



S.A(MD)No.737 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.737 of 2016

and

C.M.P(MD)No.11774 of 2016

Gandhi Jeya

...Appellant/Appellant/Plaintiff

Vs.

1.Pandiammal

2.Ramuthal

3.Lakshmi

...Respondent Nos.1 to 3/Respondent Nos.1 to 3/
Defendant Nos.1 to 3

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 23.06.2015 passed in the appeal in A.S.No.2 of 2015 on the file of the Additional Subordinate Judge, Dindigul, confirming the judgment and decree dated 19.11.2014 passed in the suit in O.S.No.203 of 2010 on the file of the District Munsif, Nilakkottai.

For Appellant : Mr.J.Barathan

For Respondents : Mr.M.Kannan



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JUDGMENT

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The plaintiff in the suit is the appellant. The suit is for bare injunction.

The suit was dismissed by the trial Court and the findings of the trial Court was confirmed in the first appeal. Aggrieved by the concurrent findings against her, the appellant is before this Court.

2. According to the appellant, the suit property is a Natham land situated in S.No.110/2 in Kethaiya Goundan Patti village. It was specifically averred by the appellant that her husband put up a thatched house in the suit property twenty years ago and Door No.2/261 was assigned to the said building. It was further submitted that the husband of the appellant was not residing with her at the time of filing of the suit. It was also averred that the thatched house got damaged by rain and therefore the plaintiff demolished the same and put up partly a compound wall with hollow bricks. The appellant claimed that the respondents without having any manner of right, tried to interfere with this peaceful possession over the suit property and hence she was constrained to file the present suit.



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3.The respondents filed a written statement denying the possession of the appellant over the suit property. It was specifically averred in the written statement that the survey number mentioned in the plaint as 116/2 was not correct. The respondents also contended that neither the appellant nor her husband ever resided in the suit village. The respondents claimed that the suit property was their ancestral property and revenue documents like patta and tax receipts, stand in their name. It was further contended by the respondents that even five years prior to filing of the suit, the suit property was orally sold by them to Kalliamman, Bhagavathiamman Kovil in Kethaiya Goundan Patti village and subsequently, on 22.11.2010 a registered sale deed was executed in favour of the temple. It was the case of the respondents that on the date of presentation of the suit, the property was under the control of the temple authorities. It was further contended that aggrieved by the act of the respondents in selling the suit property to the temple, the appellant developed inimical relationship with respondents and filed the present suit.

4.Before the trial Court, the appellant examined herself as PW1 and yet another witness was examined as PW2. Seven documents were filed on behalf of the appellant as Ex.A1 to Ex.A7. The third respondent was



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examined as DW1 and nine documents were marked on behalf of respondents as Ex.B1 to Ex.B9.

5.The trial Court on appreciation of oral and documentary evidence, available on record, came to the conclusion that the appellant/plaintiff failed to prove her case that her husband put up a thatched house in the suit property twenty years back and she had been in possession and enjoyment of the suit property for the past twenty years and consequently dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.2 of 2015 on the file of the Additional Sub Court, Dindigul. The First Appellate Court also concurrent with the findings of the trial Court. Aggrieved by the concurrent findings against her, the appellant is before this Court.

6. Assailing the judgments passed by the Courts below, the learned counsel for the appellant submitted that execution of sale deed, just one week prior to institution of the suit by the respondents, would not prove their right, title or interest over the suit property. The learned counsel further submitted that a patta issued under Natham settlement scheme is not a conclusive proof of rights of the respondents over the suit property when there was no oral or



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documentary evidence regarding the enquiry conducted under Natham settlement scheme. The learned counsel further submitted that the appellant produced house tax receipts in her name just prior to the suit. Therefore, the Courts below ought to have come to the conclusion that the appellant proved her possession over the suit property.

7. A perusal of the plaint filed by the appellant would make it clear that originally, the appellant filed a suit for injunction by mentioning the suit property as S.No.116/2. After respondents filed a written statement pointing out the mistake in the survey number, the appellant filed an amendment application and amended the suit survey number as 110/2. It is the specific case of the appellant that suit property is a Natham land and her husband occupied the same and put up a thatched house twenty years back.

8. It was further contended by her that she was not living with her husband, but, however, claimed that she had been in possession and enjoyment of the suit property for the twenty years immediately preceding the presentation of the plaint. Though the appellant claimed that her husband put up a thatched house in the suit property and the said house was assessed for



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tax, she has not produced any tax receipts in the name of her husband.

Contrary to her pleadings, she produced two tax receipts in her name, wherein, there are corrections in respect of her name. Though the appellant claimed that she had been in possession and enjoyment of the suit property for the twenty years, the alleged tax receipts produced by her pertaining to the year 2009 and 2010 only, just one year prior to the suit.

9. The Court below by taking into consideration the evidence of PW2 regarding non-availability of plaintiff's husband in the suit property, failure of the appellant to file any tax receipts in the name of her husband and corrections in the house tax filed by the appellant, which are just prior to the filing of the suit, had given a factual finding that the appellant failed to prove her lawful possession over the suit property in order to maintain a suit for bare injunction. The finding of fact with regard to the possession arrived at by the Court below is not liable to be interfered with, while exercising jurisdiction under Section 100 of C.P.C. Finding no question of law much less than substantial question of law in the second appeal, the same is dismissed by confirming the judgment passed by the Court below.



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10. In fine,

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a) this Second Appeal stands dismissed and the judgment and decree passed by the learned Additional Subordinate Judge, Dindigul dated 23.06.2015 in A.S.No.2 of 2015 stands confirmed;

b) In the facts and circumstances of the case, there would be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

25.01.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The Additional Subordinate Judge,
Dindigul.

2.The District Munsif,
Nilakkottai.

3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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