



S.A.No.130 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.130 of 2023
and C.M.P.No.3724 of 2023

J.Rani

...Appellant

Vs.

Rajesh Krishnan

...Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree made in AS.No.16 of 2021 dated 15.10.2022 on the file of the Sub Court, Coonoor confirming the judgment and decree made in OS.No.88 of 2015 dated 17.02.2021 on the file of the District Munsif Court, Coonoor.

For Appellant : Mr.V.Ravi

JUDGMENT

This second appeal is directed as against the judgment and decree made in AS.No.16 of 2021 dated 15.10.2022 on the file of the Sub Court, Coonoor confirming the judgment and decree made in OS.No.88 of 2015 dated 17.02.2021 on the file of the District Munsif Court, Coonoor.



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2. The appellant is the plaintiff and the respondent is the defendant. The appellant filed suit for bare injunction. The case of the appellant is that she purchased the suit property by virtue of the sale deed dated 29.09.1986 and she is in possession and enjoyment of the same comprised in SF.No.806 and subsequently changed to SF.No.806/3 and presently it is comprised in SF.No.668/4B. Father of the defendant also had purchased the property comprised in old survey No.806/3. As he was interfering with the peaceful possession, already the appellant filed suit in OS.No.42 of 2000 and the same was dismissed. Again on 02.09.2015, the defendant attempted to dump waste materials in the suit property. Hence, the suit.

3. Resisting the same, the respondent filed written statement and stated that the plaintiff suppressed the fact that she filed appeal in AS.No.12 of 2009 as against the dismissal of the suit in OS.No.42 of 2000. The appellant obtained sub division of her land and even without serving notice to the respondent, took advantage of the position of her husband as a Government employee. In fact, in the earlier suit filed by the appellant, advocate commissioner was appointed and as per his report and plan, the appellant's property and respondents' property were clearly demarcated.



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4. On the basis of the pleadings, the trial court framed the following issues:

- a) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
- b) To what other relief the plaintiff is entitled to?*

5. In support of the plaintiff's case, P.W.1 was examined and six documents were marked as Ex.A.1 to Ex.A.6. On the side of the defendant, D.W.1 was examined and Ex.B.1 to Ex.B.9 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in AS.No.16 of 2021 before the Sub Court, Coonoor. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal on the following substantial questions of law:

- 1) Whether the courts below are right in not considering the crux of the dispute i.e. interference with the plaintiff's / appellant's constitutional right



of enjoyment of her property i.e. putting waste, etc by the respondent / defendant in the appellant's lands?

2) Whether the court below have erroneously rejected the case of the plaintiff / appellant without proper appreciation of the facts, oral and documentary evidence?

3) Whether inspite of the finding in para 10.6 of the judgment “that the earlier suit, filed in OS.No.42 of 2000 would not operate as a re judicata for this suit”, the first appellate court was right in dismissing the appeal suit?

4) Whether the courts below were right in not appreciating that the dumping of the waste and materials like empty paint boxes, etc, in the plaintiff's/appellant's property, the threat to grab a portion of her property in the southern boundary exists?

5) Whether the courts below were right in not framing the appropriate issues and the points for consideration before deciding the dispute?

6) Whether the first appellate court has failed to follow the mandatory provisions of Order 41, Rule 31 of CPC, viz. considering all the points involved in the dispute, before dismissing the appeal?



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7) Whether the courts below have erred in not considering the entire facts of the case as the first appellate court, as the first appeal is continuous of the original suit proceedings?

8) Whether the courts below have considered the case, like a title suit discussed the details of the immovable properties while this is a case of injunction suit?

9) Whether the courts below have failed to consider the real disturbance of dumping of waste in the appellant's property which is done inspite of the compound wall situated between the two properties?

10) Whether the courts below have failed to note that suit for bare injunction is maintainable in law as held by the Hon'ble Supreme Court and by this Hon'ble High Court?

11) Whether the courts below have erred in dismissing the suit when the respondent has not properly denied the dumping of waste in the appellant's property except refuting as a formality?

12) Whether the courts below were right in discussing case laws which are not relevant to the facts of the case?



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6. The learned counsel appearing for the appellant would submit that the suit is for permanent injunction restraining the respondent from dumping waste material on the suit property. However, both the courts below on the strength of the earlier suit filed by the appellant, dismissed the present suit also on erroneous grounds. He further submitted that the earlier suit is nothing to do with the present suit since the present suit has been filed on fresh cause of action arose on 02.09.2015 as the respondent by dumping waste in the appellant's land, thereby attempted to usurp the suit property in the southern side boundary.

7. Heard, the learned counsel appearing for the appellant.

8. On perusal of records revealed that the appellant filed suit for bare injunction in respect of the suit property comprised in old survey No.806 admeasuring 3 ½ cents. Admittedly, she had purchased by registered sale deed dated 29.09.1986. In fact, she also filed suit for permanent injunction in OS.No.42 of 2000 as against the father of the respondent herein. The said suit was dismissed in respect of the suit property. The said suit was dismissed on 18.12.2008. Aggrieved by the same, she also filed appeal and the said appeal suit in AS.No.12 of 2009



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was also dismissed by the judgment and decree dated 06.10.2009. The respondent marked advocate commissioner's report filed in OS.No.42 of 2000 as Ex.B6. FMB Sketch was marked as Ex.B8. In fact both the documents are not disputed by the appellant herein. Accordingly, western extent of the property is shown as 3.6 meters, whereas Ex.B8 plan says as 3.8 meters. Western extent of the respondent's property as per Ex.B6 was shown as 6 meters, but Ex.B8 is shown as 4.2 meters. Therefore, the suit property is enlarged by 0.2 meters in Ex.B8 and the western side measurement of the respondent's property is shrunkened by 1.8 meters as per Ex.B8. Both the Ex.B6 and Ex.B8 are issued by the revenue authorities. Therefore, the appellant failed to identify the suit property properly.

9. That apart, though the appellant averred in the plaint that on 02.09.2015, the respondent had attempted to dump waste materials in the suit property, she did not even lodge any complaint. She also averred that having been warned by the police complaint against the respondent, he retreated grudgingly, the appellant did not even lodge any police complaint before the jurisdictional police. Therefore, there was absolutely no cause of action for filing the present suit.



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10. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal.

11. Accordingly, the judgment and decree made in AS.No.16 of 2021 dated 15.10.2022 on the file of the Sub Court, Coonoor confirming the judgment and decree made in OS.No.88 of 2015 dated 17.02.2021 on the file of the District Munsif Court, Coonoor is confirmed and this Second appeal is dismissed. However, if any interference is caused by the respondent in future, the appellant can take appropriate action as against the respondent in the manner known to law, if so advised. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

24.02.2023

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

- 1.The Sub Judge,
Coonoor
- 2.The District Munsif,
Coonoor.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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