



S.A.No.750 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

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K.Arjunan

...Appellant

Vs

1.Subitha

2.Sakkina

3.Surabi

4.Mani

5.Vijayalakshmi

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 16.03.2021 in



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A.S.No.70 of 2015 on the file of the Additional Sub Court, Ponneri confirming the Judgement and Decree dated 25.01.2011 passed in O.S.No.993 of 1997 on the file of the District Munsif Court, Thiruvottiyur.

For Appellant : Ms. M.Malarvizhi.

JUDGEMENT

The plaintiff who has lost in both the Courts below has filed the above Second Appeal. The parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed a suit in O.S.No.410 of 1988 on the file of the District Munsif, Ponneri, seeking injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property and from putting up construction there on. Thereafter, the suit has been transferred and re-numbered as



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O.S.No.993 of 1997 on the file of the District Munsif, Thiruvottiyur.

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3. The plaintiff would contend that he is the owner of the property, the same having been settled in his favour by his wife under a settlement deed dated 12.04.1985. The plaintiff would submit that he has been in possession and enjoyment of the same from the date of the settlement and prior to him, his wife was in possession. The defendants who had no right, title to the suit property have colluded together and were attempting to disturb the possession of the plaintiff. The defendants have put up super structure on the suit property and caused damage to the same.

4. The plaintiff would submit that he is a weaver and taking advantage of his financial weakness, the defendants openly proclaimed that they would use force and enter the property. The plaintiff submits that defendants 1 and 2 sold their property in favour of the defendants



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6 and 7 and subsequently defendants 1 and 2 have passed away. The defendants 6 and 7 encroached the suit property and constructed a new building which is objected to by the plaintiff. Immediately, the plaintiff had given a police complaint, however, the police complaint was of no use. Hence, the plaintiff has come forward with the suit.

5. The defendants have filed a written statement, in which they would submit that they are the *bona fide* purchasers for value and have been in possession and enjoyment of the suit items since their purchase. The defendants have denied the title of the plaintiff. The suit for bare injunction without relief of declaration is not maintainable.

6. Before the Trial Court, the plaintiff examined himself as P.W.1 and one Murali as P.W.2 and marked Ex.A.1 to Ex.A.6. On the side of the defendants, one Mani had examined himself as D.W.1 and



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Masilamani as D.W.2 and marked Ex.B.1 to Ex.B.5.

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7. The learned District Munsif, Thiruvottiur, on considering the evidence on record held that the suit filed without relief of declaration cannot be maintainable. Further, the plaintiff has himself admitted the constructions that have been put up in the suit property and Ex.B.2 series would show the house tax receipts in the names of the 2nd defendant, which would clearly go to show that the construction have been put up and the defendants are in possession of the same. Ultimately, the Trial Court has dismissed the suit. The plaintiff had taken up this Judgement and Decree in appeal in A.S.No.70 of 2015 on the file of the Additional Sub Court, Ponneri. The learned Additional Sub Judge, Ponneri, also confirmed the Judgement and Decree of the Trial Court and dismissed the appeal.

8. Heard the learned counsel and perused the records.



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9. The prayer in the suit are as follows:

“(a)For a permanent injunction restraining the defendants, their men, or agents and servants or persons authorised on their behalf from is anyway interfering with the peaceful possession and enjoyment of the suit property and also from putting up construction thereon or in any manner;

(b)for the costs of this suit; and

(c)for such other reliefs as may deem fit by this

Hon'ble Court in the circumstances of the case.”

10. The plaintiff as P.W.1 has admitted that the construction has been put up in the suit property measuring 2400 sq.ft by defendants 6 and 7, who are now in possession of the property. The evidence in this regard are as follows:



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“தாவா சொத்தின் தெற்குபக்கம் 2400 சதுரடியில் 6, 7 பிரதிவாதிகள் அனுபவத்தில் உள்ளார்கள் என்றால் சரிதான்.

This would clearly show that the relief claimed has become infructuous.

11. Further, the document that the plaintiff has filed to show the alleged possession of the property particularly, Ex.A.3 to Ex.A.6 are all subsequent to the institution of the suit. This suit was originally filed before the District Munsif, Ponneri and numbered as O.S.No.410 of 1988, which was thereafter transferred to the file of the District Munsif, Thiruvottiyur and re-numbered as O.S.No.993 of 1997. Therefore, except for Ex.A.1, gift settlement deed there is no other document to show title to the plaintiff. Further, there is no recitals as to how the plaintiff's wife had got the title over the property. The Courts below have in detail considered the evidence on record and dismissed the suit. Further, no substantial question of law has been



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made out by the plaintiff / appellant.

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12. In the result, the Second Appeal stands dismissed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

To,

1.The Additional Sub Court,
Ponneri.

2.The District Munsif Court,
Thiruvottiyur.

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P.T.ASHA, J.,

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