



S.A.No.1355 of 2010
and M.P.No.1 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

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

S.A.No.1355 of 2010
and M.P.No.1 of 2010

Thangamani

...Appellant

Vs.

1.Arulmigu Kayarohanaswamy &
Neelayathatchiamman Thirukoil
Nagapattinam represented by the
Executive Officer, having office at
Nagapattinam Town, Taluk.

2.Paramayee Ammal

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 13.04.2010 passed in A.S. No.3 of 2008, on the file of the Subordinate Judge, Nagapattinam, upholding the decree and judgment dated 10.08.2007 passed in O.S. No.8 of 2004, on the file of the District Munsif Court, Nagapattinam.

For Appellant : Ms.STP.Kuilmozhi

For Respondents : No appearance



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JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present Second Appeal.

2. The appellant/plaintiff filed the suit in O.S. No.8/04 before the District Munsif, Nagapattinam, for a Permanent Injunction restraining the 1st defendant Arulmigu KayaroganaSwami samedha Neelayathatchi Amman Thiru Kovil, Nagapattinam, represented by its Executive Officer, from interfering with his peaceful possession and enjoyment of the suit property morefully described in the plaint as a thatched house bearing Old Door No.2, New No.30 in Town Survey No.2831/3 of Nagapattinam Town measuring 3692 sq. ft. within the boundaries stated therein.

3. 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.



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4. The brief facts of the case of the plaintiff are as follows:

- i. The suit property belongs to the first defendant temple and they leased out the same to Nagapattinam Municipality for 99 years.
- ii. The plaintiff's father was working as a watchman in a hospital which is on the eastern side of the suit property. About 40 years back he constructed a thatched house in the suit property.
- iii. After the death of the plaintiff's father, the plaintiff continued to work in the same place and is staying in the house constructed by his father.
- iv. One Paramayee Ammal (second defendant) was evicted from a land in the same survey number on the ground that she is an encroacher.
- v. The first defendant and the said Paramayee Ammal colluded with each other and fabricated certain documents in order to show that the suit property was leased out to the said Paramayee Ammal.
- vi. Paramayee Ammal also filed a suit in O.S.No.74/2000 against the plaintiff before the District Munsif, Nagapattinam, and after full contest, the suit was decreed on 12.06.2002, as against which



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A.S.No.40/2002 was filed by the plaintiff before the Principal Subordinate Judge, Nagapattinam. The learned Principal Subordinate Judge, Nagapattinam, after scrutinising the records remitted the matter back to the trial Court. Thereafter, the suit in O.S.No.74/2000 was dismissed on 22.09.2003.

vii.Subsequently, Paramayee Ammal filed a writ petition in W.P.No.36807/2003 before this Court against the first defendant and both colluded together and obtained an order as if the suit property is leased out to Paramayee Ammal and that the plaintiff has encroached upon the same. Therefore an order was passed to the effect that the present plaintiff should remove all his encroachments made in the suit property and hand over the possession to Paramayee Ammal.

viii.Based on the said order, the first defendant issued a notice to the plaintiff on 04.01.2004 (Ex.A2) demanding the plaintiff to vacate the suit property. The order in the said writ petition was obtained by Paramayee Ammal suppressing the decree and judgement passed in O.S.No.74/2000 and therefore, she has been impleaded



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ix. According to the plaintiff, since he has been in possession and enjoyment of the suit property, he should not be evicted except under due process of law.

5. The suit was resisted by the first defendant on the ground that the suit property belongs to the first defendant and it was leased out to Nagapattinam Municipality for 99 years. After the expiry of the lease period the first defendant took possession of the property during the year 1985. Originally the second defendant's husband Sakkarai Devar was in possession of the suit property and he executed a lease document in favour of the second defendant. She is also paying necessary amount towards the lease. The plaintiff has approached this Court with unclean hands and in fact, in A.S.No.3/2008 it was observed that the suit property absolutely belongs to the first defendant and that the right to live in the suit property was given by the first defendant to the second defendant's husband.



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6.The second defendant in her written statement had prayed for the dismissal of the suit on the following grounds :

- i. The suit is barred under the principles of *res judicata*.
- ii. The entire extent of T.S.No.2831/3 of Nagapattinam is 35,832 sq.ft. and the portion on the north of Dharmakovil Road was alone leased to Municipality for 99 years. After the enactment of Inam Abolition Act, 1963, a portion of land situate on the south of Dharmakoil Road, (which was not leased to Nagapattinam Municipality) was given sub-division number T.S.2831/3 and its total extent is 9129 sq.ft.
- iii. An extent of 5675 sq.ft. in T.S.No.2829, 2830 was taken on lease by the husband of the second defendant and he was also paying necessary amount to the temple.
- iv. The plaintiff had encroached about 1204 sq.ft. on the south-west of Arivoli Iyakkam Building (previously cancer Hospital) and has constructed a building measuring 858 sq.ft. When the plaintiff attempted to encroach upon the remaining extent of 2450 sq.ft. in T.S.No.2831/3 which is under the actual possession and enjoyment



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WEB COPY of the defendant, she filed a suit in O.S.No.74/2000 against the present plaintiff and the suit was also decreed.

- v. The plaintiff is a trespasser in the suit property and therefore, is liable to be evicted from the same. In fact, this Court also in W.P.No.36807/2003 had directed the eviction of the plaintiff from 1204 sq.ft. which is under his possession in T.S.No.2831/3. She therefore, prayed for dismissal of the suit.

7. On the basis of the above pleadings, the trial Court framed the following issues :

- i. "Whether the plaintiff is in possession of the suit property?
- ii. Whether the plaintiff is entitled for a permanent injunction as prayed for by him ?
- iii. To what relief, the plaintiff is entitled?"

8. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A5. The defendants 1 & 2 examined themselves and marked Ex.B1 to Ex.B5. The report of the



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9. After full contest, the learned District Munsif, Nagapattinam, dismissed the suit filed by the plaintiff vide his decree and judgment dated 10.08.2007 on the following grounds :

- i. The suit in O.S.No.74/2000 filed by the second defendant before the District Munsif, Nagapattinam, was decreed in her favour and in the appeal filed in A.S.No.3/2004 on the file of the Additional Subordinate Judge, Nagapattinam, a decree was passed in her favour.
- ii. The Executive Officer of the first defendant (DW1) during the course of cross examination admitted that the suit property is part of the property indicated in O.S.NO.74/2000.
- iii. In W.P.No.36807/2003, this Court directed the first defendant temple to evict the plaintiff and on the basis of the said order, the first defendant had issued a notice (Ex.A2) directing the plaintiff to vacate the suit property. Therefore, it is clear that the first



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defendant had not attempted to evict the plaintiff by unlawful means. Hence, the suit filed by the plaintiff has to be dismissed.

10. Aggrieved over the decree and judgment passed by the trial Court Judge, the plaintiff filed an appeal in A.S. No.3 of 2008 before the Subordinate Court, Nagapattinam. The learned Subordinate Nagapattinam, after analysing the oral and documentary evidence adduced on both sides dismissed the appeal filed by the plaintiff vide his decree and judgment dated 13.04.2010.

11. Now the present Second Appeal is filed by the plaintiff. Notice of motion was issued to the respondents and after several adjournments, the case was posted for hearing today. In the Memorandum of Second Appeal, the appellant has raised the following substantial questions of law. -

- i. "Whether the Courts below are correct in dismissing the suit ?
- i. Whether the Courts below committed error in deciding the suit property ?



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- ii. Whether the Court below are correct in holding the view that the appellant has not proved his possession and enjoyment without considering Ex.A1 ?
- ii. Whether the Courts below have wrongly decided when this appellant is not a party to the proceedings in W.P.No.36807/03, the order passed is binding on the appellant ?"

12. Heard Ms.STP.Kuilmozhi, learned counsel for the appellant. There is no representation on behalf of the respondents 1 & 2.

13. Ms.STP.Kuilmozhi, learned counsel for the appellant contended that the plaintiff is in possession of the suit property and that both the Courts below had not properly appreciated the oral and documentary evidence adduced on the side of the plaintiff.

14. The contention of the plaintiff is that his father occupied the suit property about 40 years back and subsequent to his death he started occupying the property by constructing a thatched house. The plaintiff



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also contends that the first defendant is attempting to interfere with his peaceful possession and enjoyment of the suit property and they should be prevented from doing so except under due process of law.

14.1. Originally the suit was filed against the first defendant alone and subsequently, the plaintiff impleaded the second defendant as a party to the suit. The second defendant had on an earlier occasion filed a suit in O.S.No.74/2000 before the District Munsif, Nagapattinam against the present plaintiff seeking for a relief of permanent injunction restraining the latter from interfering with her peaceful possession and enjoyment of the very same suit property and other properties. Though the suit was dismissed by the trial Court, the First Appellate Court allowed the appeal filed by the plaintiff (the second defendant herein) in A.S.No.3/2004. It is admitted by the Executive Officer of the first defendant temple that the present suit property is a portion of the suit property in O.S.NO.74/2000. This Court in W.P.No.36807/2003 had directed the first defendant to remove the encroachments made in the suit property and based on the same the first defendant had issued a notice



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(Ex.A2). Thus, it is clear that the first defendant directed the plaintiff to vacate the suit property by lawful means by issuing a notice under Ex.A2 and therefore, the same cannot be termed as illegal. The First Appellate Court has also dealt with the earlier suit filed by the second defendant and had observed thus :

"The earlier suit between second defendant and plaintiff O.S.74/2000 was filed relating to this very same T.S.No.2831/3 of Nagapattinam Town and the earlier suit O.S.74/2000 was filed pertaining to 2450 sq.ft. in the suit survey number by stating that in the suit survey number 1204 sq.ft. is under the encroachment of this plaintiff south of the suit property in O.S.74/2000 this suit is filed for 3692 sq.ft. in the same suit survey number T.S.2831/3 with exact south and west boundaries as stated in O.S.74/2000 and regarding the northern and eastern boundary only the name differs or omitted but for it those north and east boundaries of the suit property and O.S.74/2000 suit property are one and the same and regarding it PW1 in his cross examination has admitted that suit property forms part of the earlier suit property in O.S.74/2000 pertaining to which injunction was granted in favour of the second



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defendant in first appeal A.S.3/04. Therefore, this court determines that the plaintiff by also including the earlier suit O.S.74/2000 property along with his encroached portion has filed this suit by distorting the north and east boundary to a lighter extent and has come forward with this suit suppressing the fact that the A.S.3/04 filed against the dismissal of O.S.74/2000 was allowed by the Additional Sub Court, Nagapattinam. (The Ex.B2 is the decree copy in A.S.3/04 and E.B3 is the judgement copy in A.S.3/04."

14.2. The First Appellate Court has also observed that the plaintiff had filed the present suit suppressing the pendency of A.S.No.3/2004. The plaintiff in the plaint has not mentioned about A.S.No.3/2004 pending before the Subordinate Court, Nagapattinam and thus he had not approached the Court with clean hands and therefore, he is not entitled for the discretionary relief of permanent injunction. All the observations made by both the Courts below are well founded and do not warrant any interference by this Court. Apart from that, the 1st defendant had issued a notice (Ex.A2) directing the plaintiff to vacate the suit



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No.36807/03. The suit is filed by the plaintiff praying that he should not be evicted except under due process of law. Since the plaintiff has been issued with a notice, the suit filed by the plaintiff has to fail. Also, there are no substantial question of law involved in the present second appeal.

15. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. the decree and judgment dated 13.04.2010 passed in A.S. No.3 of 2008, on the file of the Subordinate Judge, Nagapattinam, and the decree and judgment dated 10.08.2007 passed in O.S. No.8 of 2004, on the file of the District Munsif Court, Nagapattinam, are upheld.

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Internet: Yes/No
Speaking/Non-Speaking order

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R. HEMALATHA, J.
bga

To

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

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