



S.A(MD)No.306 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A(MD)No.306 of 2017
and CMP(MD)No.6589 of 2017

1.R.Annathurai

2.A.Chitra

... Appellants/Respondents/Plaintiffs

Vs

Parthipan

... Respondent/Appellant/Defendant

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the decree and Judgment, dated 22.06.2017 in A.S. No. 2 of 2016 passed by the learned Additional Subordinate Judge, Karur, reversing the Judgment and decree in O.S.No.493 of 2011, dated 16.12.2015, passed by the learned Principal District Munsif, Karur.

For Appellants : Mr.P.Athimoolapandian

For Respondent : Mr.V.Nagarajan



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JUDGMENT

The Second Appeal has been filed against the decree and Judgment in A.S. No. 2 of 2016 passed by the learned Additional Subordinate Judge, Karur, on 22.06.2017, by reversing the Judgment and decree in O.S.No.493 of 2011, dated 16.12.2015, passed by the learned Principal District Munsif, Karur.

2.For the sake of convenience, the parties are referred to as per the litigative status in the suit.

3.The plaintiffs are the appellants before this Court. It appears that they have filed a suit for the relief of permanent injunction against the defendant in O.S.No.493 of 2011, which was decreed on 16.12.2015. Against the said decree and Judgment of the trial Court, the defendant has filed an appeal in A.S.No.2 of 2016 and in the first appeal, the decree of the trial Court was reversed on 22.06.2017. Against the decree of first appellate Court, the plaintiff has come before this Court by way of this second appeal.



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4. Brief averment of the plaint is as follows:

(i) According to the plaintiffs, they are the absolute owners of the suit property, by virtue of sale deed, dated 07.07.2010. His predecessors in title one Subbarayan has purchased the property under Ex.A.5, Sale deed, dated 27.09.1972, and the Subbarayan's predecessors in title had purchased the property, by virtue of sale deed, Ex.A.6, dated 15.12.1969.

(ii) According to the plaint averments, the suit property is 5 ½ cents abutting National Highway in S.F.No.257/A6. On 12.09.2011, the defendant has attempted to encroach upon the suit property, by interfering with the possession of the plaintiffs. That is why, they have come forward with the suit for the relief of bare injunction.

5. Brief averment of the written statement and additional written statement are as follows:

(i) According to the defendant, the plaintiffs are not the owners of the suit property, and it was also submitted by the defendant that on the west of the suit property, there exists a common passage, which has been used by one Syed Ammal and the defendant.



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(ii)According to the defendant he never disturbed the possession and enjoyment of the plaintiffs and that there is no cause of action for filing the suit.

(iii)The defendant also filed additional written statement that the suit property is not belong to the plaintiffs and it is only a Government land.

6.Before the trial Court, the plaintiffs have examined two witnesses (P.W.1 and P.W.2) and marked six documents (Ex.A.1 to Ex.A.6). On the side of defendant, he also examined two witnesses (D.W.1 and D.W.2) and marked nine documents (Ex.B.1 to Ex.B.9).

7.After considering both side pleadings and materials on record, the trial Court has decreed the suit on the ground that the plaintiffs have proved their possession by virtue of sale deeds. Further the trial Court has also found the existence of passage on the western side of the suit property and ultimately decreed the suit.

8.However, the first Appellate Court has reversed the finding on the sole ground that the plaintiffs have not proved the cause of action.



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Aggrieved with the order of first Appellate Court, the plaintiffs have moved the instant second appeal.

9.While admitting the second appeal, the following the substantial questions of law have been framed on 19.07.2017:

- 1. Whether the first Appellate Court was right in relying upon Exs.B.1 and B2 photograph without examination of the photographer?*
- 2. Whether the first Appellate Court was right in giving a finding with regard to cause of action without framing an issue to that effect by the Trial Court?*

10.The learned counsel for the appellants would content that by virtue of sale deed (Ex.A.1), the physical possession and enjoyment of the property are proved by the plaintiffs. He would further submit that the finding of the first Appellate Court that there is no cause of action is without any basis and could not be countenanced.

11.He would further contend that, according to the plaint averments, there is a reference about the alleged attempt of encroachment of the defendant over the suit property, and that while mentioning the



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attempt, the plaintiff stated about the disturbance over the fencing. The learned counsel for the appellants would further submit that since because there is no fencing on the date of examining witness, it does not mean that there is no cause of action. Hence, prays to allow the second appeal.

12.Per contra, the learned counsel for the respondent strenuously objected the argument of the learned counsel for the appellants, and submitted that Ex.B1 and Ex.B2 photographs shows that there is no fencing on the western side of the property. Therefore, contended that the statement made in the plaint that the defendant has attempted to remove the fencing does not arise, as a result of which, there could be no cause of action to file the suit. Hence, the learned respondent counsel would submit that the finding of the first Appellate Court is perfectly in order and prays to dismiss the second appeal.

13.I have given my anxious consideration to both side submissions.

14.To prove the ownership, the plaintiffs have produced Ex.A. 1, sale deed, and also tax receipts, Ex.A.3 and Ex.A.4. The learned



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counsel for the appellants would invite the attention of this Court to the pleadings of the defendant made in his additional written statement.

Wherein, he has stated that the suit property belongs to the State Government. Though the defendant has stated that the suit property belongs to the State Government, he has not submitted any evidence, except the *ipse dixit* of D.W.2, who is none other than the Local Panchayat President. Since there are no materials available on record before the trial Court, the trial Court has rightly disbelieved the evidence of D.W.2 and concluded that the suit property belongs to the plaintiffs.

15.It is a basic principle that the possession would go with the ownership. Now, according to the plaintiffs, their possession was disturbed by the defendant by attempting to encroach upon the property, and while explaining such an attempt the plaintiffs have stated that the defendant has attempted to remove the fence. Now the defendant took a stand that, since there is no fence, there could not have been any cause of action for the plaintiff. Now the core issue in the suit is whether the defendant has attempted to encroach upon the plaintiffs' property, and not that whether there is fencing on the western side of the property. Since because there are no materials submitted by the plaintiffs, in respect of the



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existence of fencing, it does not mean the very pleadings of the plaintiff, that the defendant has encroached upon the plaintiffs' property, would vanish.

16. In this regard, the learned counsel for the appellants relied upon a Judgment of this Court in ***Thiruvannamalai Karuneeakar Sangam Vs Saradambal Ammal***, reported in **2023 (3) L.W.289**, wherein in paragraph Nos. 45, 46 and 47, the learned Single Judge has elaborately discussed the issue of cause of action. The relevant portion is extracted for ready reference.

“45. The statement that the cause of action pleaded in the plaint is false and therefore, the suit has to be dismissed does not appeal to me. Here is the case where the plaintiff sangam has been litigating for more than 30 years starting from 1946 till 1980, when the present suit was presented. Consistently, the title of the plaintiff has been upheld. They have been taken on appeal and the appeals also ended in their favour. The cause of action is a bundle of facts which results in deciding the court's jurisdiction and granting a decree. I will not read one line in the said paragraph whereunder cause of action is pleaded in order to non-suit the plaintiff. The entire reading of the plaint discloses a cause of action that there has been a consistent attempt by the lessee to deny



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the title of the lessor.

46. The courts have already held that a separate paragraph for cause of action is not necessary. I rely upon a judgement of a **Division Bench of Lahore High Court in Fateh Ali Shah v. Muhammad Baksh [1927 SCC OnLine Lah 589 : ILR (1928) 9 Lah 428 : AIR 1928 Lah 516]** wherein two-judges of the Division Bench were pleased to hold as follows:-

“Moreover, the Civil Procedure Code nowhere provides that the plaintiff shall state in a separate paragraph of the plaint the date of accrual of the cause of action. All that it requires is that the facts constituting the cause of action and when it arose should be stated in the plaint. Order VII, Rule 1 of Civil Procedure Code, is quite clear on this the plaints and the pleadings in Appendix A of the first schedule to the Civil Procedure Code do not contain a separate paragraph stating when the cause of action arose. The omission to mention the dates of reversal of the entries and dispossession of the plaintiffs was not noticed by the parties when the issues were framed but the necessary information, it appears, was supplied during the trial. In my opinion, this was merely a formal omission which does not in any way affect the merits of the case and the plaintiffs cannot be tied down to the date of the accrual of the cause of



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action mentioned in the plaint. The Court is entitled, as the learned Senior Subordinate Judge has done, to determine the date on which the cause of action arose from the facts alleged and proved.”

47. A meaningful reading of the plaint must disclose a cause of action. As pointed out already, a reading of the plaint shows a cause of action. The mere fact that a single sentence in an unnecessary paragraph states that possession had been taken in 1980 does not persuade me to non-suit the plaintiff. Apart from that, as noticed in the previous paragraph, the construction had been made about 2 days prior to the visit of the Advocate Commissioner to the site. The Advocate Commissioner had visited the site on 30.01.1980. Therefore, I am of the clear view that the argument that cause of action paragraph states that trespass was made in 1980 has to be read in that light. Therefore, that objection too of Mr.R.Thiagarajan is rejected”.

17.As per the above rulings the cause of action is bundle of facts, and the same cannot be construed based upon a single sentence. Thus, since because a reference is made in paragraph No.11 of the plaint that the defendant has attempted to remove the fencing on the western side of the property, it does not mean that there was no attempt for the encroachment.



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18.In this case, through the evidence of PW1 and PW2 the plaintiffs have demonstrated before this Court, about the attempt made by the defendant. However, in respect of non existence of fencing, the learned counsel for the defendant relied upon two photographs Ex.B.1 and Ex.B.2. Though the Court below has observed the non-existence of fencing through the photograph, such photographs were filed during December 2012. But the suit is of the year 2011. As rightly contended by the appellants, there is no evidence as to when the photographs were taken. Therefore, what was the exact physical feature at the time of filing of suit cannot be visualised from the photograph submitted by the defendant at later point of time.

19.Further, there is no issue in respect of the ownership of the suit property by the plaintiffs. When he is the owner, it is the presumption that the possession would be with the owner. As such the plaintiff is indubitably entitled for an injunction. Therefore, the finding reversed by the first Appellate Court cannot be countenanced. Hence, this Court is of the view that the very order passed by the first Appellate Court is liable to



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be set aside and accordingly set aside. Thus the question of law is answered in favour of the appellants.

20.In the result, **this second appeal is allowed by setting aside the decree and Judgment of the first Appellate Court passed in A.S.No.2 of 2016 and thereby, the order of the trial Court is restored and the suit is decreed as prayed for.** No costs. Consequently, connected miscellaneous petition is closed.

27.07.2023

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM

To

- 1.The Additional Subordinate Judge, Karur
- 2.The Principal District Munsif, Karur.
- 3.The Section Officer,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.,

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