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S.A.No.692 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2023

PRONOUNCED ON : 21 .03.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.692 of 2021
and
C.M.P.No.13898 of 2021

Panjavarman

... Appellant

V.s

Thangavel

... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and decree of the Sub-Court, Mannargudi in A.S.No.15 of 2015 dated 31.07.2019 by reversing the judgment and Decree in O.S.No.15 of 2010 dated 02.09.2014 on the file of District Munsif Court, Mannargudi and pass such further or other orders as this Honble court may deem fit and proper in the circumstances of the case.

For Appellant : M/s.M.Thamizhavel

For Respondent : M/s.M.Santhanaraman



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JUDGEMENT

The plaintiff is the appellant before this Court and to appreciate the grievance of the plaintiff the facts which have culminated in the filing of the above Second Appeal is herein below set out and for ease of understanding the parties are referred to in the same ranking as before the Trial Court.

Suit Property:-

2. The suit property is a house site measuring 0.04 cents comprised in S.No.173C/10B, Old No.173C/10, Karuvakurichi Village, Mannargudi Taluk, Tiruvarur bounded:-

North by : the lands belonging to the plaintiff.

South by : Road

East by : the plaintiff's house and the punja site standing in the name of Pappammal and being enjoyed by the plaintiff.



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West by : the defendant's house and backyard.

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Plaintiff's case:-

3. It is the case of the plaintiff that the suit property originally belonged to one Ammalu Ammal. She had sold the property to Pappammal under a registered sale deed dated 07.09.1987. Thereafter, the plaintiff had purchased the property from the said Pappammal under a registered sale deed dated 13.08.1991. The said Pappammal also owned the remaining 10 cents in S.No.173C/10B.

4. The plaintiff would submit that he has been in exclusive possession and enjoyment of the suit property from the date of its purchase. On 14.02.2000, the said Pappammal died and her only heir was the plaintiff's wife Dhanalakshmi. Therefore, the plaintiff and his wife started enjoying the extent purchased by him together with the 10 cents belonging to Papaammal. On 18.02.2010, the plaintiff had obtained orders for having his name included in the patta along with



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Papaammal.

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5. The plaintiff would submit that west of the suit property, the defendant owns a house. The defendant had taken steps to put up constructions in the said property abutting the plaintiff's land. Therefore, the defendant was attempting to disturb the possession of the plaintiff. The defendant had in fact trespassed into the suit property and destroyed the fence on the western side and attempted to put up a hut which was prevented. Hence, the plaintiff had filed the suit O.S.No.15 of 2010, on the file of the District Munsif, Mannargudi seeking the relief of permanent injunction restraining the defendant, his men and agents from trespassing into the suit property and disturbing his peaceful possession and enjoyment of the same.

Written statement:-

6. The defendant would submit that the suit property at no point in time belonged to Ammalu Ammal or Pappammal. The said



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Pappammal had another daughter Susila apart from the plaintiff's wife, Dhanalakshmi. The said Susila had passed away 10 years prior to the filing of the suit and her husband and children were very much available.

7. It is the contention of the defendant that Ammalu Ammal did not own any land in the suit survey number or near it. On 17.10.2001, the defendant had purchased a vacant site measuring 0.06.0 ares in S.No.173C/10. He was enjoying this extent along with his house site situate in S.No.173C/10B totally measuring 0.05.5 ares which included the 4 cents.

8. The defendant would contend that he had his house assessed to tax and had obtained electricity and water connection and has been enjoying the same without any hindrance. While so, the plaintiff who had no right, title or interest in the suit property had proceeded to include his name in the revenue records. Therefore, the defendant



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prayed for the dismissal of the suit.

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Trial Court:

9. The Trial Court had framed the following issues:-

1. Whether Plaintiff is entitled to permanent injunction as prayed for?

2. Whether Plaintiff is in possession and enjoyment of suit property?

3.To what other relief?

10. The plaintiff had examined himself as P.W.1 and one Govindarajang as P.W.2 and marked Ex.A.1 to Ex.A.8. The defendant had examined himself as D.W.1 and marked Ex.B.1 to B.3.

11. The learned Trial Judge on going through the evidence both oral and documentary and the pleadings returned a finding that the plaintiff was in possession of the suit property and consequently entitled to the decree for injunction. Therefore, by judgment and



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decree dated 02.09.2014, the learned Trial Judge was pleased to
decree the suit.

Lower Appellate Court:-

12. Challenging the said judgment and decree the defendant had filed A.S.No.15 of 2015 on the file of the Sub Court, Mannargudi. The Lower Appellate Judge had framed the points for consideration as to

Whether the defendant's appeal has to be admitted?

13. The learned Appellate Judge on considering the evidence observed that there was no cause of action for the filing of the suit as the plaintiff had not filed any document to prove that the defendant had attempted to trespass into the suit property. The learned Judge had observed that the suit is bad for non-joinder of necessary parties as some of the legal heirs of Pappammal had not been impleaded as a party. The learned Judge had also observed that the plaintiff had not proved his possession of the suit property in the manner known to law. Ultimately, the lower Appellate Court had allowed the appeal and set



aside the judgment and decree of the Trial Court. Challenging the same, the plaintiff is before this Court.

14. When the matter came up for admission, this Court had directed notice to the respondent and after notice the respondent had entered appearance in this Second Appeal.

Submissions:-

15. The learned counsel for the appellant would submit that the Lower Appellate Court has failed to appreciate that the plaintiff has purchased the property under Ex.A.1 and has also produced the earlier deed Ex.A.2 which would go to show that the plaintiff is the owner of the suit property. The Lower Appellate Court has failed to appreciate the admission of D.W.1 that the suit property has no connection with the property described in Ex.B.1. He would also submit that the Lower Appellate Court has erred in rejecting Exhibits A.3 to A.5 only on the ground that these documents are dated 2010 totally overlooking the fact that the same is granted by the revenue authorities only when



possession is proved. He would therefore submit that a Substantial

Question of Law is involved in the above Second Appeal in as much as the Lower Appellate Court has ignored vital documents and has proceeded to allow the appeal and thereby dismissed the suit.

16. Per contra, Mr.M.Santhanaraman, learned counsel appearing on behalf of the defendant would submit that the plaintiff has come to Court suppressing the true facts. The plaintiff has claimed that his wife is the only daughter of Pappammal whereas the Pappammal had another daughter Susila who is no more and is survived by her husband and two children, a daughter Sangeetha and a son Kumar. The learned counsel for the defendant would submit that the plaintiff traces title to the suit property on the basis of Ex.A.7. However, a reading of the recitals in Ex.A.2 would show that there is no mention of Ex.A.7. Further, in the schedule to the plaint, the property is described as a vacant site whereas P.W.1 has himself admitted that there is a thatched house as well as a tiled house in the property. He



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would also draw the attention of the Court to the evidence of P.W.2 who has admitted in his cross examination that it is the defendant who is residing in the suit property. He would submit that the documents to show possession has been procured only a month before the filing of the suit. That apart, the plaintiff has not proved the cause of action, which is, that the defendant has attempted to trespass into the suit property on 21.02.2010. He would therefore submit that the suit being one for a bare injunction and the plaintiff having failed to prove his possession, the Lower Appellate Court has rightly rejected the suit and this Court sitting in the Second Appeal should not interfere with this judgment and decree.

17. Heard the counsels on both sides.

Discussion:-

18. The suit has been filed for a bare injunction and the contention of the plaintiff is that the property has been purchased by



him from one Pappammal under a sale deed dated 13.08.1991 under

Ex.A.1. The said Pappammal had purchased the said property from one Ammalu Ammal under Ex.A.2, under a sale deed dated 07.09.1987. The said Ammalu Ammal had got the above property under a settlement deed from her mother under Ex.A.7 dated 09.03.1977. However, a perusal of Ex.A.7 would indicate that the land which is the subject matter of settlement is a land that has been assigned to a settlor on 19.11.1937. Under Ex.A.2, Sale deed Ammalu Ammal would submit that this property has been taken possession by her in execution proceedings in E.P.No.138/1979 in O.S.No.361 of 1977. Therefore Ex.A.7, which the plaintiff claims is the parent document to Ex.A.2 traces ownership to a sale dated 19.11.1937 whereas Ex.A.2 would refer to Execution Proceedings.

19. Thereafter, the property has been sold by Pappa Ammal to the plaintiff herein. The suit property is an extent of 4 cents. P.W.1 has stated that the property covered under Ex.A.1 totally measures 19



cents and it contains a thatched house as well as a tiled house.

Further, P.W.1 has admitted that it is the defendant who is in possession of the lands comprised in S.No.173C/10A measuring 0.06.0 ares and 173C/10B measuring 0.05.5 ares in which the suit property measuring an extent of 4 cents is situate. P.W.1 has admitted that the defendant has been in possession of this property for over 40 yeas. This is also confirmed by P.W.2 who in his cross examination would admit that the defendant has been residing in the very same house since his father's time.

20. Therefore, the plaintiff has not been able to prove how his vendor and his predecessor in title had an interest to the 4 cents which has been conveyed under Ex.A.1. Further, even in the sale deed Ex.A.2, there is a recital that the total extent of land comprised in S.No.173C/10 is an extent of 28 cents and only 4 cents is conveyed. Although Pappa Ammal has purchased only an extent of 4 cents, the plaintiff would state that Pappa Ammal had a right to 14 cents. 4



cents she sells to the plaintiff under Ex.A.1 and the remaining 10 cents was in her enjoyment which on her death was being enjoyed by her daughter Dhanalakshmi, wife of the plaintiff. It is clear that the plaintiff has not come to Court with a definite case.

21. Coming to the question of whether the plaintiff has proved the possession, the plaintiff has produced Ex.A.3 to Ex.A.5. A perusal of the same would show that the documents i.e; Ex.A.3 has been procured on 18.02.2010 and Ex.A.4 and Ex.A.5 have been procured on 22.02.2010. The alleged cause of action for filing the suit is the attempt to trespass into the suit property on 21.02.2010. Therefore, it is crystal clear that these documents have been applied for and obtained only to buttress the plaintiff's case that he is in possession of the suit property. The plaintiff who claims to have purchased the property as early as in the year 1991 has not produced a single document to show his possession from the said date. On the contrary, he has produced documents which has been procured only a month before the filing of the suit in question. Further, the plaintiff has not



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proved the cause of action pleaded by him.

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22. The Lower Appellate Court has considered the evidence from its correct perspective and has rightly set aside the judgment and decree of the Trial Court and dismissed the suit. I see no reason to interfere with the same. Further no substantial question of law have been made out in the above Second Appeal, accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.03.2024

Index : Yes/No
Speaking order/non-speaking order
Neutral Citation :Yes/No
shr

To,

1. The Sub-Court, Mannargudi
2. The District Munsif Court, Mannargudi.

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3. The Section Officer,
V.R.Section,
High Court, Madras.

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P.T.ASHA, J.,

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