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C.M.A.No.1440 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1440 of 2023
and C.M.P.No.14380 of 2023

Pon Baskaran

...1st Defendant/Appellant/Respondent

Versus

1.M.Sadhuram,

2.V.R.Devi

3.D.Sridhar

...Defendants 2 and 3/ Respondents 2
and 3/Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 43 Rule 1 (u) of CPC against the Judgment and decree dated 25.04.2023 in A.S.No.32 of 2015 on the file of the Additional Subordinate Judge, Ponneri setting aside and remanding the suit by judgment and decree dated 20.04.2015 in O.S.No.29 of 2014 on the file of the District Munsif, Thiruvottiur.



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For Appellant : M/s.AL.Gandhimathi, Senior counsel
for Mr.L.Palani Muthu

For Respondents : Mr.E.Prabu for
Caveator

JUDGMENT

The above appeal has been filed challenging the Judgment and Decree dated 25.04.2023 of the learned Additional Subordinate Judge, Ponneri in A.S.No.32 of 2015, setting aside the Judgment and Decree dated: 20.04.2015 passed by the learned District Munsif, Thiruvottriyur in O.S.No.29 of 2014 and remanding the matter to the Trial Court.

2. The brief facts leading to the above appeal are as follows:

(a) The appellant filed a Suit for an Injunction restraining the respondents herein from interfering in his possession of the Suit Schedule Property. The appellant had stated that his wife purchased the Suit Schedule Property by Sale Deed dated 20.02.2003 by document No.2058 of 2003; that thereafter, his wife had settled the property in his name; that Patta was transferred in his name; and that however, the respondents who are strangers to the property attempted to trespass into the property and dispossess him.

(b) The first respondent herein/third defendant in the Suit filed a written statement stating that he along with his brother one Devadas



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acquired 50 cents of land by the Sale Deed dated 07.02.2007 registered as

Document No.1377 of 2007 on the file of Sub Registrar Office, Ambatur;

that after the purchase of said land, he and his brother are in exclusive possession of the property; that he had put up compound walls around his property; that Patta was issued in his name for Survey No. 202A/4 measuring 10.5 ares (25 cents); that the Suit, alleging trespass is therefore not maintainable.

(c) The Trial Court framed three issues. The appellant examined 4 witnesses on his side and marked Exhibits A1 to A21. The defendants/respondents examined two witnesses and marked Exhibits B1 to B10.

(d). The Trial Judge/District Munsif, Thiruvottriyur, found that the appellant had established that he was in possession of the Suit property and therefore, entitled the relief as claimed for. The Trial Court also found that the Suit cannot be held to be bad merely because the appellant had not prayed for a declaration of title.



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(e). The first respondent herein/third defendant in the Suit filed an appeal before the learned Additional Subordinate Judge, Ponneri. The learned Additional Subordinate Judge, Ponneri found that the Trial Court erred in holding that the appellant was in possession of the Suit property based on the documents and also found that the Trial Court did not consider the documents produced on the side of the first respondent herein to prove his possession. The learned Additional Subordinate Judge, Ponneri also allowed the application filed by the first respondent to let in additional evidence. The Appellate Court held that the finding of the Trial Court as regards possession based on documents was erroneous. Hence, set aside the Judgment and remanded the matter to the Trial Court for deciding the case on merits after recording the evidence of both parties denova.

3(a). M/s.A.L.Gandhimathi, learned Senior counsel for the appellant submitted that the Appellate Court erred in ordering a fresh trial merely because the first respondent had filed an application for letting in additional evidence. The learned Additional Subordinate Judge, Ponneri ought to have decided the appeal in the light of the evidence on record. In any case, the lower Appellate Court had power to accept additional evidence and could have decided the matter on the said basis.



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3(b). The learned Senior counsel further submitted that the Judgment of the Trial Court is a well considered one and ought not to have been set aside by the learned Additional Subordinate Judge, Ponneri.

3.(c) The learned Senior counsel further submitted that an order of remand cannot be made on mere asking and therefore, she prayed for setting aside the Judgment of the learned Additional Subordinate Judge, Ponneri/Appellate Court.

4. *Per contra*, Mr.E.Prabhu, the learned counsel for the caveator submitted that the Appellate Court had rightly allowed the application filed by the first respondent to receive additional documents. The learned Additional, Subordinate Judge, Ponneri not only found that the additional documents are necessary but also found that the Judgment of the Trial Court decided the question of title in the absence of any issue framed in this regard. Hence, he submitted that there is no reason to interfere with the Judgment of the Subordinate Judge, Ponneri and prayed for dismissal of the appeal.



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5. This Court had perused the Judgments of the Courts below.

The Trial Court while holding that the appellant was entitled to permanent injunction proceeded to decide the question of title. The Trial Court decreed the Suit for Permanent Injunction mainly on the ground that the appellant had established title over the property and therefore, entitled to relief of permanent injunction. The Trial Court also found that the first respondent had not denied the plaintiff's title and therefore, the Suit is maintainable in the absence of any prayer for declaration of title. The Appellate Court found that the respondents herein had denied the title of the plaintiff and the Trial Court erroneously in a Suit for Permanent Injunction had granted a declaratory relief. The Appellate Court also found that the finding of the Trial Court as regards possession is also erroneous as it is based on documents which are hardly sufficient to establish possession. The Appellate Court also found that the first respondent was justified in making an application to receive additional documents.

6. In such circumstances, this Court is of the view that the Appellate Court's finding that the Trial Court had traversed beyond the scope of the Suit and decided on the title cannot be faulted. The Trial Court also had not taken into consideration certain documents produced on the



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side of the first respondent to establish title and possession. Therefore, this Court is of the view that the Judgment of the Appellate Court remanding the case to the Trial Court is in accordance with law. However, since the Suit is of the year 2014 the trial Court is directed to dispose of the Suit within a period of six (6) months from the date of receipt of copy of this order. The parties are directed to maintain *status quo* till the disposal of the suit. It is needless to say that the Trial Court shall afford sufficient opportunity to both the parties to adduce evidence and to put forth their case. Therefore, with the above observations, Judgment of the Appellate Court in A.S.No.32 of 2015 dated 25.04.2023 is confirmed.

7. With the above observation, the Civil Miscellaneous Appeal is dismissed. No Cost. Consequently, the connected miscellaneous petition is closed.

02.08.2023

dk/vkr

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

dk

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