



S.A.No.722 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.722 of 2023

B.Balasubramani

... Appellant/Plaintiff

Vs

B.Amuthaveni

... Respondent / Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 15.09.2022 passed in A.S.No.44 of 2021 on the file of the I Additional Subordinate Judge, Erode, confirming the judgment and decree dated 02.03.2020 in O.S.No.89 of 2016 on the file of II Additional District Munsif Court, Erode.

For Appellant : Mr.M.Guruprasad



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JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court.

2. The parties are referred to in the same litigative status as before the trial Court, namely, the II Additional District Munsif, Erode.

3. The plaintiff had filed O.S.No.89 of 2016 on the file of the above Court, seeking the relief of permanent injunction restraining the defendant, her men or agents from interfering with the plaintiff's possession and enjoyment of the suit schedule properties which are two items of property.

4. It is the case of the plaintiff that he had got married to the defendant at Erode and out of this wedlock, they are blessed with two sons. The plaintiff had started a small jewellery shop in Erode town



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with the financial assistance of his father. He has been saving small amounts from the income earned by him and out of this savings amount and from the chit amount, on 25.06.2009, the plaintiff had purchased the first item of the suit property, which was a vacant site with a house at Periasemmur Village, Erode in the name of the defendant.

5. On 06.09.2012, the property was mortgaged for a sum of Rs.8,00,000/- and together with savings of Rs.4,00,000/-, the plaintiff had put up further constructions on the said property. The plaintiff would submit that he has been paying the monthly installment of Rs.23,500/- to the bank for the loan.

6. It is the further case of the plaintiff that the second item of the suit property was purchased by him on 19.11.2012 in the joint names of himself and the defendant. The property measures an extent of 1820



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sq.ft and is a house together with a vacant site. Both the properties are house sites purchased in layout. It is his case that the second item of the suit property was also mortgaged with Diwan Housing Finance Corporation Limited, Erode for a sum of Rs.11,49,560/- towards which the plaintiff is paying a monthly installment of Rs.15,503/-.

7. It is the case of the plaintiff that the defendant never saw eye to eye with his parents and on her insistence, they had set up a separate residence in the second item of the suit property along with their children in the year 2014. The plaintiff would submit that the defendant was often going to her parental home after picking up a quarrel with the plaintiff. On 10.04.2014, the plaintiff had purchased another property in his name in R.S.No.107/6 with two storied house and vacant land by taking a loan of Rs.16,50,000/- which is being repaid by him on a monthly installment of Rs.18,642/-.



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8. In the month of October 2014, the defendant had left her matrimonial home and not returned, which constrained the plaintiff to file a petition for divorce in Family Court at Erode on 05.03.2015. With an intent to usurp the property of the plaintiff, the defendant has lodged a police complaint and during the mediation attempted by the police authorities, the plaintiff and the defendant were asked to work out their remedies elsewhere. On 26.02.2016, the defendant along with her relatives and henchmen had attempted to trespass into the suit properties and disturb the plaintiff's peaceful possession and enjoyment. Hence, the plaintiff has come forward with the suit in question.

9. The defendant had filed a written statement *inter-alia* denying the allegations contained in the plaint and it is her specific case that the properties were purchased by the defendant with the money provided by her parents. It is her case that on 15.10.2014, she was chased out of



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her matrimonial home since she had questioned the illicit relationship that the plaintiff had with one Sukanthi. It is also her case that when the bank loans were subsisting, the plaintiff had further borrowed from one Vivekanandan by mortgaging the property and it was her brother Sakthivel, who had repaid the loan of Rs.2,97,440/-. The second item of the suit property, according to the defendant, is a joint property and the plaintiff cannot seek an injunction against a co-owner, The defendant is residing in the first floor of the “A” schedule property and she is the joint owner of the second item of the suit property. Therefore, there cannot be an injunction against her.

10. The II Additional District Munsif, Erode had framed a single issue, namely, whether the plaintiff is entitled to the decree for permanent injunction.



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11. The plaintiff had examined himself as P.W1 and marked Exs.A1 to A9. The defendant had adduced evidence as D.W1 and had not marked any document in support of her case.

12. Ultimately, the learned II Additional District Munsif, Erode by judgment and decree dated 02.03.2020 had dismissed the suit. Challenging the said judgement and decree, the plaintiff had filed A.S.No.44 of 2021 on the file of the I Additional Subordinate Judge, Erode. The learned Subordinate Judge by judgment and decree dated 15.09.2022 was pleased to dismiss the appeal. Aggrieved by which, the plaintiff is before this Court.

13.The Courts below have concurrently held that the plaintiff, who had claimed that he had purchased the first and second items of suit properties from the income earned by him in the name of the defendant and in the joint names of himself and the defendant,



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respectively, has failed to let in any documentary evidence to prove the same. On the contrary, the Courts below have held that it is the specific case of the defendant that the plaintiff had mortgaged her jewellery, weighing about 40 sovereigns and from the amounts received therein, the purchase has been made. This factum has not been disputed by the plaintiff. The Courts below have also observed that the defendant has paid the consideration towards the purchase of the first item of the property which is evidenced by Ex.A1-Sale Deed. Further, since the first item of the property stands in the name of the defendant, the onus is upon the plaintiff to prove that he has contributed to the purchase of both the first item as well as the second item of the property. The plaintiff has failed to prove the same. That apart, the suit is not one for declaration, but it is one for permanent injunction. The plaintiff had contended that he has been paying the monthly installments towards the loan, but however documents in support of the same has not been filed. The defendant had contended



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that she is residing in the first floor of the first item of the suit property and is a joint owner of the second item of the property and there cannot be an injunction against a co-owner.

14. Considering the fact that the plaintiff has not been able to establish the case pleaded by him and taking note of the fact that the defendant is residing in the first item of the property and the second item of the property stands in the joint names of both plaintiff and the defendant, the Courts below have rightly rejected the claim of the plaintiff. The plaintiff has also not made out any substantial question of law warranting interference of this Court. Accordingly, the Second Appeal is dismissed. No costs.

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Index: Yes/No
Speaking order/non-speaking order
srn

9/11



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To

1. I Additional Subordinate Judge, Erode,
2. II Additional District Munsif Court, Erode.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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