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A.S.No.297 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.297 of 2015

1. Egambaram
2. Senthamizhan
rep. by Power of Attorney
M.Vaithilingam
(Amended as per order in
I.A.No.437 of 2015 dated
03.07.2015)
(Transposed the 2nd respondent
as 2nd appellant vide order of
this Court dated 16.06.2023 in
C.M.P.No.7592 of 2023 in
A.S.No.297 of 2015)

... Appellants

-Vs-

Perumal

... Respondent

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.76 of 2007 dated 05.02.2015 on the file of the learned III Additional District Judge at Puducherry with costs throughout.

For Appellants

For A1 : Mr.M.Devaraj

For A2 : Mr.Nagarajan

For Respondent : Mr.Balavijayan



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JUDGMENT

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This appeal is directed as against the judgment and decree dated 05.02.2015 passed in O.S.No.76 of 2007 by the learned District Judge, Puducherry, thereby partly allowed the suit filed by the respondent for declaration, possession and for damages.

2. The appellants are the defendants and the respondent is the plaintiff. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff is that the suit property originally purchased by one Vazumuni @ Kathirvelu by the French Notarial sale deed dated 12.05.1960. Subsequently, the said land was acquired for school purpose and the government deposited the award amount into the Court. In the mean time, the devotees of Sri Siddhi Vinayagar Sri Sivasubramaniaswamy Temple filed suit in O.S.No.179 of 1981 for declaration and also claiming right to withdraw the award amount, as against the said Vazumuni. During the pendency of the suit, the said Vazumuni died and his legal heirs were impleaded as parties to the said



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suit. Though, the said suit was dismissed by the judgment dated 05.07.1989, the trial Court observed that the temple has the right to claim the award amount. Therefore, the legal heirs of the said Vazumuni as well as the temple devotees were filed appeal suits in A.S.No.141 of 1989 & A.S.No.145 of 1990, respectively.

4. In the appeal suits, a common judgment was passed on 05.11.1990, thereby declared that purchase of the property by the said Vazumuni by the notorial sale deed dated is valid and the legal heir of the said Vazumuni are permitted to withdraw the award amount and the same was confirmed up to this Court. Insofar as the remaining property, the legal heir of Vazumuni effected partition and one of the legal heirs viz., Pandian was allotted the suit property. The plaintiff had purchased the vacant house site from the said Pandian by the registered sale deed dated 03.09.2007. However, the defendants trespassed into the suit property and hence the plaintiff filed this suit for declaration and recovery of possession.



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5. Resisting the same, the defendants filed written statement stating that neither the plaintiff nor his vendors were in possession of the suit property at any point of time. The said Vazumuni filed case No.1128, 193 of 1961 for declaration and eviction as against 23 persons alleging that they had trespassed into the land owned by him. In that case, the father of the first defendant was arrayed as D9. Though, the said Vazumuni succeed in the suit, in the appeal suit, it was remanded back to the trial Court and thereafter there was no continuous of proceedings. Further, the father of the first defendant and his brother had purchased the said property by the notarial sale deed dated 15.05.1950 and from the date of their purchase, they were in possession and enjoyment of the suit property. Thereafter, they had partitioned the suit property as per the partition deed dated 09.12.1988 vide document No.4222 of 1998. After the demise of the first defendant's father, he inherited the suit property and the second defendant claiming the right over the property as per the Will executed by another brother. Therefore, the plaintiff had no title over the property. Hence, they prayed for dismissal of the suit.



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6. On completion of pleadings, the trial Court framed the following issues :-

“(i) Whether the suit is maintainable?

(ii) Whether the suit is bad for non-joinder of necessary parties?

(iii) Whether the plaintiff is the absolute and exclusive owner of the suit schedule property?

(iv) Whether the plaintiff is entitled for judgment and decree?

(vi) To what other reliefs the parties are entitled?”

7. On the side of the plaintiff, he examined P.W.1 & P.W.2 and marked documents in Ex.A.1 to Ex.A.25. On the side of the defendants, they examined D.W.1 to D.W.4 and marked documents in Ex.B.1 to Ex.B.25. After considering the oral and documentary evidences, the trial Court partly allowed the suit in favour of the plaintiff except the prayer of claiming damage. Aggrieved by the same, the defendants filed the present appeal.



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8. The learned counsel appearing for the appellants/defendants submitted that the earlier suit in O.S.No.1128, 193 of 1961 was decreed on the strength of notarial sale deed dated 12.05.1960. However, the said sale deed was rejected in the appeal suit in A.S.No.364 of 1968. Without considering the same, the trial Court mechanically allowed the present suit. In fact, the defendants are claiming the suit property based on the sale deed dated 15.05.1950. Therefore, the decree passed in A.S.No.364 of 1968 has become final and binding in nature. The principal of estoppel has been created by operation of law in terms of Section 105 of C.P.C., towards the principle of resjudicate in subsequent proceedings. Hence, he prayed to allow this appeal.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. Having regard to the pleadings, evidence and the submissions made by the learned counsel appearing on either side, the only point raised in this appeal is that whether the appellants/defendants entitled for any relief.



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11. On perusal of records revealed that the plaintiff's vendor's father viz., Vazumuni had title over the property by the document marked as Ex.A.1. After acquisition of the property, which were purchased by the said Vazumuni, his legal heirs are entitled to seek compensation. In respect of remaining property, there was partition between them and the suit property was allotted in favour of one Pandian. Thereafter, the suit property was purchased by the plaintiff by the sale deed. From the date of purchase, the plaintiff is in possession and enjoyment of the suit property. In fact, the remaining portion of the property stands in the name of the said Pandian.

12. It is also seen that in the different cadastre number, the defendants had claiming the property and it was also admitted by the defendants. Whereas, the specific case of the plaintiff is that, the defendants attempted to trespass into the suit property and also illegally demolished the compound wall on 08.10.2007. Further, the plaintiff also lodged complaint before the Station House Officer, Lawspet, and the same was marked as Ex.A18. After trespassing into the suit property, the



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defendants had put up cement sheet shed that too without any title over the property. Therefore, the trial Court rightly decreed the suit and this Court finds no infirmity or illegality in the order passed by the Court below.

13. In the result, the Appeal Suit stands dismissed. There shall be no order as to costs.

11.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order

rts



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To
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1. The III Additional District Judge
Puducherry.



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G.K.ILANTHIRAIYAN, J.

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