



S.A.No.1321 of 2007 & M.P. No.1 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1321 of 2007 &

M.P. No.1 of 2007

1. Srinivasan

Anjapuli (died)

2. Arumugam

3. Sivanthayi Ammal

...Appellants

Vs.

1. Alammal (died)

2. Gandhi

3. Karuthal @ Kubendran

4. Nepolian

...

Respondents

RR2 to 4 brought on record as LR's of the deceased first respondent vide order of Court dated 04.08.2021 made in CMP Nos.9762, 9766 & 9763 of 2021 in S.A. No.1321/2007.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 31.01.2007 passed in A.S. No.83 of 2004, on the file of the Subordinate Judge, Kallakurichi, reversing the decree and judgment dated 05.03.2004 passed in O.S. No.321 of 1994, on the file of the III Additional District Munsif Court, Kallakurichi.



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For Appellants : Mrs.T.R. Gayathri
for M/s. Sarvabhauman Associates
For R2 & R3 : No appearance.

JUDGMENT

The appellants are the defendants 1,3 and 4 in O.S.No.321/1994 on the file of the III Additional District Munsif Court, Kallakurichi. The first respondent Alammal (since deceased) filed the above suit for a permanent injunction restraining the defendants 1 to 4 in the suit including the present appellants from interfering with her peaceful possession and enjoyment of the suit properties and also for a mandatory injunction to remove the wall in the second item of the suit properties.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The first respondent/plaintiff filed two suits before the III



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Additional District Munsif, Kallakurichi, one in O.S. No.321/1994 and another in O.S. No.945/1997. The suit properties in both the suits are one and the same. While O.S. No.321/1994 was filed for permanent injunction restraining the defendants, his men or agents from interfering with the plaintiff's possession and enjoyment of the suit properties and for a mandatory injunction to remove the foundation which was put up for constructing a wall (2nd item of the suit properties), O.S.No.945/1997 was filed for the relief of bare injunction in respect of the very same suit properties. Since the cause of action, parties and the suit properties in both the suits were one and the same, they were tried simultaneously.

4. The case of the plaintiff is that the suit properties originally belonged to one Arumugam. The plaintiff's husband filed a suit in Small Causes Case No.625/71 against the said Arumugam for realising the loan amount borrowed from him by the latter. A decree was passed in the said suit and the suit property was sold in court auction in which the plaintiff Alammal was the successful bidder. She took possession of the suit properties as per the Delivery Receipt Ex.A2. Ever since the date of



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court auction purchase, the plaintiff has been in possession and enjoyment of the suit properties by paying necessary tax to the Government (Ex.A3 to Ex.A10). According to the plaintiff, the defendants, in order to grab the suit properties from the plaintiff, have been interfering with her possession over the suit properties and also trespassed into the 2nd item of the suit properties by putting up a foundation. She, therefore, filed two suits as stated above.

5. The suit was resisted by the defendants on the following grounds:

- i. The suit Items 2 and 3 do not belong to Arumugam.
- ii. The Suit Items 2 and 3 originally belonged to one Kuppan and after his death his wife Poongavanam Ammal executed a Gift deed dated 24.06.1965 (Ex.B4 marked in O.S.No.945/97) in favour of one Arumugam, Son of Sengaraiyan.
- iii. The said Arumugam sold the properties settled in his favour to the 4th defendant vide a registered sale deed dated 09.03.1970 (Ex.B5).
Ever since the date of purchase, the 4th defendant has been in



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possession and enjoyment of suit items 2 and 3. Though the 4th defendant took steps to stop the sale in respect of suit Items 2 and 3, the sale was confirmed in favour of the plaintiff's husband, as the plaintiff's husband had given wrong boundary description in respect of suit Items 2 and 3.

- iv. The 3rd defendant had put up construction only in his property which was purchased on 03.03.1986.
- v. All the allegations contained in the plaint are false. They, therefore, prayed for dismissal of the suit.

6. The trial court on the basis of the above pleadings framed the following issues:

- i. Whether the plaintiff has acquired prescriptive right and right of adverse possession over the suit property?
- ii. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
- iii. Whether the plaintiff is entitled to a relief of mandatory injunction as prayed for?



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iv. To what other relief plaintiff is entitled?

7. In the trial court in O.S. No.321/94, the plaintiff's husband was examined as P.W.1 and Ex.A1 to Ex.A10 were marked. On the side of the defendant no witnesses were examined and no documents were marked. In O.S.No.945/97, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A11. On the side of the defendants, the 2nd defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B5.

8. After full contest, the learned trial court judge, vide her decree and judgment dated 05.03.2004 dismissed both the suits filed by the plaintiff on the following grounds:

- i. The plaintiff has not proved her continuous possession over the suit properties.
- ii. The Sale Certificate and Delivery receipt are not sufficient to hold that the plaintiff has been in possession and enjoyment of the suit properties.



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iii. Except the oral evidence of P.W.1, there is no other material records to substantiate the contention of the plaintiff. On the contrary, the 4th defendant has filed Ex.B1 to B3, which would go to show that he has been in possession and enjoyment of the suit properties.

9. Aggrieved over the decree and judgment passed by the trial court dated 05.03.2004, the plaintiff filed an appeal in A.S. No.83/2004 before the subordinate Judge, Kallakurichi. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, set aside the decree and judgment passed by the trial court and allowed the appeal on the following grounds:

- i. The suit Items 1 to 3 were sold in court auction in E.P. No.237/73 in S.C. No.625/71.
- ii. The sale certificate (Ex.A1) clearly shows that the suit properties were sold in favour of the plaintiff.
- iii. There is no error apparent on the face of the document Ex.A1.

Moreover, the plaintiff had also taken possession of the suit



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properties vide Delivery Receipt on 03.10.1973 (Ex.A2) through court in the presence of witnesses. Thereafter the plaintiff and her husband has been in continuous possession and enjoyment of the suit properties.

- iv. Though the 4th defendant claims title over the suit items 2 and 3 through a settlement deed dated 24.06.1965, he did not file the said document.
- v. Moreover, the suit properties were handed over to the plaintiff subsequent to the sale in favour of the 4th defendant and the 4th defendant did not take any steps to set aside the court auction sale.
- vi. The evidence of P.W.1 clearly shows that she has been in possession of the suit properties and the 2nd item of the suit properties was encroached upon by the defendants.
- vii. In such circumstances, the plaintiff is entitled for a permanent injunction and mandatory injunction as prayed for.

10. Now the present Second Appeal is filed by the defendants



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on the following substantial questions of law.

- (1) Whether the lower appellate court is correct in reversing the judgment and decree in O.S. No.321 of 1994 when the decree in O.S. No.945 of 1997 passed by way of a common judgment remains unchallenged and has become final?
- (2) Whether the lower appellate court is justified in law in granting an order of permanent injunction against a true owner?
- (3) Whether the lower appellate court is correct in decreeing the suit without considering the admission of the plaintiff that she sold items 2 and 3 properties to the first defendant in O.S. No.945 of 1997 and she had no locus standi to maintain the suit for injunction against her also?

11. Heard Ms.T.R. Gayathri, learned counsel for the appellants. Though notice was served on the respondents, there is no representation on behalf of the respondents.



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12. Ms.T.R. Gayathri, learned counsel for the appellants contended that when the defendants had clearly stated that the boundary descriptions of the suit properties are incorrect, the first appellate court did not take note of the same. She also drew attention of this court to the cross examination of the plaintiff, wherein she had deposed that she and her husband had sold 2nd item of the suit properties in favour of the 1st defendant. She had further deposed that the survey number of suit Items 2 and 3 are one and the same. Relying on the evidence of the plaintiff, the learned counsel for the appellants contended that the first appellate court had committed a grave error in decreeing the suit in favour of the plaintiff especially when the plaintiff has not adduced any documentary evidence to show that she has been in possession and enjoyment of the suit properties. She also drew the attention of this Court to the evidence of Murugesan (P.W.2), the husband of the plaintiff, who had deposed that he sold suit items 2 and 3 in favour of the 1st defendant and that the 1st defendant has been in possession of suit items 2 and 3 for the past 30 years. She, therefore, would contend that the first appellate court was



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13. The case of the plaintiff is that she purchased the suit properties in court auction sale. The sale certificate (Ex.A1) and delivery receipt (Ex.A2) were marked by her. However, her husband Murugesan had deposed that he sold suit Items 2 and 3 in favour of the 1st defendant and that the 1st defendant is in possession of the same for the past 30 years. It is pertinent to point out that the plaintiff Aalammal was the successful bidder in the court auction sale and the sale certificate and the delivery receipt were issued in her favour. In such circumstances, the husband of the plaintiff cannot say that he sold suit items 2 and 3 to the first defendant and that the 1st defendant has been in possession and enjoyment of suit items 2 and 3. In fact, the husband of the plaintiff in his evidence had not given any details about the sale in favour of the 1st defendant by him and his wife. The first appellate court had rightly observed that the defendants did not raise any objection in E.P. No.237/73 in S.C. No.625/71 when the suit properties were brought for



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court auction sale. Prior to the court auction, the property would have been attached and even at that point of time the defendants did not take steps to set aside the attachment made in respect of suit items 2 and 3. It is also pertinent to point out that the plaintiff took possession of the suit properties on 03.10.1973 in the presence of the witnesses as is seen from delivery receipt Ex.A2. The 4th defendant having failed to take steps for setting aside the Court auction sale, cannot now contend in the present suit that he purchased the suit property in the year 1970. It is true that the plaintiff did not enter into the witness box as far as the present suit is concerned, but she was, in fact, examined by the trial court in the other suit filed by her in O.S. No.945/1997 (which was tried simultaneously with the present suit), in which she had clearly deposed about the court auction sale and the sale receipt issued in her favour. In such circumstances, I do not see any reason to interfere with the findings recorded by the first appellate court especially when it is based on oral and documentary evidence adduced on both sides. The substantial questions of law are answered accordingly.



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14. In the result,

- i. the second appeal is dismissed. No costs.
consequently connected miscellaneous petition is closed.
- ii. the decree and judgment dated 31.01.2007 passed in A.S. No.83 of 2004, on the file of the Subordinate Judge, Kallakurichi, is upheld.
- iii. the decree and judgment dated 05.03.2004 passed in O.S. No.321 of 1994, on the file of the III Additional District Munsif Court, Kallakurichi, is set aside.

06.03.2023

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

To

1. The Subordinate Judge, Kallakurichi.
2. The III Additional District Munsif Court, Kallakurichi.
3. The Section Officer, VR Section, High Court, Madras.

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