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S.A.No.157 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 157 of 2017

Sedhu @ Ramakrishnan

...Appellant

Vs.

Vemban

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.29 of 2016 on the file of Principle Subordinate Judge, Salem dated 21.07.2016 in confirming the judgment and decree in O.S.No.1026 of 2008 on the file of the II Additional District Munsif, Salem dated 31.08.2015.

For Appellant : M/s.V.Srimathi

For Respondent : Mr. P.Jagadeesan



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J U D G M E N T

The unsuccessful defendant in the suit is the appellant herein. The respondent herein has filed a suit for bare injunction. The said suit was decreed by the Trial Court and the findings of the Trial Court was affirmed by the First Appellate Court. Aggrieved by the concurrent findings of the facts, the appellant has come before this Court by way of this second appeal.

2. According to the plaintiff, the suit properties bearing Survey Nos.112/3 and 112/5 were allotted to the share of the plaintiff in family partition dated 12.07.2004 under “B” schedule. The defendant is the owner of the lands situated on the southern side of plaintiff's property. The defendant without having any manner of right over the property allotted to the plaintiff attempted to commit trespass on the southern portion of the plaintiff's property which was shown as ABCD in the plan marked as Ex.A3. Therefore, the plaintiff was constrained to file a suit for bare injunction.

3. The appellant /defendant filed a written statement denying the title as well as possession of the respondent over the suit property. In the written statement, the appellant clearly admitted that the defendant was the owner of the property situated on the southern side of the plaintiff's property. However,



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the appellant disputed the description of the suit property by claiming that the appellant is entitled to property on the north of Rose colour portion shown in the plaint plan. It was also pleaded by the appellant that his property on the southern side was in a higher level and the property of the respondent was in lower level. It was also claimed that there was a pucca stone revertment on the northern border of the land dividing the property of the plaintiff and the defendant. The appellant also pleaded adverse possession by claiming that he had been in possession and enjoyment of the ABCD portion situated in Survey No. 112/3 and 112/5 and hence, the respondent was not entitled to the relief as prayed for.

4. Before the Trial Court, the respondent/plaintiff was examined as P.W.1 and 11 documents were marked as Ex.A1 to Ex.A11. The appellant/defendant was examined as D.W.1 and three witnesses were examined on his side as D.W.2 to D.W.4. However, no document has been marked on the side of the defendant. The Trial Court also appointed an Advocate Commissioner and he filed a report and plan and the same were marked as Ex.C1 and Ex.C2.

5. The Trial Court, on appreciation of oral and documentary evidence



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available on record, came to the conclusion that respondent has proved his possession over the suit property and consequently granted a decree for permanent injunction. Aggrieved by the same, the appellant has filed an appeal in A.S.No.29 of 2016 on the file of learned Principal Sub-Ordinate Judge, Salem. The first Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.

6. At the time of admission, this Court framed the following substantial questions of law :-

“1. Whether a suit for injunction is maintainable when the plaintiff's title to the property is seriously disputed by the defendant and under such circumstances the absence of a declaratory relief should not the Courts below dismiss the suit as not maintainable as per the principles laid down in Annathulla Sudhakar's case 2009 1 MLJ 1001 (SC)?

2. In view of the admission of P.W.1 as regard the clear bifurcation of his property with the southern boundary and also taking into consideration the difference in levels of the lands of the plaintiff and the defendant, are the Courts below justified in decreeing the suit for injunction?”



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7. The learned counsel for the appellant by taking this Court to the boundary description found in the plaint submitted that in the plaint boundary description, the owner of the southern property is mentioned as one Kandasamy. However, the suit has been laid by the respondent treating the appellant as the owner of the southern property. Therefore, when the description of the property as given in the plaint is not correct, the respondent is not entitled to any decree for injunction. The learned counsel further submitted that in view of serious dispute with regard to the location of respondent's property, there is a cloud over the title of the respondent and hence, the suit for bare injunction is not at all maintainable. The learned counsel by taking this Court to the report and plan of Advocate Commissioner submitted that the physical features noted by the Commissioner with regard to the level of property of parties has not been properly appreciated by the Courts below and hence, the judgment and the decree passed by the Courts below are liable to be dismissed.

8. The learned counsel for the respondent/plaintiff by taking this Court to the findings of the fact that both the Courts below, on appreciation of oral and documentary evidence available on record, came to a factual conclusion



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that respondent proved his possession over his suit property and the said concurrent findings of the fact need not be interfered with by this Court while exercising power under Section 100 of CPC in the absence of any perversity in the findings of the Courts below.

9. The respondent/plaintiff claims 1.27 acres out of 3.53 acres in Survey No.112/3 and 1.03 acres out of 3.54 acres in Survey No.112/5 under partition deed dated 12.07.2004 marked as Ex.A11.

10. It is the specific case of the respondent that the appellant's land is in the southern side of his property and he is trying to commit trespass into the portion of the property on southern extremity. The said portion is shown as ABCD in the plan marked as Ex.A3. In order to prove his possession over the suit property, the respondent marked Ex.A11, the certified copy of the partition deed, Ex.A1, patta for Survey No.112/5 and Ex.A2, patta for Survey No.112/3. Ex.A9 is the adangal extract for the above said suit Survey Nos and the same stands in the name of the respondent. The Ex.A10 is the A-register for the above said Survey Nos and the same has the entry of respondent's name. In Ex.A1 and Ex.A2 with regard to the suit survey Nos, the suit property is



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described as punja land. The adangal extract is the best evidence to show the possession of the person in respect of the agricultural lands. The respondent herein produced Patta, Adangal extract and A-register for the suit properties and established his possession over the same. The Courts below, on appreciation of revenue documents and partition deed produced by the respondent, came to the conclusion that the respondent succeeded in proving his possession over the suit property.

11. The appellant herein was examined as D.W1. During the course of his cross-examination, he clearly admitted that the Survey No of his property is 117/2 and the same lies on the southern side of the suit property. Therefore, it is clear that the suit properties and appellant's property are lie in different Survey Nos.

12. A perusal of the Advocate Commissioner's report and the plan filed by him which were marked as Ex.C1 and Ex.C2 would suggest that the disputed portion of the suit property lies in Survey Nos.112/3 and 112/5 belongs to the respondent /plaintiff. The appellant herein has not filed any objection to Advocate Commissioner's report and sought for reissue of warrant



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disputing location of the suit property noted by him. In such circumstances, there is no difficulty in come to the conclusion that the disputed portion of the suit property lies on the Southern extremity of the said Survey no belonging to the respondent. The learned counsel for the appellant by citing the Southern boundary mentioned in Ex.A11 submitted that there is discrepancy with regard to the boundary description and therefore, the suit for bare injunction will not lie. When the appellant was examined as D.W.1, he clearly admitted that the Survey No of appellant is 117/2 and his property lies on the Southern side of the respondent's property. In such circumstances, there is no dispute with regard to the fact that the appellant's property lies on the Southern side of the suit property. Therefore, the submission made by the learned counsel for the appellant with regard to the misdescription of the suit property is without any substance.

13. The appellant herein has not filed any documents claiming right over the suit Survey Nos which belonged to the respondent. In fact, the appellant as D.W.1 admitted that his property lies in different Survey No. The appellant has not created any cloud over the title of the respondents. Therefore, there is no necessity for the respondent to seek a declaratory relief.



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14. The learned counsel for the respondent by relying on the judgment of the Hon'ble Apex Court in the case of **Sri.K.M.Krishna Reddy Vs Sri. Vinod Reddy and another** reported in **2023 INSC 877** submitted that when the defendant claims adverse possession against the plaintiff, there is no necessity for the appellant to seek declaration of title. The relevant observation of the Hon'ble Apex Court in the above mentioned case laws reads as follows:-

“16. It is obvious that there was no issue involved about the title of the plaintiff and his father. It is not as if the respondents had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant, which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the case at hand, it was not



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necessary for the appellant to claim a declaration of ownership. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable”.

15. In the case on hand, the appellant claims adverse possession in respect of the disputed ABCD portion. Once a person claims adverse possession, the natural corollary would be he admits the title of the other side. Therefore, the ratio laid down in the above mentioned case law is squarely applicable to the facts of the present case. Therefore, this Court holds there is no necessity for the respondent/plaintiff to seek declarative relief of his title when appellant failed to prove any cloud over the title of the respondent. The appellant having failed to lead any evidence to show his simple possession, much less than adverse possession, failed in his plea of adverse possession also.

16. In view of the discussions made earlier, both the substantial questions of law framed at the time of admission are answered against the appellant. Thus, the second appeal stands dismissed.

a) by confirming the judgment and decree in A.S.No.29 of 2016 on the



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file of learned Principle Subordinate Judge, Salem dated 21.07.2016
confirming the judgment and decree in O.S.No.1026 of 2008 on the file of the
learned II Additional District Munsif, Salem dated 31.08.2015.

b) In view of the above facts and circumstances of the case, there will be
no order as to costs.

12.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.



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To

1. The learned Principle Subordinate Judge, Salem
2. The learned II Additional District Munsif, Salem

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