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S.A.No.324 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.324 of 2017
CMP.No.7799 of 2017

1.R.Kumar
2.T.V.Kumaresan
3.K.Gayathri

...Appellants

Vs.

V.Varalakshmi

...Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment decree in A.S.No.37 of 2012 passed by the Subordinate Judge, Thiruthani, dated 20.04.2016 reversing the judgment and decree in O.S.No.64 of 2005 passed by the District Munsif, Thiruthani, dated 23.12.2011.

For Appellants : Mr.R.Vijayaraghaven

For Respondent : Mr.C.R.Muralikrishnan

J U D G M E N T

The unsuccessful defendants in a suit for permanent injunction are the appellants herein. The respondent herein filed a suit for injunction and the same was dismissed by the trial Court. The First Appeal filed by the



S.A.No.324 of 2017

respondent was allowed and the suit was decreed as prayed for. Aggrieved by the same, the defendants are before this Court.

2. According to the respondent/plaintiff, the suit property was originally owned and possessed by her father Velayutha Chetty, he got the sale deed registered under a registered partition deed dated 25.08.1983. The suit property and other properties were allotted to the share of Velayutha Chetty in the said partition deed under 'B' schedule property and subsequently on 22.08.1990, the father of the respondent executed a registered settlement deed dated 22.08.1990 in respect of the suit property in favour of the respondent. From that day onwards the respondent has been in possession and enjoyment of the suit property. The appellants without having any manner had tried to interfere with the peaceful possession of the respondent and hence, she was constrained to file a suit for bare injunction as prayed for.

3. The appellants herein filed a written statement and resisted the suit on the ground that the father of the respondent viz., Velayutha Chetty sold the property obtained by him under partition in favour of one Anthony in the year 1988 even prior to settlement deed executed by said Velayutha Chetty in



S.A.No.324 of 2017

WEB COPY
favour of respondents. Therefore, it is the specific case of the appellants that the father of respondent had no title to convey when he executed settlement deed in favour of respondent. It is further averred that first appellant purchased the suit property from the above said Anthony on 19.06.2000 by way of registered sale deed. Thus, by claiming title over the suit property, the appellants sought for dismissal of the suit filed by the respondent.

4. Before the trial Court, the appellant was examined as PW.1, two other witnesses were examined on behalf of the appellants as PW2 and PW.3. Four documents were marked on the side of the appellants as Exs.A1 to A4. The first respondent was examined as DW.1, his vendor Anthony was examined as DW.2. The respondents 2 and 3 were examined as DW.3 and DW.4. One Sarojammal was examined as DW.5. On behalf of the respondents, six documents were marked as Exs.B1 to B6.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the respondent/plaintiff failed to prove her settlor's title over the suit property, the fact of settlement, her possession over the suit property on the date of the suit



S.A.No.324 of 2017

and consequently dismissed the suit. Aggrieved by the same, the respondent filed an appeal in A.S.No.37 of 2012, on the file of the Subordinate Judge, Tiruttani. The First Appellate Court based on the admissions of the appellant came to the conclusion that the respondent proved her settlor's title, her possession etc and consequently allowed the appeal. Aggrieved by the same, unsuccessful defendants have come up by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 20.12.2021:

(i) Is it not the burden of the plaintiff to prove her case?;

(ii) Is it not for the plaintiff to stand or fall on her own to prove her case?;

(iii) Whether the First Appellate Court is correct in relying upon the evidence of defendant to suit the case of the plaintiff when the plaintiff failed to prove her case either by oral or by documentary evidence?



S.A.No.324 of 2017

7. The learned counsel appearing for the appellants submitted that the respondent being a plaintiff has to prove her case and she cannot take advantage of the deficiency in the defence. The learned counsel further submitted being a plaintiff in a suit for bare injunction, the respondent failed to lead in any evidence to show her possession. In such circumstances, the decree for injunction granted by the First Appellate Court is untenable in law.

8. The learned counsel for the appellants further submitted that both the appellants and respondent are claiming title under Velayutham. In the absence of identification of piece of property purchased by the respondents, the First Appellate Court ought not to have granted a decree for injunction.

9. It is seen from the description of the property found in the plaint, the respondent is claiming title over the vacant site in plot No.32 with an extent of 2546 sq.ft situated in Old S.Nos.24/1D/1A and 24/1D/2, New S.No.24/1D1A6 and 24/14 in Tiruttani Village, Tiruttani Taluk and District. The respondent claims title over the suit property under settlement deed executed by her father Velayutha Chetty under Ex.A1. The appellants



S.A.No.324 of 2017

contested the title of the respondent mainly on the ground that the suit property was sold to one Anthony by father of respondent under Ex.B2, dated 02.12.1988 and hence the settlor of the respondent had no title to convey on the date of execution of the settlement deed. The First Appellate Court on careful consideration of description of the property found in Ex.A1 and Ex.B2 came to the conclusion that the properties dealt with under Ex.B2 and Ex.A1 are different properties. The father of the respondent viz., Velayutha Chetty got a larger extent of property under partition dated 25.08.1983 marked as Ex.A4. He sold only portion of the property he got under partition to one Anthony. Out of the remaining properties in his hands, he settled a portion to the respondent under Ex.A1. The appellants are not able to show that the property purchased by Anthony under Ex.B2 includes the suit property. In this regard, the evidence of first appellant as DW.1 assumes significance. The first appellant was examined as DW.1. During the course of his cross-examination, he clearly admitted that he had no right over plot No.32 purchased by the respondent and the same was not in his possession. Relying on the said fatal admission of first appellant, the First Appellate Court came to the conclusion that the property dealt with under Exs.A1 and B2 are different properties. When DW.1 himself admitted that he had no right over plot No.32,



S.A.No.324 of 2017

which is the subject matter of the suit, we cannot say that there is a cloud over the title of the respondent. In view of the clear admission by DW.1, there is no dispute regarding identification of the property covered by Ex.A1.

10. Admittedly, the suit property is a vacant site and the First Appellate Court came to the conclusion based on Ex.A1 coupled with admission of DW.1 that the respondent proved her title over the suit property. Therefore possession automatically follows his title. In such circumstances, the First Appellate Court is justified in granting a decree for permanent injunction as prayed for. Accordingly, the substantial questions of law formulated at the time of admission are answered against the appellants.

11. The learned counsel for the appellants submitted based on the admission of DW.1 in cross examination, the Court cannot come to a definite conclusion with regard to the identity of the properties covered by Ex.A1. In case, the appellants are so advised, it is always open to them to establish their right over the suit property by filing a suit for declaration of the title and other consequential relief.



S.A.No.324 of 2017

12. With these observations, the Second Appeal Stands dismissed.

13. In nutshell,

The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.37 of 2012, on the file of the Subordinate Judge, Thiruthani, dated 20.04.2016 reversing the judgment and decree in O.S.No.64 of 2005, on the file of the District Munsif, Thiruthani, dated 23.12.2011.

b) In the facts and circumstances of the case, there shall be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

12.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To



S.A.No.324 of 2017

1. The Subordinate Judge, Thiruthani.

2. The District Munsif, Thiruthani.

S.SOUNTHAR, J.

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S.A.No.324 of 2017

S.A.No.324 of 2017

12.10.2023