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S.A.No.43 of 1998

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.43 of 1998

1. E.R.C. Davidar (died)

2. Priya Davidar

3. Peter Davidar

...

Appellants

(A1 died, A2 & A3 are B/R
as LR's of the deceased A1
vide Court Order dated 07.06.2023
made in CMP Nos.2250,3033 &
3036/2023 in S.A.No.43 of 1998)

/Vs./

George J.Kuruvilla

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 03.09.1997 made in A.S.No.19/1997 on the file of the District Judge of the Nilgiris at Ootacamund, which was filed against the judgement and decree dated 14.10.1996 in O.S.No.88/1989 on the file of the District Munsiff, Gudalur.

For Appellants : Mr. M. Santhanaraman

For Respondent : set exparte



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JUDGMENT

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Challenge in this second appeal is made to the Judgement and Decree dated 03.09.1997 passed by the learned District Judge, Nilgiris at Ootacamund in A.S.No.19 of 1997, reversing the Judgment and Decree dated 14.10.1996 passed by the learned District Munsiff, Gudalur in O.S.No.88 of 1989.

2. The plaintiff in O.S.No.88 of 1989 on the file of the District Munsiff Court, Gudalur, is the appellant herein. Pending Second Appeal, the appellant/plaintiff died and his legal heirs were impleaded as appellants 2 & 3 in this Second Appeal.

3. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

4. The fact of the case is that the plaintiff purchased the property in different survey numbers situated in Masinagudi village under the Sale Deed executed by the Official Receiver of Coimbatore in I.P.No.3 of 1968 of the Subordinate Court, Ootacamund and the suit property is situated at District- Nilgiris, Registration Sub District-Gudalur Village, Masinagudi, R.S.No.382/1, Old Survey No.113/1, extent 1.33 O.H.A. or 3.30 Acres. The plaintiff took



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possession of the property along with other items of property covered by the Sale Deed registered as Document No.2425/1977 at the office of the Joint Registrar, Coimbatore. He is in actual physical possession and enjoyment of 3.30 acres in the Survey No.113/1 of Masinagudi Village in the suit schedule property. The defendant claims that he had purchased half share of the suit schedule property from one Ganesh Rao, S/o.A.N.Jaganatha Rao in the year 1987. The said Ganesh Rao could not be conferred any title to the defendant when the plaintiff has perfected his title by adverse possession. The plaintiff has enjoyed continuous and uninterrupted possession since 13.07.1976. Since the defendant is threatening and disturbing the peaceful possession of the plaintiff, the plaintiff has filed the suit against the defendant.

5.The defendant has contested the suit and filed written statement, in which, he contended that the plaintiff has no manner of right, title or possession in respect of the suit property. The allegation that the plaintiff has perfected his title through adverse possession is false. The defendant had purchased 3.30 acres comprised in Survey No.113/1 of Masinagudi Village, presently in R.S.No.382/1 from the previous owner Ganesh Prasanna, S/o. Jagannatha Rao under a registered Sale Deed dated 05.05.1987 as Document No.822/87 before the Sub Registrar of Gudalur. Hence, he prayed to dismiss the suit.



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6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

- 1. Has the plaintiff been in possession and enjoyment of the suit property on the date of filing the suit ?*
- 2. Has the plaintiff established his right in the suit property through adverse possession ?*
- 3. Has the defendant got the right through adverse possession ?*
- 4. Is it right on the part of the plaintiff to ask for permanent injunction without asking for declaratory relief ?*
- 5. Is it necessary to grant an order of Permanent injunction sought for by the plaintiff ?*
- 6. What other relief can be granted in this suit?*

7. Before the Trial Court, in support of the plaintiff's case, the plaintiff examined himself as PW1 and 22 documents were marked as Ex.A.1 to Ex.A.22. On the side of the defendants, the second defendant examined himself as DW1 and one John was examined as DW2 and 23 documents were marked as Ex.B.1 to Ex.B.23.



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8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit by its judgment and decree dated 14.10.1996. Aggrieved over the same, the defendant filed an appeal in A.S.No.19 of 1997 on the file of the District Court, Nilagiri, Ootagamund. The First Appellate Judge, after considering the entire materials, by his Judgment and Decree dated 03.09.1987, allowed the appeal in A.S.No19 of 1997. Now, challenging the same, the present Second Appeal has been filed.

9. The second appeal has been admitted on the following substantial questions of law:

1. Can this Court take judicial notice of a document that is inadmissible in law ? Ex.B8, which is the letter written by the plaintiff to the defendant suggesting a settlement “without prejudice” is a privileged communication which is not admissible in evidence as per section 23 of Indian Evidence Act?

2. Whether the lower appellate court was justified in reversing the judgment passed by the Trial Court



granting injunction on the basis of the materials placed by the plaintiff to the effect that the possession of the suit property was obtained pursuant to the sale in his favour by the Official Receiver, Coimbatore in respect of 8/61th share in a total area of 199.25 acres?

3. Whether lower appellate court was justified in making a new case in favour of the defendant which was not pleaded while allowing the appeal ?

10. The learned counsel appearing for the appellants submitted that the judgment and decree of the First Appellate Court is against law, contrary to the facts and against the weight of evidence and probabilities of the case. The First Appellate Court failed to appreciate the evidence let by the plaintiff to establish his possession over the suit property after his purchase from the Official Receiver, Coimbatore, in the year 1976. The First Appellate Court misconstrued the document filed by the defendant, particularly, Sale Deed dated 28.11.1975 executed by one B.M.H.Anderson to Ganesh Prasanna, the defendant's vendor and the Sale Deed did not establish a title of the defendant. The First Appellate Court failed to consider the fact that the defendant himself did not depose about his possession over the plaint schedule properties from the



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date of his purchase. Under these circumstances, the finding of the First Appellate Court is erroneous and liable to be set aside. He further reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the second appeal.

11. Though the name of the respondent was printed in the cause list, none appeared on behalf of the respondent either in person or through his counsel and hence, the respondent was called absent and set exparte on 27.06.2024.

12. I have considered the matter in the light of the submissions made by the learned counsel for the appellants and perused the materials available on records carefully.

13. On perusal of the records, it is seen that the plaintiff claimed to be an owner of the plaint schedule properties in Survey No.382/1 having purchased them under a registered Sale Deed executed by the Official Receiver of Coimbatore, registered as Document No.2425/1977 is evidenced by Ex.A.1.

14. The plaintiff examined himself as P.W.1. and deposed that he had purchased only 8/61 shares under Ex.A.1. It is not disputed by the parties that



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the total extent is 200 acres. The entire property was earlier owned by one Basuviah and 17 others. In 1950, an extent of 199.29 acres of land was sold to Basuviah by one lady by name E.N.Agnes. All the 61 share holders occupied their respective portions. But, there is no demarcation to show their possession. Further, on perusal of records, it is seen that one Ganesh Prasanna has sold the property in the same survey number to the defendant by way of registered Sale Deed dated 05.05.1987 vide Document No.822 of 1987 registered at Sub-Registrar of Gudalur. It is evidenced by Ex.B.4 and the registered copy is Ex.B.7. On further evidence reveals that on 12.11.1975, widow of late K.D.S. Anderson.,viz., Mrs.B.M.H.Anderson and his son T.M.S.Anderson had given General Power of Attorney to one Selvi M.Thoy with regard to the suit property. It is evidenced by ExB.2. The Power agent sold the property on 28.11.1975 to one Ganesh Prasanna, S/o. Jegannatha. It is evidenced by Ex.B3. From Ganesh Prasanna, this defendant had purchased the property in S.No.113/1 to an extent of 3.30 acres vide a Sale Deed which is evidenced by Ex.B.4.

15.On perusal of Ex.A.8 proceedings of Tahsildar, it is noticed that Mr.Anderson is shown as Joint-Pattaholder in respect of S.Nos.389/1, 399/3,



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399/4, 400/1, 382/1, 338, 335, 336, 391/3 in which, the plaintiff was not the sole owner of the suit property. Further, on perusal of Ex.B.8, letter dated 17.10.1988 written by the plaintiff to the defendant, in which, he had admitted only a portion of this property is in his possession. Further, it reveals that Ex.B.11 to Ex.B.16, Ex.B.18, and Ex.B.19, the receipts for land tax payment made by the defendant's vendor in respect of suit property. On perusal of Ex.A.6, Ex.A.7 and Ex.B.22 & Ex.B.23, it reflects that both the parties are having shares in the same survey numbers. Ex.A.6 and Ex.A.7 are chitta extracts. These documents reveal that the plaintiff is not having title over the entire property. Further, it is to be noted that the plaintiff himself admitted during the examination that he had purchased only 8/61 shares under Ex.A.1 Sale Deed. The plaintiff fails to establish that the entire suit property is under his possession and enjoyment and his title to the property is in dispute and it is under a cloud. Therefore, the plaintiff will have to file a suit for declaration of title and consequential relief of injunction.

16.In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that



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as on the date of the suit, he was in lawful possession of the suit property and the defendant tried to interfere with his lawful possession. But, he fails.

Therefore, the First Appellate Court rightly decided that the plaintiff is not entitled to the relief of permanent injunction as sought for in the suit and allowed the appeal. The finding of the First Appellate Court was based upon the evidence on records. There is no misconception of evidence and no irrelevant matter has been considered. Therefore, the finding of the First Appellate Court is not erroneous one and there is no ground for interference.

17. In the light of the abovesaid factors, it is found that the First Appellate Court, on a proper appreciation of the materials placed on record both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had correctly decided the issues and the findings of the First Appellate Court is legally valid and I find no merit in this Appeal and the substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff/appellant.

18. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is



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closed.

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Index : Yes / No

Internet : Yes / No

mrp

31.07.2024

To

1.The District Judge,
The Nilgiris at Ootacamund.

2.The District Munsiff, Gudalur.

V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.43 of 1998

31.07.2024