



S.A.(MD).No.529 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).No.529 of 2020

and

C.M.P.(MD).No.5823 of 2020

Eshwaran

... Appellant/Appellant/Defendant

Vs.

Sudalaimuthu

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree dated 07.03.2020 passed in A.S.No.53 of 2017 on the file of the learned Principal Sub Court, Tenkasi confirming the judgment and decree dated 13.03.2017 passed in O.S.No.263 of 2011 on the file of the Principal District Munsif Court, Tenkasi by allowing this Second Appeal with cost.

For Appellant : Mr.V.Meenakshisundaram

For Respondent : Mr.N.Sankar Ganesh



S.A.(MD).No.529 of 2020

JUDGMENT

WEB COPY

The defendant is the appellant before this Court. The respondent/plaintiff filed a suit for declaration of title in the suit second schedule property, which is part of the first schedule property, with mandatory injunction to demolish the alleged encroachment in the suit second schedule property.

2. It is the case of the plaintiff/respondent that the suit second schedule property is a pathway and the defendant/appellant has encroached upon the said pathway and built a portion of his house in the said pathway. The appellant/defendant denied the averments made in the plaint and stated that he was in occupation of the property in their possession for nearly 30 years. He has never encroached on the alleged pathway.

3. Before the Trial Court, the plaintiff/respondent examined himself as P.W.1 and marked exhibits A1 to A6. The defendant/appellant examined himself as D.W.1 and marked exhibits B1 to B11. The Advocate Commissioner's report and the plan annexed to the report were marked as Court exhibits 1 and 2.



S.A.(MD).No.529 of 2020

WEB COPY

4. The Trial Court found that the plaintiff/respondent purchased the schedule property by Ex.A4 sale deed dated 23.02.2011. The Trial Court also relied upon the evidence of D.W.1 in his cross-examination, wherein, he had admitted that he had encroached upon the land belonging to the plaintiff and has made the following admission:

□எனது வீட்டில் உள்ள மேல்புற மேலச்சுவரில் 1 அடி அளவில் நீட்டி ஓடு வேய்ந்துள்ளேன் என்று சொன்னால் சரிதான். எனது வீட்டின் மேலச்சுவர் பொதுச்சுவர் அல்ல. மேற்படி ஓடு வாதியின் இடத்திற்கு நீட்டியபடி உள்ளதால் அதை நான் எடுத்துக்கொள்ள சம்மதிக்கிறேன்.□

Hence, the Trial Court passed a decree declaring that the item 2 of the suit first schedule property belongs to the plaintiff/respondent and passed an order of mandatory injunction to the defendant/appellant to remove the constructions put up in the second schedule property and held that the rough plan filed in support of the plaint marked as Ex.A5 shall form part of the decree.

5. The Appellate Court confirmed the findings of the Trial Court and have traced the title of the respondent/plaintiff based on the documents filed in support of the suit. The Appellate Court disbelieved the appellant's version that



S.A.(MD).No.529 of 2020

the second schedule property was allotted to the share of the appellant/defendant in an oral partition. The Appellate Court relied upon the admissions made by the appellant/defendant and held that the respondent/plaintiff had established title over the suit schedule property and confirmed the judgment of the Trial Court.

6. The learned counsel for the appellant/defendant submitted that the suit for mandatory injunction is barred by limitation since the alleged constructions were made in the year 2005-06 and the suit was filed only in the year 2011. The learned counsel further submitted that the Courts below ought not to have decreed the suit merely on the basis of certain admissions made by the appellant/defendant, which at best would be a slip of the tongue. His answers in the cross-examination alone should not have been the basis for decreeing the suit.

7. The learned counsel for the respondent/plaintiff submits that the appellant has not made out any ground for admission of Second Appeal. There is no question of law raised much less a substantial question of law. The Courts below had considered the documents filed on behalf of the respondent/plaintiff



S.A.(MD).No.529 of 2020

and had correctly come to the conclusion that the respondent/plaintiff is entitled to the relief of declaration and mandatory injunction as prayed for. The respondent/plaintiff had established his title by marking Ex.A4 sale deed and the parent documents Ex.A1 to Ex.A3. The appellant/defendant was unable to establish his title over the suit schedule property. On the other hand, D.W.1 had categorically admitted that he had encroached upon the property belonging to the plaintiff.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the judgments of the Courts below and other records.

9. This Court on perusal of the judgment of the Courts below finds that the Courts below had taken into consideration Ex.A4 sale deed in favour of the respondent/plaintiff and the parent documents produced on the side of the respondent/plaintiff, namely, Ex.A1 to Ex.A3. Though the appellant/defendant had pleaded that those sale deeds do not conclusively establish the plaintiff's title, the appellant/defendant had not been able to substantiate his case. Besides the above documents, the appellant/defendant has admitted in the



S.A.(MD).No.529 of 2020

cross-examination that the plaintiff/respondent is entitled to the second item of the suit schedule property, which is extracted in the judgment of the Courts below. He has also admitted that the second item is a pathway and that he had no right of title over the said pathway. He had admitted the claim of the respondent/plaintiff that he had kept a door on the western side of the suit property to access the first item and second item of the suit schedule property. He further admitted that he had encroached upon one feet in the suit schedule property on the western side and he was prepared to remove it. The Courts below on the basis of the admissions and the documents filed in support of the plaint has decreed the suit as prayed for.

10. On perusal of the judgments, this Court finds that no infirmity can be found in the findings of the Courts below. The appellant/defendant has not raised any question of law much less a substantial question of law. The concurrent findings of fact cannot be faulted with and nothing has been placed by the appellant to assail those findings.

11. However, the learned counsel for the appellant submitted that the decree was passed in terms of Ex.A5 rough plan attached to the plaint. He



S.A.(MD).No.529 of 2020

would plead that the plan attached to the Advocate Commissioner's report shows the correct description of the second schedule property and decree ought to have been granted in terms of the plan attached to the Advocate Commissioner's report. This Court is of the view that no such prayer has been prayed before the Courts below. Both the Courts below have proceeded on the basis of the rough plan annexed to the plaint which was marked as Ex.A5. There is nothing on record to suggest that this plan should not be accepted. Hence, this court rejects the submission made by the learned counsel for the appellant and confirms the judgment and decree passed by the Courts below on the basis of Ex.A5. Hence, the Second Appeal is dismissed.

12. However, the learned counsel for the appellant prays for eight months' time to vacate and hand over the premises in terms of the decree passed by the Courts below. The learned counsel for the respondent however objects to the same and submits that pursuant to the Execution Petition proceedings, the wall was demolished and a portion of the property was taken over and at the most, three months' time may be granted.

13. Considering the facts and circumstances of the case, this Court deems



S.A.(MD).No.529 of 2020

it appropriate in the interest of justice to grant six (6) months' time to the appellant to act in terms of the decree and hand over the vacant possession of the second schedule suit property after demolishing the wall as per the decree. The appellant shall do it on or before 30th August, 2023. At this stage, the learned counsel for the respondent submits that the appellant may be directed to file an affidavit to that effect. The appellant is directed to file an affidavit undertaking to vacate the premises on or before 30th August, 2023 and further stating that he would not seek further extension of time.

14. In the result, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed. Post the matter on 28.02.2023 for the appellant to file the affidavit.

24.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm



S.A.(MD).No.529 of 2020

To

- 1.The Principal Sub Court,
Tenkasi.
- 2.The Principal District Munsif Court,
Tenkasi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.529 of 2020

SUNDER MOHAN, J.

Lm

S.A.(MD).No.529 of 2020

24.02.2023