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S.A.No.598 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.598 of 2017
and CMP.No.14940 of 2017

Devika

...Appellant

Vs.

1.Gurusamy Gounder
2.Selvaraj
3.Kannammal
4.K.Keerthi

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 28.03.2017 made in A.S.No.40 of 2015 on the file of the learned First Additional Sub Court, Erode, confirming the judgment and decree dated 01.04.2015 made in O.S.No.262 of 2011, on the file of the learned Second Additional District Munsif Court, Erode by allowing this second Appeal.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.R.Narayanan



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JUDGMENT

The second plaintiff in a suit for bare injunction is the appellant. The appellant's mother viz., Rukmaniammal and appellant filed a suit for bare injunction and the same was dismissed by the trial Court. Aggrieved by the same, both plaintiffs preferred an appeal and pending appeal, the first plaintiff viz., Rukmaniammal died and the second plaintiff was allowed to prosecute the appeal. The First Appellate Court confirmed the findings of the trial Court and dismissed the First Appeal. Aggrieved by the same, the second plaintiff has come up by way of this second appeal.

2. According to the appellant/plaintiff, the suit properties are ancestral properties. The appellant's father viz., Marappa Gounder owned larger extent of property in the suit survey number and he sold 10 ½ cents to the first respondent/first defendant under Ex.A1, dated 11.06.1958. The first respondent had taken possession of the said property and put up compound wall surrounding the property purchased by him. The respondents 2 and 3 are children of first respondent. Subsequently, the 4th respondent purchased 12 ½ cents in the suit survey number from the first respondent under Ex.A3 dated



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23.11.2009. Even prior to purchase by 4th respondent there was a partition in the family of the plaintiffs and properties on south and west of property conveyed to the first respondent was allotted to the share of the plaintiffs under Ex.A2, dated 13.01.1984. On 22.04.2011 the respondents attempted to trespass into the property on the southern and western side of their property and hence the plaintiffs were constrained to file a suit for bare injunction.

3. The respondents 1 to 3 remained ex-parte before the trial Court and 4th respondent/4th defendant alone filed a written statement and contested the suit. The 4th respondent claimed that he purchased 12 ½ cents from respondents 1 to 3 and he has been possession and enjoyment of the same. It was further averred by the 4th respondent that his property was assigned with new Sub Division No.516/1 and the property of the appellant/plaintiff was assigned with R.S.No.516/2. It was also claimed by the 4th respondent that he never disturbed the possession of the appellant over his property in R.S.No.516/2 and the appellant by giving wrong description of the property has filed the suit. The 4th respondent also denied the correctness of the rough plan appended with the plaint.



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4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant has given wrong description of the suit property and making a claim over the property of the 4th respondent in S.No.516/1 and consequently, dismissed the suit. Aggrieved by the same, the appellant preferred a First Appeal in A.S.No.40 of 2015, on the file of the First Additional Subordinate Court, Erode. The First Appellate Court also affirmed the findings of the trial Court and dismissed the same. Aggrieved by the same, the unsuccessful second plaintiff has come up by way of this second appeal.

5. At the time of admission, this Court formulated the following substantial questions of law by order dated 23.10.2017:

(i) In the absence of any complicated issue relating to the title, whether the Courts below are justified in declining to decide prima facie title in a suit for permanent injunction particularly when there is no variation in payment of Court fees?;

(ii) When there is no dispute as to the extent owned by the defendants 1 to 3 and their intention to sell an extent purchased by them, whether the Courts below



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have committed an error in holding that the boundaries given in Ex.B1=Ex.A3 dated 23.11.2009 will prevail over an extent conveyed?

6. The learned counsel appearing for the appellant submitted that the father of the appellant namely Marappa Gounder sold only 10 ½ cents and the first respondent and his son the respondents 2 and 3 without having any right, sold a larger extent of 12 ½ cents to 4th respondent and taking advantage of the same, the respondents are making an attempt to interfere with the possession of the appellant's property on the southern and western side of the properties sold to the respondents.

7. The learned counsel, by taking this Court to the boundary description found in the plaint and the rough plan appended to the plaint and the Advocate Commissioner's report and Surveyors plan, submitted that the appellant is not making any claim over the survey number of the respondent in S.No.516/1 and the injunction is sought for only in respect of the property in S.No.516/2A which lies on south and west on S.No.516/1. The learned counsel further submitted that the finding of the Courts below, as if the appellant has given wrong description of the suit property is vitiated by



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misreading of plaint description and the Advocate Commissioner report and the Surveyor's plan.

8. The learned counsel for the respondents submitted that the survey number of the respondents is S.No.516/1 and the survey number of the appellant is S.No.516/2. The respondents are not making any claim in respect of land in S.No.516/2A. Therefore, there is no cause of action for the appellant to maintain a suit for injunction against the respondents.

9. It is seen from Ex.A1, the appellant's father Marappa Gounder sold 10 ½ cents to the first respondent on 11.05.1958. However, the first respondent sold a larger extent of 12 ½ cents to the 4th respondent under Ex.A3. The sale of larger extent by the first respondent in favour of 4th respondent appear to be a trigger for misunderstanding between the parties. Therefore, in the light of Exs.A1 and A2 and the evidence of PW.1, we cannot say that there is no cause of action for the appellant to maintain a suit for injunction. Both the appellant and respondents clearly admitted that the property of the respondents lies in S.No.516/1 and the property of the appellant lies in S.No.516/2A.



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10. A perusal of surveyor's plan annexed with Advocate Commissioner report would suggest that the larger extent of property purchased by the 4th respondent under Ex.A3 falls beyond the limits of S.No.516/1. The 4th respondent, who was examined as DW.1, clearly admitted that the Advocate Commissioner filed his report by measuring the suit property based on the documents produced. He also admitted as per boundary description under Ex.C1, the property of the appellant/plaintiff lies on southern and western side of his property.

11. In these circumstances, the respondents are not entitled to interfere with the possession of appellant's land which lies on south and west of S.No.516/1 as identified by Surveyor's plan marked as Ex.C2. Therefore, I hold that the appellant/plaintiff is entitled to permanent injunction in respect of the property in S.No.516/2A which lies on south and west of S.No.516/1. The surveyor's plan which was marked as Ex.C2 shall form part of the decree in the second appeal. Accordingly, the judgment and decree passed by the Courts below, dismissing the suit are set aside and the appellant/plaintiff is entitled to decree for injunction as indicated above.



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12. In nutshell,

(a) The Second Appeal is allowed by setting aside the judgment and decree passed by the Courts below;

(b) The appellant/plaintiff is entitled to decree for permanent injunction in respect of the property in S.No.516/2A which lies on the south and west of S.No.516/1;

(c) The Surveyor's plan Ex.C2 shall form part of the decree in Second Appeal;

(d) In the facts and circumstances of the case, there shall be no order as to costs.

(e) Consequently, connected Miscellaneous Petition is closed.

07.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To
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- 1.The First Additional Sub Court, Erode.
- 2.The Second Additional District Munsif Court,
Erode.

S.SOUNTHAR, J.



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