



S.A(MDNo.155 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.155 of 2007

M.Erulandi
S/o.Late E.Muthaiah,
Pattampudur,
Virudhunagar Via & Taluk,
Virudhunagar District,
Through his wife and Power agent
Mrs.E.Muthulakshmi

...Appellant

-Vs-

1. Velusamy Naicker (died)

2.Milraja
S/o.Late Velusamy Naicker

... Respondents

(Second respondent is brought on record as LR's of the deceased sole respondent vide Court order dated 03.04.2019 made in C.M.P(MD) Nos.585 to 587 of 2019)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Subordinate Judge, Virudhunagar, dated 08.09.2005 in A.S.No.13 of 2005 thereby dismissing the first



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appeal and confirming the judgment and decree of the District Munsif, Virudhunagar, dated 18.01.2005, in O.S.No.201 of 2002.

For Appellant : Mr.C.Murugavel
for Mr.N.Dilip Kumar

For Respondents : No appearance

JUDGMENT

The plaintiff in the suit is the appellant before this Court. The suit for bare injunction was dismissed by the trial Court and confirmed in appeal.

2. According to the appellant/plaintiff, the suit property was originally belonged to one Muthiah Asari, the father of the plaintiff. He purchased the said property from one Muthukumara Chettiar through a registered sale deed, dated 07.06.1951. The said Muthiah Asari had three sons and four daughters. He died in the year 1972. The properties of the Muthiah Asari was enjoyed by his male heirs and there was a partition among them on 06.01.1986. The 'C' schedule property in the partition deed was allotted to the share of the plaintiff.



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Subsequently, there was an oral partition between the appellant/plaintiff and his brother Marimuthu Asari, whereunder the suit property was allotted to the plaintiff and he has been enjoying the same by changing the patta in his name. The appellant after demolishing the old tiled house in the suit property, engaged in constructing a madras terraced house. The first respondent/defendant, who got no manner of right over the suit property, threatened the plaintiff to stop the construction work by making unjustified claim and consequently, the appellant was constrained to file the suit for bare injunction restraining the first respondent from interfering with his possession. He also sought for injunction restraining the first respondent from interfering with his construction activities.

3. The first respondent/defendant herein filed a written statement stating that on the northern side of the suit property, there is a temple calling Thatha Koil and the first respondent /defendant is the poosari of the said temple. The appellant has no right over the vacant site in front of his property, which belongs to said Thatha kovil. During the course of putting up of new construction, the appellant encroached the portion of the vacant site in front of his property to an extent of six feet length and put up dais. It was also specifically mentioned by the



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first respondent in his written statement that he never threatened the plaintiff to stop the construction and he never attempted to interfere with the peaceful possession of the appellant/plaintiff over his property.

4. The trial Court, on an appreciation of oral and documentary evidences available on record, dismissed the suit on the ground that the appellant failed to prove the alleged cause of action of the suit, namely, interference by the first respondent with the possession of the appellant. Aggrieved by the same, the appellant filed first appeal in A.S.No.30 of 2005 on the file of Sub Court, Virudhunagar and the same was dismissed by the first Appellate Court by confirming the findings of the trial Court. Aggrieved by the same, the appellant/plaintiff is before this Court.

5. The learned counsel for the appellant submitted that before the trial Court, he prayed for two injunctions, namely, injunction restraining the first respondent from interfering with his peaceful possession over the suit property and also for injunction restraining the first respondent from interfering with his construction activities in the suit property. Pending suit, the appellant completed



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the construction work and therefore, he has not pressed the second relief. As far as the first relief is concerned, it is the contention of the learned counsel for the appellant that he proved his title and possession over the suit property by necessary documentary evidences. The first respondent/defendant has no right over the suit property and hence, it is not open to him to interfere with the possession of the appellant, who is the rightful owner of the suit property.

6. Both the Courts below dismissed the suit filed by the appellant mainly on the ground that the appellant failed to prove the cause of action for maintaining an injunction suit. The first respondent/defendant filed a written statement stating that he never threatened the appellant and tried to interfere with the appellant's peaceful possession over the suit property. During the course of trial, the first respondent/defendant appeared as D.W.1 and deposed that he never tried to interfere with the possession of the appellant over the suit property. His only objection is that during the course of putting up construction in the suit property, the appellant encroached open space in front of the suit property, which belongs to the temple and put up a construction thereon. The objection made by the first respondent/defendant is only with regard to the dais portion put up by the



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appellant allegedly by encroaching the open space in front of the suit property.

Therefore, a close scrutiny of evidence of D.W.1, makes it clear that he never tried to interfere with the possession of the appellant over the suit property.

7. It is also not in dispute that the dais portion put up by the appellant in front of the suit property is not shown in the plaint schedule property and the same is not the subject matter of the suit. Therefore, absolutely there is no evidence available on record that the respondent ever attempted to interfere with the possession of the appellant over the suit property and objected to the construction made by the appellant in the suit property. Therefore, the concurrent findings rendered by the Courts below do not call for any interference under Section 100 of CPC. The second appeal is dismissed as it does not involve any substantial question of law.

8. In nutshell,

(i) The Second Appeal is dismissed by confirming the judgment and decree, dated 08.09.2005 made in A.S.No.13 of 2005 on the file of Subordinate Judge, Virudhunagar, confirming the judgment and decree dated 18.01.2005 made



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WEB COPY in O.S.No.201 of 2002, on the file of District Munsif, Virudhunagar; and

(ii) In the facts and circumstances, there will be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Virudhunagar.
- 2.The District Munsif, Virudhunagar.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.



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