



A.S.No.210 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.210 of 2013
and M.P.No.1 of 2013

1. Rajeswari Ammal
2. Muthulakshmi .. Appellants

Versus

1. T.V.S.Mani
2. Sharmila
3. Jayanthi
4. Susila

5. Sri Sai Marble Granite,
Koyambedu,
Chennai - 600 106.

6. K.P.N.Travels
Koyambedu,
Chennai - 600 106. .. Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code to call for the records pertaining to the issue of decree and judgment in O.S.No.9253 of 2010, dated 31.08.2012 by the learned XVIII Additional



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District and Sessions Judge, Chennai directing the dismissal of the suit and set aside the same and thus allow the appeal.

For Appellants : No Appearance

For Respondents : Mr.K.V.Sundararajan,
for RR-1 to 4

: No Appearance for RR-5 and 6

JUDGMENT

This Appeal Suit is directed against the judgment and decree of the learned XVIII Additional District and Sessions Judge, Chennai, dated 31.08.2012 in O.S.No.9523 of 2010, in and by which, the suit filed by the appellants / plaintiffs for permanent injunction restraining the respondents / defendants from interfering with the peaceful possession and enjoyment of all the pieces of land in all measuring 11 cents namely, 4800 sq.ft., comprised in T.S.No.3/1, Block No.64, Jawaharlal Nehru Road, Koyambedu, Chennai - 600 010, which is more-fully described in the schedule to the suit.

2. The case of the appellants / plaintiffs is that the suit schedule property originally formed part of an extent which was owned by one

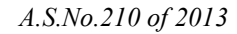


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Tarapore and Company Brick Industries. The said company was thereafter dissolved and the land was possessed by one *K.E.Arunachala Mudaliar*. The lands were occupied by many of the occupants. While so, the Government under the *The Tamil Nadu Survey and Boundaries Act, 1923* converted and issued new T.S numbers in respect of the said property. One *A.N.Annamalai*, in the capacity of the Power of Attorney Agent of the said *K.E.Arunachala Mudaliar* and associates, sold a portion of the property by a registered sale deed, dated 28.10.1953 *vide* Doct.No.2224 of 1953 to one *Rangabashiyam*. Similarly, another extent was sold on 16.06.1993 which was registered as Doc.No.2655 of 1993 at the office of Sub-Registrar, Anna Nagar, Chennai in favour of one *Sundaramurthy*. While so, the defendants are attempting to grab the said property and in the process, they are trying to enter into the property of the appellants / plaintiffs and disturbing their possession. Even though the appellants / plaintiffs lodged a police complaint, there was no action and hence the suit for permanent injunction.

3. The suit was resisted by the respondents / defendants by filing a written statement, in and by which, it is contended that the suit property actually belongs to Highways Department as the Government has already



4. On the strength of the said pleadings, the Trial Court framed two issues:-

(ii) *To what relief, the appellants / plaintiffs are entitled to?*

5. On the said issues, the second appellant / plaintiff examined herself as **P.W.1** and on behalf of the appellants / plaintiffs, **Exs.A-1** to **A-6** were marked. On behalf of the respondents / defendants, the first respondent / defendant was examined as **D.W.1** and **Exs.B-1** to **B-8** were marked. Upon considering the oral and documentary evidence on record, the Trial Court found that firstly, the appellants / plaintiffs have to establish their title to the property and also the fact that they are in possession of the property. In the



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absence of the same, the Trial Court dismissed the suit. Aggrieved by the same, the present Appeal is filed before this Court.

6. It is the contention of the appellants / plaintiffs that the Trial Court failed to see that the suit property is a piece of vacant land measuring 11 cents which is sought to be misused and encroached by the respondents / defendants 1 to 3. When the respondents / defendants have openly declared that they are not entitled to the suit property, the Trial Court ought to have granted the injunction. It is their further contention that even though originally there was a proposal to form a ring road, the present land in question has been left out and therefore, when the appellants / plaintiffs are in occupation, the Trial Court ought to have granted the injunction.

7. Opposing the above grounds, *Mr.K.V.Sundararajan*, learned Counsel appearing on behalf of the respondents / defendants 1 to 4, would submit that as a matter of fact, as on date, the land itself has been taken back by the Highways Department for its use. Further, when **Ex.B-7** was produced by the respondents / defendants, whereby, the Highways Department had temporarily granted them permission to use the land,



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pursuant to which, when the respondents / defendants have fenced the property and as on date of the suit and during the trial, when the Trial Court has found that the respondents / defendants were actually in possession, there was no question of granting permanent injunction, especially when the appellants / plaintiffs have no right, title or interest over the suit schedule property.

8. I have considered the rival submissions made on behalf of the learned Counsel appearing for the respondents / defendants 1 to 4 and perused the material records of the case. The point for consideration in this Appeal Suit is whether or not the plaintiffs are entitled for an injunction against the defendants in respect of the suit schedule property? Admittedly, the land belongs to the Highways Department. Admittedly, as on date, it is being utilized by the Highways Department. Therefore, there is no question of granting permanent injunction as prayed for in the suit. Even otherwise to pray for permanent injunction in respect of the suit land, being vacant land, the appellants / plaintiffs had to prove their title. When the title vests with the Government, there cannot be any injunction in respect of vacant land as the possession of the vacant land follows the title and the appellants



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/s/ plaintiffs can never plead that they are in possession and claim for injunction. Accordingly, the suit is bound to fail and has been rightly dismissed by the Trial Court.

9. In the result, this Appeal Suit in A.S.No.210 of 2013 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

The XVIII Additional District and Sessions Judge,
Chennai.



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grs

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