



S.A.(MD).No.809 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.809 of 2021

and

C.M.P.(MD).No.11120 of 2021

1.Thanka Lilly

2.Agnees

... Appellants/Appellants/Defendants 1 & 2

Vs.

L.Menela

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the Judgment and Decree made in A.S.No.24 of 2017 dated 28.02.2019 passed by the learned Subordinate Judge, Padmanabhapuram confirming the Judgment and Decree passed in O.S.No.313 of 2012 dated 17.04.2017 on the file of the learned Principal District Munsif, Padmanabhapuram and allow the Second Appeal.

For Appellants : Mr.G.Ramanathan

For Respondent : Mr.R.Balakrishnan



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JUDGMENT

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This Second Appeal has been filed challenging the concurrent findings of the Courts below. The defendants in the suit O.S.No.313 of 2012 on the file of the Principal District Munsif Court, Padmanabhapuram are the appellants herein. The respondent is the plaintiff in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. The plaintiff claims that she is the absolute owner of the suit schedule property by virtue of the settlement deed dated 15.05.2012 marked as Ex.A1 in her favour. The plaintiff has also traced her title over the suit schedule property and she had also filed documents including revenue records, which have been marked as exhibits A1 to A22 before the Trial Court. On the side of the plaintiff, two witnesses were examined, namely, the plaintiff herself as P.W.1 and another person by name, James, who is the father of the plaintiff, who had executed the settlement deed dated 15.05.2012 (Ex.A1) in plaintiff's favour.



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3. However, the defendants have pleaded in their written statement that the plaint schedule property in Re-Survey No.550/20B is correlated to Old Survey No.1740B, though the plaintiff has claimed that it is correlated to Old Survey No.1740A. The defendants have filed documents including encumbrance certificates, which are marked as exhibits B5, B8 and B9, in order to substantiate their claim that the old survey number for Re-Survey No.550/20B is 1740B and not 1740A as claimed by the plaintiff.

4. But, however, as seen from the orders passed by the relevant revenue authorities, namely, the Revenue Divisional Officer and the District Revenue Officer, which have been marked as exhibits A9 and A12, Re-Survey No.550/20B which is disclosed in the suit schedule has been correlated to Old Survey No.1740A as claimed by the plaintiff. The Trial Court has rightly rejected the encumbrance certificates produced by the defendants, which have been marked as exhibits B5, B8 and B9 on the ground that the same has no relevancy as it pertains to Old Survey No.1740B and not 1740A.

5. Admittedly, no title deed has been produced by the defendants to substantiate their title over the suit schedule property, which pertains to Re-Survey No.550/20B correlated to Old Survey No.1740A. But they have



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produced title deed pertaining to only Old Survey No.1740B. The plaintiff has also produced revenue records standing in her name including the patta for the suit schedule property dated 11.01.2013, which has been marked as Ex.A14. The defendants had also sought for cancellation of the said patta before the revenue authorities and the same has also been rejected. In fact, the District Revenue Officer had given a direction to both the parties to approach the Civil Court to redress their respective remedies. Accordingly, the defendants in the suit filed a suit in O.S.No.11 of 2013 on the file of the Sub Court, Padmanabhapuram seeking for permanent injunction to restrain the plaintiff from interfering with the defendants' peaceful possession and enjoyment of the suit schedule property. Subsequently, the defendants also filed I.A.No.510 of 2013 in O.S.No.11 of 2013 to amend the plaint prayer to include the declaratory relief that the defendants are the absolute owner of the suit schedule property. I.A.No.510 of 2013 filed by the defendants in O.S.No.11 of 2013 was dismissed by the Sub Court, Padmanabhapuram. Thereafter, the suit, namely, O.S.No.11 of 2013 filed by the defendants was dismissed for default by the order dated 22.11.2018.

6. The defendants claimed that there is a cloud over the title of the plaintiff and therefore, a bare injunction suit filed by the plaintiff is not



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maintainable. However, as seen from the documentary evidence produced by the plaintiff, which has been marked as exhibits, it is clear that the plaintiff is the absolute owner of the suit schedule property as the suit schedule property pertains to Re-Survey No.550/20B, which correlates to Old Survey No.1740A, whereas, the defendants' claim is only in respect of Old Survey No.1740B.

7. The learned counsel for the appellants had also relied upon the oft quoted judgment of the Hon'ble Supreme Court in the case of **Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and others** reported in **2008 (6) CTC 237**, which has been rightly considered by the Courts below by holding that since there is no issue of title which involves complicated questions of fact and law, even though the defendants have denied the title of the plaintiff, in accordance with the aforesaid decision of the Hon'ble Supreme Court, there is no necessity for the plaintiff to file a suit for declaration and a bare injunction suit is maintainable. Only when the issue of title involves complicated questions of fact and law, there would be a necessity to file a suit for declaration and a bare injunction suit is not maintainable. But in the instant case, it is not so. When the documentary evidence produced by the plaintiff as stated supra clearly proves the plaintiff's case that she is the absolute owner of the suit schedule property, a bare injunction suit as filed by the plaintiff is



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maintainable. The suit for declaration filed by the defendants subsequent to the filing of the suit by the plaintiff herein was admittedly dismissed for default and no further steps have been taken by the defendant to restore the said suit.

8. After giving due consideration to all these factors, this Court is of the considered view that there is no cloud over the title of the plaintiff over the suit schedule property. Only based on the oral and documentary evidence available on record, the Trial Court, namely, the Principal District Munsif Court, Padmanabhapuram in O.S.No.313 of 2012 by its judgment and decree dated 17.04.2017 as well as the Lower Appellate Court, namely, the Sub Court, Padmanabhapuram by its judgment and decree dated 28.02.2019 in A.S.No.24 of 2017, have rightly held that the plaintiff has proved her title over the suit schedule property and therefore entitled for the relief of permanent injunction as prayed for in the plaint.

9. This Court on 22.02.2022 admitted the Second Appeal by formulating the following substantial question of law:

“Whether the Courts below are correct in came to the conclusion that defendants are not specifically denied the title of the plaintiff and her predecessors? As a matter of fact, defendants



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specifically denied the right over the suit property of plaintiff in their written statement?”

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10. In view of the reasons given by this Court in the aforementioned paragraphs, the substantial question of law formulated by this Court while admitting this Second Appeal is answered against the appellants as there is no cloud over the title of the plaintiff over the suit schedule property. Hence, there is no merit in this Second Appeal.

11. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

12.04.2023

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

To

1.The Sub Court,
Padmanabhapuram.

2.The Principal District Munsif Court,
Padmanabhapuram.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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