



S.A.No.767 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.767 of 2017

1.K.Yasotha
2.K.Anabalagan
3.K.Nirmala
4.K.Kanagavalli

...Appellants

Vs.

Parthiban

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 11.08.2017 passed in A.S.No.6 of 2012 on the file of the Subordinate Judge, Kancheepuram, reversing the judgment and decree dated 10.12.2011 passed in O.S.No.20 of 2007 before the Additional District Munsif Court, Kanchipuram.



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For Appellants : Mr.J.Sudhakaran

For Respondent : Mr.G.T.Subramanian

JUDGMENT

The plaintiffs in the suit are the appellants. The plaintiffs filed a suit for bare injunction against the respondent and the suit was decreed by the trial Court. Aggrieved by the same, the respondent/defendant filed an appeal and the first Appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiffs are before this Court.

2. According to the appellants/plaintiffs, the suit property is Government Poromboke land called cherry Natham and the same had been in possession and enjoyment of the plaintiffs' family from the day the first appellant's father-in-law and the appellant 2 to 4's grand father



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Raman got the property. It was averred by the appellants that the said Raman had put up a house in the suit property and had been paying tax to the Government. After the death of Raman, the first appellant's husband and the father of the appellants 2 to 4 namely Krishnan enjoyed the property by paying house tax to the Government. The said Krishnan died on 19.09.2004 and after his death, the plaintiffs have inherited the property and have been enjoying the same. The respondent who is a stranger to the suit property without any manner known to law attempted to interfere with the possession of the appellants. Hence, the above suit for bare injunction was filed by the appellants.

3. The respondent filed a written statement denying the right and possession of the appellants over the suit property. He specifically disputed the description of property found in the plaint. It was his specific case that there was a thatched house in the suit property apart from certain trees and the respondent has been living in the said thatched house.



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4. The trial Court on consideration of oral and documentary evidence available on record came to the conclusion that the appellants had given wrong description in the plaint schedule. The trial Court based on appreciation of evidence available on record came to the conclusion that the dispute between the parties are in respect of the property lying on the south of street and the appellants had given wrong description as if the suit property lies on the “North of Panchayat Street.” However, the trial Court proceeded and granted a decree for injunction by treating the suit property as the one lies on the South of Street. Aggrieved by the said judgment and decree, the respondent herein filed an appeal in A.S.No.6 of 2012 on the file of the Subordinate Court, Kancheepuram. The First Appellate Court on re-appreciation of evidence available on record came to the conclusion that the real dispute between the parties is in respect of the property lies on the south of road and whereas, the appellants had given wrong boundary description as if the disputed property lies on the North of road. The First Appellate Court came to the conclusion that the respondent never attempted to interfere with the possession of the



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appellants over the suit property situated on the North of road and hence, there is no cause of action for the appellants to maintain the suit for bare injunction in respect of the property lies on the North of road.

5. On these findings, the First Appellate Court reversed the judgment and decree of the trial Court and allowed the appeal by dismissing the suit. Aggrieved by the same, the appellants are before this Court.

6. The learned counsel for the appellants submitted that the appellants by producing various notices issued by the Government in respect of the suit property under Ex.A1 to Ex.A6 and also the revenue records proved their possession over the suit property and the same has been over looked by the first Appellate Court. The learned counsel for the appellants further submitted that the appellants produced the documentary evidence before this Court to prove their possession over the suit property and their admission in oral evidence should not be put against them.



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7. The appellants filed a suit for bare injunction in respect of S.No.91 in Walajabad Firka, Venkudi Village, Kanchipuram Taluk. The four boundaries of the suit property are mentioned as follows in the plaint schedule; 1) North of Panchayat Street; 2) South of Vacant site and 3) East and West of Kullammal House.

8. The respondent in their written statement specifically disputed the boundary description given by the appellants/plaintiffs. During the examination of the second appellant as PW1, the respondent produced a rough sketch relating to the suit property and the same was marked as Ex.B1. In Ex.B1, it is clearly mentioned that the house of the plaintiffs is situated in North of Street and the disputed suit property is situated on the South of Street. PW1 and PW2 clearly admitted that the suit property lies on South of Street opposite to the house which lies on North of Street. Therefore, the trial Court came to the conclusion that the dispute is only in respect of the property lies on the south of street.



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However, the trial Court proceeded to treat the Southern boundary mentioned in the plaint schedule as the Northern boundary of the suit property and granted injunction.

9. The trial Court observed that the words “North of Panchayat Street” mentioned in the schedule shall be treated as “North by Panchayat Street.” Therefore, the trial Court by assuming that suit property lies on South of Street proceeded to grant of decree for injunction, even without any amendment of the boundary description by the plaintiffs. The first Appellate Court on appreciation of documentary evidence produced by the appellants and also oral evidence of PW1 came to the conclusion that the appellants had given four boundaries in respect of the property situated on the North of Street. However, the real dispute between the parties, is in respect of the property situated on the South of Street. The First Appellate Court also observed that the respondent had not laid any claim over the property situated on the North of Street and therefore, there is no cause of action for the appellants to maintain a suit in respect of the property situated on the “North of Panchayat Street.”



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PW1 during the course of evidence clearly deposed that the dispute between the parties is only in respect of the vacant site lies on the South of Street. However, the suit has been laid in respect of the property lies on the North of Street. Therefore, the first Appellate Court rightly came to the conclusion that the appellants had given wrong boundary description and they have no cause of action to maintain the suit in respect of the property situated on the North of suit property. Hence, the findings of the trial Court were reversed by the first Appellate Court. When PW1 himself had admitted that the dispute is in respect of the suit property on the South of Street, the trial Court ought not to have assumed suo-motu that the boundary description given in the plaint as North of Street shall be treated as one for the property lies on the Southern side of the Street. Therefore, the First Appellate Court rightly reversed the findings of the trial Court on the ground that the appellants failed to establish cause of action for maintaining the suit for injunction in respect of the property described by them which lies on the “North of Panchayat Street.” The said findings of the first Appellate Court is based on the admission of PW1. Further the first Appellate Court also came to a conclusion that all



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the documents produced by the appellants were relating to the property lies on the “North of Panchayat Street” not in respect of the disputed property on the “South of Panchayat Street.” In such circumstances, I do not find any perversity in the findings of the facts rendered by the first Appellate Court and consequently, the Second appeal is dismissed.

10. At this juncture, the learned counsel for the appellants submitted that a liberty may be granted to the appellants to file an appropriate suit with other consequential relief in respect of the property lies on the South of Street by giving correct description as the First Appellate Court dismissed the suit mainly on the ground that the appellants failed to give correct description of the suit property. In such circumstances, It is always open to the appellants to file an appropriate suit and proper relief in respect of the property lies on the South of Street by giving correct description.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court.



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S.SOUNTHAR, J.

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

19.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation Case : Yes/No

dna

To

1.The Subordinate Judge, Kancheepuram.

2.The Additional District Munsif Court, Kancheepuram.

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