



S.A(MD).No.223 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.223 of 2021
and C.M.P(MD)No.3148 of 2021

M.Jeyaraman Appellant/Appellant/Defendant

Vs.

M.Ulagammal ... Respondent/Appellant/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 29.11.2019 passed in A.S.No.93 of 2015 on the file of the Principal Sub Court, Madurai confirming the judgment and decree dated 24.03.2015 passed in O.S.No. 591 of 2003 on the file of the District Munsif Court, Madurai Taluk.

For Appellant : Mr.V.Meenakshisundaram
For Respondent : Mr.Ramakrishnan

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The defendant in the suit in O.S.No.591 of 2003 on the file of the District Munsif Court, Madurai Taluk is the appellant herein. The respondent is the plaintiff in the suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.



S.A(MD).No.223 of 2021

2. The suit was filed for permanent injunction, mandatory injunction and for recovery of possession in respect of the suit schedule property. The plaintiff claimed that he is the absolute owner of the suit schedule property having got the same under a sale deed dated 29.06.1979 marked as Ex.A.5. According to the plaintiff, the defendant is interfering with her peaceful possession and enjoyment of the suit schedule property and under those circumstances, the suit came to be filed. It is also her case that the defendant has illegally put up a fence over her property and the said fence also has got to be removed.

3. However, as seen from the written statement filed by the defendant, the contentions of the plaintiff have been disputed. They would contend that only through a valid sale deed dated 03.08.1994 marked as Ex.B.6, the defendant purchased the suit schedule property. Hence, the defendant contended that the relief sought for by the plaintiff in the plaint cannot be granted. The defendant would also contend that the plaintiff's vendor has not taken delivery of the suit schedule property through a court order in the execution proceedings and hence, he cannot claim that he is the absolute owner of the suit schedule property.



S.A(MD).No.223 of 2021

4. The trial court framed the issues. On the side of the plaintiff, 10 documents were filed which are marked as Ex.A.1 to Ex.A.10 and 2 witnesses were examined as P.W.1 and P.W.2. On the side of the defendant, 27 documents were filed namely Ex.B.1 to Ex.B.27 and 2 witnesses were also examined namely, D.W.1 and D.W.2. Based on the oral and documentary evidence available on record, the trial court has decreed the suit in favour of the plaintiff as prayed for in the plaint in O.S.No.591 of 2003 and rejected the contentions of the defendant by holding that there is a delivery order issued in favour of the plaintiff's vendor Viswanathan as seen from Ex.A.1 to Ex.A.3. Further, the plaintiff's vendor is having valid title to sell the suit schedule property to the plaintiff by virtue of the final decree and the execution proceedings passed in the partition suit namely, O.S.No.3 of 1960.

5. Aggrieved by the same, the defendant in that suit filed a first appeal in A.S.No.93 of 2015 on the file of the Principal Sub Court, Madurai. The lower Appellate Court by its judgment and decree dated 29.11.2019 passed in A.S.No.93 of 2015 also confirmed the findings of the trial court by dismissing the first appeal.



S.A(MD).No.223 of 2021

6. As seen from oral and documentary evidence available on record, the plaintiff has discharged her burden by proving that she is the absolute owner of the suit schedule property by virtue of the following reasons:

a) The final decree was passed in the partition suit on 31.03.1975 in O.S.No.3 of 1960 on the file of the II Additional Sub Court, Madurai marked as Ex.A.2.

b) Mr.Viswanathan, who was allotted the suit schedule property under the final decree, has also executed a sale deed dated 29.06.1979 in favour of the plaintiff, which has been marked as Ex.A.5.

c) Revenue records have also got mutated in favour of the plaintiff and subsequently they were marked as Ex.A.6 to Ex.A.10.

7. On the contrary, the defendant though has contended that he has purchased the suit schedule property under a sale deed dated 03.08.1994 marked as Ex.B.6, which is subsequent to the sale deed dated 29.06.1979 (Ex.A.5) standing in the name of the plaintiff, he has not filed any revenue records pertaining to the suit schedule property but the revenue records which have been marked as Ex.B.18 to Ex.B.20 pertain to a different survey number.



S.A(MD).No.223 of 2021

8. Therefore, this Court is of the considered view that only based on the oral and documentary evidence available on record, the trial court has rightly decreed the suit in favour of the plaintiff as prayed for in the plaint. The plaintiff has also established through oral and documentary evidence that the defendant has put up a fence-cum-compound wall in the suit schedule property unauthorizedly as he is not the owner of the same. Therefore, the trial court has rightly granted the relief of mandatory injunction also in favour of the plaintiff. This Court does not find any infirmity in the findings of the trial court. The lower Appellate Court has also rightly confirmed the findings of the trial court by dismissing the first appeal filed by the defendant. In the grounds of this Second Appeal, the appellant/defendant has raised a substantial question of law namely, since there was a condition imposed in the final decree passed in O.S.No.3 of 1960, without satisfying the said condition Mr.Viswanathan, cannot alienate the property to the plaintiff. Though the said ground has been raised in this Second Appeal, there is no pleading to that effect in the written statement filed by the defendant. The learned counsel for the respondent would also submit that the said condition was fulfilled and only thereafter the property was sold to the plaintiff by Mr.Visvanathan.



S.A(MD).No.223 of 2021

8. For the foregoing reasons, there is no merit in this Second Appeal and there is no substantial question of law involved.

9. In the result, this Second Appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

18.04.2023

Index : Yes/No
Internet: Yes/No
CM

To,

1.The Principal Sub Court, Madurai

2. The District Munsif Court, Madurai Taluk

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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S.A(MD).No.223 of 2021

ABDUL QUDDHOSE, J.

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S.A.(MD)No.223 of 2021
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