaintiffs in O.s.No. 12564 of 2010. The learned trial Judge held that there since was no document of title in favour of Thambiran Naicker but still recognized the fact that his legal heirs were in possession and had also obtained patta, had therefore granted declaration of title to that particular extent of 679 sq.ft., and had granted protection of possession for that particular area of 679 sq.ft.

42. The relief sought to declare that the defendants were in unlawful possession was therefore rejected and the suit in O.S.No. 12564 of 2010 was therefore partly decreed with respect to declaration of title and permanent injunction for 679 sq.ft. Even though the learned counsel for the appellant made a valiant attempt to establish that the entire property must be declared to be under the possession of the appellants, the records do not assist such a plea.



43. It is clear that the defendants are also in possession. Both parties have produced documents to show their respective possession by filing property tax receipts and payments to other statutory authorities.

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44. The defendants have additionally produced the sale deed in favour of Pushpavathy Ammal for property measuring 43' x 53' st. They are however in actual possession only of 1600 sq.ft. Therefore, their right to possess 1600 sq.ft., was recognized by the trial Judge. I would uphold that finding. The plaintiffs have not produced any document of title but they have produced documents to be in possession but their area under their possession was not permitted to be measured by the Advocate Commissioner. The entire area being 2279 sq.ft., after giving leverage to the possession of the defendants to an area of 1600 sq.ft., the learned trial Judge had granted declaration of title and permanent injunction in favour of the plaintiffs to an area of 679 sq.ft. This finding is also logical and I would uphold the same. It is only appropriate that both the parties are permitted to retain the properties over which they are in physical possession. The defendants have not filed any appeal even though Ex.B-1, sale deed through which they trace title is for 2279 sq.ft., a larger area than the 1600 sq.ft., for which permanent injunction had been granted.

45. I have to hold that the Judgment is fair, just and has to be upheld.

46. The learned counsel for the appellant had relied on (2009) 4 SCC 594 [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs or Ors] with respect to the criteria to be examined for grant of injunction with respect to immovable property. The Hon'ble Supreme Court had held as follows:-

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of



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to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

47. In the instant case, the documents are clear. The plaintiffs had filed a suit for declaration of title and for permanent injunction but they have not produced any document of title. The plaintiffs are however in possession. Their possession had been long and adverse to the defendants. Therefore, for the area in which the plaintiffs are in possession, the relief of declaration and injunction was granted. The defendants are also in possession of a separate identifiable portion and they have produced their document of title Ex.B-1, and injunction had been granted for the area in which they are in actual physical possession. The guideline of the Hon'ble Supreme Court as laid in the aforementioned Judgement had been followed by the learned trial Judge.

48. I would therefore uphold the common Judgment and decree dated 28.07.2017 in O.S.No. 12564 of 2010 and in O.S.No.12862 of 2010 passed by the XVI Additional City Civil Court, Chennai.

49. The Appeals are therefore dismissed. In view of the circumstance surrounding the case and the fact that the parties are neighbours, I would desist from granting costs.

50. Accordingly, these Appeals are dismissed, but without costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vsg



To:

1. The XVI Additional Judge,
City Civil Court, Madras.

Copy to:

The Section Officer,
VR Section,
Madras High Court, Madras.

+1cc to Mr.M.A.Sivakumaran, Advocate, S.R.No.25044

+1cc to Mr.D.Nellaiappan, Advocate, S.R.No.24933

+1cc to Mr.D.Nellaiappan, Advocate, S.R.No.24934 (15/06/2022)

A.S.Nos. 629 & 630 of 2018
And
C.M.P.Nos. 27812, 27801 & 27805 of 2019

GP(CO)
SU(23/05/2022)