



S.A.No.819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.819 of 2023

&

C.M.P. No. 25648 of 2023

Kuzhandaivel

... Appellant

Vs

1.P.Rangasamy

2.Nagayyan

... Respondents

Prayer : The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 31.10.2022 passed in A.S.No. 2 of 2021 on the file of the I Additional Sub Judge, Cuddalore confirming the Judgement and Decree dated 15.04.2019 passed in O.S.No.197 of 2015 on the file of the Principal District Munsif Court, Cuddalore.



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For Appellant : Mr. D.Baskar

For Respondent 1: Mr. P.Dinesh Kumar
(In SR stage).

JUDGEMENT

The unsuccessful 2nd defendant before the Courts below is the appellant before this Court. The 2nd defendant has challenged the concurrent Judgement and Decree passed by the I Additional Subordinate Judge, Cuddalore in A.S.No.2 of 2021 in and by which the learned Judge has confirmed the Judgement and Decree passed by the Principal District Munsif, Cuddalore in O.S.No.197 of 2015. To appreciate the contentions in the appeal, it is necessary to set out the facts which has led to the filing of the above Second Appeal, with the parties being referred to in the same rank as before the Trial Court.

2. The plaintiff has filed the suit for bare injunction restraining



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the defendants, their men, agents and servants from interfering with the plaintiff's peaceful possession and enjoyment of the B – Schedule property. The suit property is a portion of old S.No.42/5 and 44/9. The entire extent of land belonged to Adi Dravidar and Tribal Welfare Department who formed layout of house sites. The Special Tahsildar had assigned plot No.2 to the plaintiff on 25.09.1975 and this is described as A – Schedule property.

3. The plaintiff has constructed a house and obtained electricity service connection to the same. The portion immediately east of the A – Schedule property is the B – Schedule property. This is the portion of the road which vests with the Special Tahsildar. This road is formed for the public purpose, however, there is no road on the north as it is a dead end.

4. The plaintiff would submit that he has been in the enjoyment



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of the B – Schedule along with the A – Schedule and he has enclosed A and B – Schedule properties within a compound wall. It is the further contention of the plaintiff that the 1st defendant had claimed that he had been given patta in respect of the B – Schedule property by the Tahsildar, Cuddalore and he had filed O.S.No.300 of 2000 on the file of the Principal District Munsif, Cuddalore to declare his title to the B – Schedule property and for permanent injunction. This suit came to be dismissed on 30.01.2003, against which there is no further appeal. Therefore, the 1st defendant's claim of title to the B – Schedule property had been negated and there was no assignment by the Government in favour of the 1st defendant. The Tahsildar, Cuddalore had issued patta in respect of the B – schedule property against the rules since it is the Special Tahsildar Adi Dravidar and Tribal Welfare Department who is the competent authority to issue patta.

5. It appears that the 1st defendant had sold the property to the 2nd



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defendant on 23.01.2014 and the plaintiff has filed an appeal before the RDO, Cuddalore questioning the patta that has been granted to the 1st defendant, which has been dismissed on 03.07.2015, as against which the plaintiff has filed revision before the DRO, Cuddalore. Taking advantage of the dismissal of the appeal, the defendants are attempting to forcibly take possession of the B – Schedule property. Therefore, the plaintiff has come forward with the suit in question.

6. The 2nd defendant had filed a written statement, which was adopted by the 1st defendant in which he would contend that the plaintiff has been granted assignment only with reference to 0.01.0 hectares bearing plot No.2 and described as the A – Schedule property. The plaintiff has deliberately not given the extent of the property. The defendants would further submit that the B – Schedule property is neither the road nor portion of the road but however it is the property with an irregular shape. Under the Natham Land Survey and Taxation



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Scheme, the schedule of property was assigned to the 1st defendant.

The plot measures 0.0081 sq. metre and bears plot no.101/22 this was assigned on 26.04.1996.

7. The assignee was in possession of the B – Schedule property. The 1st defendant had filed O.S.No.300 of 2000 for declaration and permanent injunction in respect of B – Schedule property against the plaintiff. However, the suit was dismissed on technical ground stating that the suit was filed giving a larger measurement. Therefore, the 1st defendant had not filed any appeal.

8. The defendants would further submit that the 1st defendant since his purchase has been in possession of the B – Schedule property and he has prescribed title by adverse possession. The 2nd defendant has purchased the property from the 1st defendant. The defendants would submit that the suit is barred by the provisions of Order II Rule



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1 CPC and the plaintiff neither has title nor is in possession of the
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property.

9. The learned Principal District Munsif, Cuddalore, had framed five issues and the plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.7. On the side of the defendants, the 2nd defendant had entered the box as D.W.1 and one Anbumani as D.W.2 and Ex.B.1 to Ex.B.7 have been marked. That apart, the Commissioner's report, plan and photos were marked as Ex.C.1 to Ex.C.3.

10. One of the issues that was framed by the learned Principal District Munsif, Cuddalore was *whether the suit was barred by the principles of res judicata?* It was argued that the plaintiff who has lost appeal before the RDO and the DRO has filed the present suit, therefore, the same is barred by principles of res judicata.



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11. The learned District Munsif, Cuddalore, has rightly rejected this contention since the earlier proceedings were pending before the revenue authority and not before a Civil Court. The learned Judge has also held that the plaintiff is in possession of the B – Schedule property and not the 2nd defendant. Ultimately, the suit was decreed.

12. Challenging the same, the 2nd defendant had filed the appeal before the I Additional Subordinate Judge, Cuddalore in A.S.No.2 of 2021. The learned Judge by his Judgement and Decree dated 31.10.2022 was pleased to dismiss the said appeal and confirmed the Judgement and Decree passed by the Trial Court.

13. Challenging the same, the 2nd defendant is before this Court.

14. Mr. D.Baskar, learned counsel appearing on behalf of the



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appellant / 2nd defendant would submit that even as per the versions of the plaintiff, the B – Schedule property is a public road and he seeks to have an injunction with reference to public road which cannot be granted. The learned counsel would further submit that the earlier suit was not dismissed on merits but was dismissed on technical ground that the suit had been filed with reference to a larger extent.

15. Heard the learned counsel and perused the records.

16. The Judgement in O.S.No.300 of 2000 has been marked as Ex.A.7. A perusal of the same would indicate that the 1st defendant had filed the suit against the plaintiff herein and two others seeking declaration of his title to the B – Schedule property and for an injunction restraining them from interfering with his peaceful possession and enjoyment of the suit schedule property, on the ground that on 17.06.2000, the defendants, which includes the plaintiff herein,



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had attempted to put up construction in the B – Schedule property on 17.06.2000. Therefore, he had filed the said suit.

17. The plaintiff herein had filed a written statement which is adopted by the other defendants. In the said defense, the plaintiff herein has stated that he has been assigned lands by the Government. Ultimately, the learned Judge has dismissed the suit stating that the 1st defendant herein who is the plaintiff therein had not explained as to how he claimed right to the B – Schedule property. He has also not explained as to how he claims right to 0.00.87 hectares when he was allotted only 0.00.81 hectares of land. As against this findings, the 1st defendant has not preferred any appeal.

18. That apart, the argument that the plaintiff has not entitled to an injunction since the B – Schedule property is a portion of the road cannot be countenanced for the reason that the plaintiff has been in



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possession and enjoyment of both the portion of the B - schedule along with the A – schedule property and both these properties are enclosed within a compound wall. The aggrieved party is the Revenue Department which has not initiated any proceedings to date. That the plaintiff is in possession of the same has been proved by them by marking documents.

19. Therefore, I see no reason to upset the concurrent Judgement and Decree of the Courts below, particularly when the appellant has not made out any substantial question of law. In the result, the Second Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To,

1.The I Additional Sub Judge,
Cuddalore.

2.The Principal District Munsif Court,
Cuddalore.



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P.T.ASHA, J.,

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