



S.A.No.818 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.818 of 2023
and
C.M.P.No.25619 of 2023

Mrs. Amsaveni

... Appellants

Vs.

1.Raghunathan

2.Mrs.R.Sivagami

. . . Respondents

Prayer:- Appeal is filed under Section 100 of C.P.C against the judgement and decree of the learned District Judge and Appellate Authority of the Nilgiris at Udhagamandalam in A.S.No.12 of 2013 dated 29.10.2020 reversed the Judgement and Decree of the learned Sub Judge of Nilgiris Udhagamandalam in O.S.No.116 of 2011 dated 12.03.2013.

For Appellant : Mr.J.Franklin

For Respondents : Mr.K.J.Bratheesh



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JUDGEMENT

The defendant who has not entered the witness box nor cross-examined the plaintiffs is the appellant before this Court. The defendant/appellant seeks to challenge the judgement and decree passed by the learned District Judge and Appellate Authority of the Nilgiris at Udhagamandalam in A.S.No.12 of 2013 in and by which the learned Judge had reversed the judgment and decree passed by the learned Sub Judge of Nilgiris Udhagamandalam in O.S.No.116 of 2011. The brief facts are as follows and the parties are referred to in the same ranking as before the Trial Court.

Plaintiff's Case:

2. The plaintiffs had filed the suit for recovery of possession and for past damages of a sum of Rs.2,000/- and for future damages of Rs.2,000/- from the date of the suit till the date of delivery.



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3. It is the case of the plaintiffs that the suit schedule property is a residential premise bearing D.No.32H, Ranganayagi Illam at Church Hill Lane, Udhagamandalam. The defendant is the sister of the 1st plaintiff and the plaintiffs are husband and wife. It is their case that the 1st plaintiff that he had purchased the suit property under a sale deed dated 11.01.1979, registered as document no.57/1979. The property was purchased by both the 1st plaintiff as well as his brother, Sathanandan along with other properties. Thereafter, they had partitioned the property under a compromise final decree in I.A.No.114/1988 in O.S.No.91/1985 on the file of the District Munsif, Udhagamandalam.

4. It is the case of the plaintiffs that from the date of this judgment and decree, the 1st plaintiff alone was in exclusive possession and enjoyment of the property. The defendant is the 1st



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plaintiff's sister and she was given marriage to one Ramachandran, who was serving the military establishment.

5. It is the case of the plaintiffs that originally the defendant was residing at Mayfield Cottage, Nilgiris and since she had to vacate that cottage, the 1st plaintiff had permitted the defendant to occupy the suit schedule property. The defendant's occupation was under a leave and license granted by the 1st plaintiff and from the date of the leave and license the defendant has been in possession and enjoyment of the suit schedule property. The defendant's son had purchased the adjacent property from the plaintiff under a sale deed dated 20.04.2005 and had constructed a house thereupon.

6. The plaintiffs would submit that under a registered settlement deed dated 16.03.2011, the 1st plaintiff had bequeathed the properties in favour of the 2nd plaintiff. Since the plaintiffs require the suit



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schedule premises, they had issued a legal notice dated 11.04.2011, revoking the leave and licence and they had demanded the defendant to vacate and surrender vacant possession of the suit property. To this, the defendant had sent a reply dated 08.06.2011, contending false statements. Therefore, the plaintiff had filed the above suit for the relief stated supra.

Defendant's Case:

7. The defendant had filed a written statement inter alia denying the sale deed dated 11.01.1979 in favour of the 1st plaintiff. It is the case of the defendant that the alleged vendor under a sale deed dated 11.01.1979 is the grandfather of the 1st plaintiff and the defendant. The defendant's grandfather Subban had several joint family properties which included the suit schedule property. After the death of the said Subban, his son (father of the 1st plaintiff and the defendant) had succeeded to the suit properties. The defendant's father Munuswamy



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had two wives. Through the 1st wife, the 1st plaintiff, the defendant and one Sathanandan were born. After the death of the 1st wife, the said Munuswamy had married one Yasoda and through her the said Munuswamy had heirs.

8. The defendant would deny the compromise decree passed in I.A.No.114/1998 in OS.No.91 of 1995. The defendant would submit that she is not party to the said proceedings and therefore, the same would not bind her. She would submit that she is in possession of the suit property as a co-sharer and the suit property is a joint family ancestral property left by her grandfather, Subban and therefore, the contention of the plaintiffs that they have permitted the defendant to continue to squat on the property is false. The defendant would plead that there was no cause of action for the suit.



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Trial Court:

9. The Trial Court had framed the following issues:-

1. Whether the plaintiffs are entitled to get decree for possession of the suit property?

2. Whether the plaintiffs are entitled to get decree for damages?

3. Whether the defendant is in possession and enjoyment of the suit property by way of inheritance and as co-sharer?

4. To what relief?

10. The 1st plaintiff had examined himself as P.W.1 and Ex.A.1 to A.7 were marked. The 1st plaintiff was examined in chief on 26.04.2012 and thereafter at the request of the defendant's counsel, the matter was adjourned on six occasions for cross-examination of P.W.1. Though the matter had been adjourned for over six occasions, the defendant chose not to cross-examine P.W.1. Ultimately, by order



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dated 13.08.2012, the Court was pleased to call the defendant absent and set her ex parte.

11. The learned Trial Judge had ultimately dismissed the suit on the ground that the plaintiffs had not furnished the revenue details and that apart they had not stated the date on which the leave and license had been granted. Aggrieved by the same, the plaintiffs had filed A.S.No.12 of 2013 on the file of the District Munsif Court, Nilgiris at Udthagamandalam.

12. The Lower Appellate Court, on considering the evidence had held that there is no ambiguity in the description of the property. Further, the learned Judge had observed that adverse inference had to be drawn on account of the defendant not entering the box to adduce evidence or to cross examine the plaintiffs. Ultimately, the appeal was allowed as against which the present Second Appeal has been filed



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with a delay of 845 days. By order dated 17.10.2023, the delay was condoned on payments of costs. Today, the matter is listed under the caption for Admission.

13. Heard the Counsels.

Discussion:-

14. The appellant/defendant seeks to challenge the judgement and decree of the Lower Appellate Court only on the ground that the description of the property has not been properly given. The Lower Appellate Court in its discussion had observed that in the plaint, the property has been properly described and the defendant has also understood the property in respect of which the suit has been filed which is evident from a perusal of Ex.A.7, reply notice, wherein she has herself admitted the description of the property. The defendant has not entered the box to show as to how the description of the property is



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erroneous or that the property which is described in the plaint schedule is not the property in which she is in occupation. This coupled with her admission in Ex.A.7 would clearly show that the ground raised in the appeal is without any substance.

15. The appellant has not been able to contend that as to how the judgement and decree of the Lower Appellate Court is otherwise erroneous. Therefore, I see no reason to interfere with the judgement and decree of the Lower Appellate Court passed in A.S.No.12 of 2013 as no question of law has been made out. Consequently, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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10/12



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To

1. The Sub Court, Tambaram, Chengalpattu District
2. The District Munsif Court, Tambaram, Chengalpattu District.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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