



S.A.(MD) No.416 of 2005

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.416 of 2005

and

C.M.P.(MD) No.3622 of 2019

1.Karuppayee Ammal

2.Duraipandi (Died)

3.Sivaraman

4.Rajendran

5.Pandiammal

... Appellants/Appellants/
Defendants

Vs

1.Sarasu Ammal

... 1st Respondent/Respondent/
Plaintiff

2.Yogeshwari

... 2nd Respondent

[R2-was brought on record as LR of the deceased 2nd appellant vide order dated 08.11.2021 made in C.M.P.(MD) No.2358 of 2021 in S.A.(MD) No.416 of 2005]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 03.12.2003 made in A.S.No.26 of 2003 on



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the file of the Principal Sub Court, Madurai confirming the judgment and decree dated 27.11.2002 made in O.S.No.200 of 2001 on the file of the District Munsif's Court, Melur.

For Appellants : Ms.M.D.Devi Saravanapriya
For R1 : Ms.P.Jessi Jeva Priya
For R2 : No appearance

J U D G M E N T

The defendants are the appellants. The first respondent herein filed a suit for permanent injunction restraining the appellants from interfering with her peaceful possession over the suit property and also for mandatory injunction directing the appellants to remove the new construction put up by them on the southern side within 1½' from 'CD' line. The suit was decreed by the trial Court and the findings of the trial Court were confirmed by the first appellate Court. Aggrieved by the same, the defendants are before this Court. Pending second appeal, the second appellant died and the second respondent was brought on record as his legal representative.



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2. According to the first respondent/plaintiff, the suit property was purchased by her from one Velusamy. Earlier, there was a litigation between the first respondent's vendor Velusamy and the first appellant's husband and father of appellants 2 to 5 viz., Kanchivanam in O.S.No.213 of 1967. In that suit, there was a compromise entered between the parties. The portion shown as Velusamy's property in that compromise memo on the northern side of 'CD' line was purchased by the first respondent/plaintiff. As per the said compromise memo, when the predecessor of the appellants Kanchivanam put up construction in his property situated on the southern side of 'CD' line, he should leave 1½' on immediate south of 'CD' line as open space. Violating the terms of the said compromise, the appellants put up construction in the place which was agreed to be maintained as an open space. Further, the appellants also tried to interfere with the possession of the first respondent in respect of her property on the northern side of 'CD' line. Therefore, she was constrained to file a suit for permanent injunction and mandatory injunction as stated earlier.



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3. The appellants herein filed a written statement stating that the property which lies on the south of 'CD' line was allotted to the husband of the first appellant and therefore, the first respondent cannot deny the right of the appellants over the said property. It was further averred that the construction was put up by the appellants within the limits of the property allotted to them as per the compromise entered into in the earlier litigation. It was also further averred that the first respondent, violating the terms of the compromise memo, put up construction in the space agreed to be kept as open space in the earlier litigation. On these pleadings, the appellants sought for dismissal of the suit.

4. Before the trial Court, the husband of the first respondent was examined as P.W.1 and yet another witness was examined on her side as P.W.2. The sale deed in the name of the first respondent was marked as Ex.A.1. The judgment and the compromise decree in the earlier litigation were marked as Ex.A.2 and Ex.A.3. On behalf of the appellants, the second appellant was examined as D.W.1 and the title document of the appellants was marked as Ex.B.1. Before the trial Court, an Advocate Commissioner



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was appointed to measure the suit property with the help of a Surveyor and note down the physical features. The Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. The Surveyor's plan was marked as Ex.C.3.

5. The trial Court, on consideration of oral and documentary evidences available on record, came to the conclusion that the first respondent proved her right over the suit property and also found that the appellants have no right to interfere with the possession of the first respondent in the property which lies on the north of 'CD' line. The trial Court also found that there is an encroachment by the appellants on the north of 'CD' line and the said encroachment shall be removed by way of mandatory injunction. Therefore, the suit filed by the first respondent was decreed as prayed for by granting permanent injunction and also mandatory injunction. Aggrieved by the same, the appellants filed an appeal in A.S.No. 26 of 2003 on the file of the Principal Sub Court, Madurai. The first appellate Court, while confirming the decree for permanent injunction on a finding that the first respondent has got right and possession over the



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property which lies on the north of 'CD' line, modified the mandatory injunction part of the decree by holding that there is no encroachment on the north of 'CD' line. But however, the first appellate Court found that the new construction put up by the appellants on the immediate south of 'CD' line in the eastern portion would amount to violation of the conditions mentioned in the compromise decree, which was marked as Ex.A.3. With this modification, the first appellate Court dismissed the appeal. Aggrieved by the same, the appellants are before this Court.

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

“a) Whether the suit is maintainable under law, when the reliefs prayed are for permanent injunction and mandatory injunction without a relief for declaration of title to the suit property, particularly when the defendants disputed the plaintiff's title? and

b) Whether the Courts below are right in granting the relief for mandatory injunction particularly when the same is barred by limitation since the wall has been put long back i.e., subsequent to compromise decree dated 12.2.1970?”



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7. The first respondent herein has filed the present suit on a specific averment that the appellants violated the earlier compromise decree entered between the predecessors of both the parties, wherein both of them agreed to leave 1½' open space on either side of 'CD' line viz., on the northern side as well as on the southern side . The property of the first respondent is situated on the northern side of 'CD' line and the property of the appellants is situated on the southern side of 'CD' line. A perusal of the Advocate Commissioner's report and plan, which were marked as Ex.C.1 and Ex.C.2, would make it clear that the appellants put up construction on the immediate south of 'CD' line on the eastern side without leaving an open space of 1½' feet as agreed in Ex.A.3. The construction put up by the appellants is shown as red washed portion in the Advocate Commissioner's plan and the portion of construction, which falls within the no construction area as agreed by the parties, is shown as blue washed portion. The first appellate Court, after careful consideration of Ex.A.3, compromise entered in the earlier litigation and Ex.C.2 Advocate Commissioner's plan filed in the present case, came to the conclusion that the construction put up by the appellants within the 1½' on the immediate south of 'CD' line should be



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removed by way of mandatory injunction. Both the appellants and the first respondent are claiming title under the parties to the earlier litigation. Therefore, Ex.A.3 is binding on both the appellants and the first respondent. In these circumstances, I do not find any perversity in the approach of the first appellate Court in granting a decree for mandatory injunction directing the appellants to remove the offending construction in the blue washed portion in Ex.C2, Advocate Commissioner's plan.

8. As far as the decree for permanent injunction is concerned, even as per the compromise entered between the parties in the earlier litigation, the property on the north of 'CD' line absolutely belongs to the first respondent. The appellants are not entitled to interfere with the possession of the first respondent over her property which lies on the immediate north of 'CD' line. Therefore, the first appellate Court rightly concurred with the findings of the trial court with regard to the decree for permanent injunction.

9. In view of the discussions made above, both the substantial questions of law, framed at the time of admission, are answered against the



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appellants and the second appeal is dismissed by confirming the judgment and decree dated 03.12.2003 made in A.S.No.26 of 2003 on the file of the Principal Sub Court, Madurai. However, in the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.02.2023

NCC: Yes/No

Index: Yes/No

abr

To

- 1.The Principal Sub Judge,
Madurai.
- 2.The District Munsif,
Melur.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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