



S.A.(MD) No.987 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 02.11.2022

JUDGMENT PRONOUNCED ON : 04.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.987 of 2008

1.Periyasamy
2.Parvathiammal ... Appellants/Respondents 1 & 2/
Defendants 1 & 2

Vs.

1.M.Kamatchiammal (Died) ... Respondent/Appellant/Plaintiff

2.Tahsildar,
Tahsildar Office,
Theni.

3.The District Collector,
Theni.

4.Theni Allinagaram Municipality,
Through its Commissioner,
Theni.

... Respondents/Respondents 3 to 5/
Defendants 3 to 5

5.V.Narayanasamy

6.Selvam

7.Valarmathi

... Respondents 5 to 7

*[RR5 to 7 were brought on record as LRs of the deceased
R1 vide order dated 17.12.2020 made in C.M.P.(MD) No.
4780 of 2020 in S.A.(MD) No.987 of 2008]*



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 27.07.2007 made in A.S.No.22 of 2006 on the file of the Principal District Court, Theni modifying the judgment and decree dated 19.12.2002 made in O.S.No.655 of 1993 on the file of the District Munsif's Court, Periyakulam.

For Appellants : Mr.K.Govindarajan

For Respondents : Mrs.K.Chistry Theboral
Additional Government Pleader
for R2 & R3
: Mr.K.Hema Karthikeyan for R4
: Mr.B.Rajesh Saravanan for R5 to R7

JUDGMENT

1.1 There were two suits, and what has now reached this Court is an appeal against one of the two suits. The two suits are: O.S.No.655 of 1993 and O.S.No.715 of 1993, both of which are laid by the same plaintiff against two different defendants, whom as between themselves are brothers. The suits were laid for declaration of plaintiff's title over a stretch of land measuring 3' x 36' and for an interim injunction that the defendants in both the suits should not trespass into this piece of property. However, during the



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pendency of the suits, the defendants are stated to have put up a gate covering the suit property measuring 3' x 36' along with an adjacent strip of land in their possession to the immediate west of this property. Hence, the plaintiff amended the plaint and sought a relief of mandatory injunction.

1.2 Both the suits came to be tried jointly. The trial Court dismissed the suits in entirety. This resulted in two first appeals in A.S.Nos.22 of 2006 and 46 of 2006 at the instance of the plaintiff, and the first appellate Court vide its common judgment has declined a decree for declaration of plaintiff's title over 3' x 36', but granted a mandatory injunction and other ancillary injunction.

1.3 While the defendant in O.S.No.715 of 1993 did not choose to challenge the decree passed in A.S.No.46 of 2006, the defendants in the other suit in O.S.No.655 of 1993 have come forward with the present second appeal. For narrative convenience, the parties would be referred to by their rank before the trial Court in O.S.No.655 of 1993, which is the subject matter of the present appeal.



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2. The facts of the case fall within a narrow compass and they may be summarised as below:

- The properties of the plaintiff and defendants 1 and 2 and other adjoining properties fall under Sy.No.1716/B-2 of Allinagaram village, Theni. It is a poramboke piece of property in which at least some 36 settlements have been put up by encroachers. The present duel is between two such encroachers of this poramboke property.
- According to the plaintiff, a certain Ponnuthayammal owned a plot of property measuring 21' East-West x 36' North-South. From her, it came into the hands of one Pethannasamy. While so, under Ext.A.2-sale deed dated 24.09.1983, Pethannasamy had sold it to the plaintiff.
- As indicated above, the East-West length of the plot covered under Ext.A.2 measures 21 feet. According to the plaintiff, she had left a strip of land measuring 3' x 36' on the western extremity, and put up a structure covering 18' x 36'. The dispute is over this strip measuring 3' x 36'. According to the plaintiff, she had left this strip of land for the convenient enjoyment of her own property wherein she had put up her drainage etc.



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➤ To the further west lies another strip of land with a width measuring $1\frac{1}{2}$ feet and further west lies the house of the defendants. The $1\frac{1}{2}$ ' wide property that lies to the immediate west of the disputed property admittedly is in the possession of the first defendant and his brother.

When defendants 1 and 2 tried to put up a gate covering the entire width of $3' + 1.5'$, the plaintiff rushed to the Court with the suit in O.S.No.655 of 1993. An identical suit in O.S.No.715 of 1993 was also laid against the plaintiff's brother Rajiah.

3. The defence in essence is to the effect that the 1st and 2nd defendants' property on the west of plaintiff's property stretches up to the western wall of the plaintiff's house. In other words, the defendants 1 and 2 claim possessory title over the disputed strip measuring $3' \times 36'$. They would further plead that the property to the west of the plaintiff's property originally belonged to the father of the 1st defendant, that on his demise it devolved on his heirs, that he and his brother Rajiah had since divided the property and have put up their independent houses therein.



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4.1 The dispute went to trial and before the trial Court, both the plaintiff and the defendants have adduced their oral and documentary evidence. For the plaintiff, the plaintiff's husband was examined as P.W.1, whereas for the defendants, the first defendant himself stepped into the box and deposed as D.W.1. The plaintiff had produced Ext.A.1 to Ext.A.14, whereas the defendants had produced Ext.B.1 to Ext.B.5. The trial Court, on its part appointed a Commissioner, and his report and plan came to be marked as Ext.C.1 and Ext.C.2. The document critical to the plaintiff's case is Ext.A.3, a mortgage deed dated 08.04.1975 executed by the plaintiff's vendor in favour of the 1st defendant's father.

4.2 On appreciating the evidence before it, the trial Court chose to dismiss the suit. It's core line of reasoning is that: since the property is a poramboke piece of property, Ext.A-2 under which the plaintiff claims title is invalid in law, and refused to recognise it.

5. When the matter reached the first appellate Court at the instance of the plaintiff, the Court did find that the plaintiff is entitled to possessory title



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yet, it did not grant a decree for the same. And treating the property as a poramboke property, it chose to grant decree for mandatory injunction and also prohibitory injunction as prayed for. Aggrieved by the said decree, defendants 1 and 2 have approached this Court with this appeal.

6. The appeal was admitted for considering the following substantial question of law:

“Whether the Lower Appellate Court is right in reversing the Judgment and Decree of the trial court in so far as permanent injunction is concerned dehorse the specific admission by the respondent/plaintiff that own admission that the Appellants/Defendants 1 & 2 alone has been in possession and enjoyment of the 'B' schedule property?”

7. The learned counsel for the appellants made the following submissions:

- The positive case for the plaintiff is that under Ext.A.2, she had purchased a plot measuring 21' East-West x 36' North-South. And the plaintiff relies on Ext.A.12, which according to her had fed title to



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Ext.A.2 However, the side measurement of the plot sold under Ext.A.12 is not given in feet, but in '*kai-muzham*'. The conversion factor for '*kai-muzham*' is not provided in evidence.

- The plaintiff has amended the plaint to incorporate a decree for mandatory injunction to remove certain structure. This would imply that she has since been dispossessed, but she has not sought for recovery of possession of the 'B' schedule property she had lost. By virtue of seeking mandatory injunction, she cannot obtain recovery of possession of this property. Reliance was placed on the authority of *Cheventhipaul Nadar Vs Srinivasa Nadar and Ors.* [(1982) 2 MLJ 348].

8. Per contra, the learned counsel for the plaintiff argued that:

- Under Ext.A.3, the plaintiff's predecessor in title had mortgaged the property covered under Ext.A.2 to the 1st defendant's father. The plot is a vacant site and as per Ext.A.3, it measures 21' East-West x 36' North-South. The plot sold under Ext.A.2 is exactly the same property, which is covered under Ext.A.3. This document binds the



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defendant, since it was on the strength of Ext.A.3, the 1st defendant's father had advanced some loan to the mortgagor.

- So far as the contention of the learned counsel for the appellants that the conversion factor for converting '*kai-muzham*' into feet has not been provided, the same will have little significance in the face of Ext.A.3, since Ext.A.3 has been executed in favour of the 1st defendant's father, who has acknowledged the title of the plaintiff's predecessor in title for over a plot of 21' East-West x 36' North-South and the 1st defendant does not set up any independent title but claimed title only under his father.
- Both Ext.A.3 and Ext.A.2 shows the property dealt with thereunder is a vacant site and today, there is a building. This implies, the building which the plaintiff has built has come up only subsequently and therefore, the defendant cannot claim title to any stretch of land up to the western wall of the plaintiff's house. At any rate, even the defendants can claim only possessory title over the property and unless it is demonstrated that they have been in possession of the stretch of land measuring 3' x 36' next adjacent to the western wall of



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the plaintiff's house, they cannot resist the plaintiff in establishing her title.

9. This is a second appeal, and the Court may not interfere with the finding of the first appellate court merely because a better view is possible. And this Court finds very little material on record to hold that the approach of the court is shockingly perverse as to warrant an interference, and the reasons are:

- The defendants 1 and 2 are harping on the unit of measurement given in *kai-muzham* in Ext.A-12 and it is perhaps the most dramatic piece of argument. *Kai-muzham* is the length from elbow to the finger tip, and it is not something belonged to pre-historical era. It is still in vogue among villagers. And, Google provides the conversion factor as 1.53 for converting a *muzham* into feet. And Ext.A-12 states that the East-West length is 14 *kai-muzham* and this is equivalent to 21.42 feet. If one turns to Ext.A-3 and A-2, they indicate this measurement as 21 feet. It appears that the appellant's counsel cried *eureka* too early as it presumed that the point he raised is unresolvable. This



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argument fails. When this argument failed, the rest of the case falls exactly the way the plaintiff's counsel has projected.

10. The second aspect argued by the appellants' counsel is that the plaintiff has not sought recovery of property. It needs to be stated that it is not a case where defendants 1 and 2 were shown to be in possession of the disputed strip of land prior to suit, and that they had come into possession only after the suit. Where defendants 1 and 2 show little respect to the judicial process and do anything by force and show scant respect for the judicial process when a civil court had already taken cognizance of the dispute, they deserve little protection in law. And the dictum in *Cheventhipaul Nadar Vs Srinivasa Nadar and Ors.* [(1982) 2 MLJ 348] which he relied on does not have any factual similarity to invite its application. It relates to maintainability of the suit for mere declaration of title without accompanied by a consequential relief.

11. In conclusion, this Second Appeal is dismissed. Accordingly, the judgment and decree dated 27.07.2007 made in A.S.No.22 of 2006 on the



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file of the Principal District Court, Theni modifying the judgment and decree dated 19.12.2002 made in O.S.No.655 of 1993 on the file of the District Munsif's Court, Periyakulam, is confirmed. No costs.

04.11.2022

Index: Yes/No

Internet: Yes

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To

- 1.The Principal District Judge, Theni.
- 2.The District Munsif, Periyakulam.
- 3.The Tahsildar,
Tahsildar Office,
Theni.
- 4.The District Collector,
Theni.
- 5.The Commissioner,
Theni Allinagaram Municipality,
Theni.
- 6.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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N.SESHASAYEE, J.

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Pre-delivery judgment made in
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