



S.A.No.232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.232 of 2024
and
C.M.P.No.7538 of 2024

S.Muthu

... Appellant

Vs.

1.Marrapan

2.Nallammal

3.Rajavelu

4.Ravikumar

... Respondent

Prayer:- Appeal is filed under Section 100 of C.P.C to set aside the Judgment and decree dated 13.10.2023 made in AS.No.37/2018 on the file of the Sub Court, Thiruchengode confirming the judgment and decree dated 18.07.2018 made in OS.No.395/2015 on the file of the Principal District Munsif Court, Tiruchengode by allowing this Second Appeal.

For Appellant : M/s.D.Gopal



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JUDGEMENT

The plaintiff who has unsuccessfully contested a suit for permanent injunction and mandatory injunction is the appellant before this Court.

2. The facts are briefly set out herein below with the parties being referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the suit O.S.No.395 of 2015 on the file of the District Munsif, Tiruchengode for the reliefs set out supra. It is the case of the plaintiff that the 1st defendant is the husband of the 2nd defendant and father of defendants 3 and 4. Defendants are living as a joint family. The properties described in the suit schedule was purchased by the plaintiff as a vacant site under a registered sale deed dated 02.11.1972. The plaintiff had thereafter constructed a terraced house in the suit property and living there along with his family. At the time of constructing his house since the defendants' land was vacant,

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the plaintiff had left an open space of one and a half feet immediately on the north of his northern side basement. Between the plaintiff's building wall and the basement, the drainage of the plaintiff's house is situate. This one and a half feet was left vacant to construct a compound wall and for periodically white washing and doing the other sundry repairs to the compound wall after its construction.

4. During the town survey conducted in the Tiruchengode Municipality, the suit property was measured by the Survey Authorities and the plaintiff was assigned Patta No.4889 in respect of the suit property. During the said survey, the defendants were allotted TSLR No.27/2 in old Survey No.127. There was no dispute between the parties in enjoying their respective survey numbers.

5. In the meantime, when the plaintiff and his wife were out of town from 27.10.2015 to 26.11.2015, the defendants had taken



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advantage of the absence and encroached upon a strip of land extending from 0 inches to 11 inches from west to east over a length of 21.8 feet in a triangular shape and had put up a hollow brick wall to the height of 9 feet. Immediately, on 27.11.2015, the plaintiff had directed the defendants to remove the unlawful construction since he had decided to construct a wall. The defendants had convened a Panchayat and stated that there was no encroachment. Thereafter, on the advice of Panchayatdars both parties measured their pattas and it was found that the defendants had encroached into 1 foot of the suit property to a length of 24 feet on the north western portion. The Panchayatdars advised the defendants to remove encroachment. The defendants who had assured that they would remove the wall, have failed to do so. On the contrary, on 16.12.2015, the defendants started putting up construction over the encroached area. The plaintiff had therefore filed the above suit for the reliefs claimed therein.

6. The 4th defendant had filed a written statement which was



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adopted by defendants 1 to 3. They had denied the allegations contained in the plaint. The defendants would submit that the 1st defendant had purchased the properties adjacent to that of the plaintiff under the sale deeds dated 25.08.1972, 14.02.1975 and 15.02.1980. The properties were originally comprised in S.No.127 of Tiruchengode Village. Thereafter, the property was allotted TSLR.No.27/2. The 1st defendant after the purchase of the property had put up construction and has been living there with his family.

7. While re-surveying the lands there appears to have been some errors committed by the Surveyor. The plaintiff is now trying to take advantage of this mistake by claiming a right to the property as per the measurements given in the patta contrary to what was on site. Claiming such a right the plaintiff had attempted to disturb the construction being carried out by the defendants in the month of December 2015. Thereafter, a Panchayat was convened and the property was measured as per the documents. During this survey, it was found that the plaintiff



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has constructed his house and extended it one foot into the defendants' land. However, since the plaintiff had already completed his construction, the defendants did not choose to make an issue out of the above. The defendants have also made an application to the Commissioner, Tiruchengode Municipality to once again re-survey the properties. The defendants would submit that the properties of both parties have to be re-measured as per their documents. The plaintiff who is aware that if such a measurement is undertaken it would be found out that he has encroached into the defendants' property. Therefore, to divert the said issue the plaintiff has come forward with the suit in question. They therefore sought for the dismissal of the suit.

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

- 1. Whether the plaintiff is in legal and peaceful possession and enjoyment of the suit property?*
- 2. Whether the plaintiff is entitled to the decree for injunction ?*



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3. Whether the plaintiff is entitled to the decree for mandatory injunction?

4. To what other reliefs the plaintiff is entitled to?

9. The plaintiff had examined himself as P.W.1 and Ganesan and Devarajan as P.W.2 and P.W.3 and marked Ex.A.1 to A.14. The 1st defendant had examined himself as D.W.1 and the 3rd defendant, his son had examined himself as D.W.2 and Ex.B.1 to B.3 were marked. The Commissioner's Report, plan, the Surveyor's Plan and the objection submitted by the plaintiff to the Advocate Commissioner's Report and Plan were marked as Ex.C.1 to C.4 respectively. Through the Court witness Ex.X.1 was marked.

10. The learned Trial Judge on considering the evidence on record had found that as per the documents under which the plaintiff had purchased the property i.e; Ex.A.1 and A.2, the plaintiff had



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purchased an extent of 2574 Sq.ft. i.e. east west 39 feet and north south 66 feet. However, in the patta, Ex.A.3, the measurement is shown as 2750 sq.ft. and the plaintiff is now trying to stake a claim to this excess land which is shown in the patta.

11. The learned Trial Judge observed that the revenue record is not a document of title and is only raises a presumption of possession and therefore the plaintiff was not entitled to the relief as claimed as the plaintiff has not been able to prove that he is the owner of the land as described in the suit schedule. Ultimately, the learned Trial Judge had dismissed the suit. Aggrieved by the same, the plaintiff has filed A.S.No.37 of 2018 on the file of the Sub Court, Tiruchengode. The learned Appellate Judge had confirmed the judgement and decree of the Trial Court and dismissed the appeal. Challenging the same, the appellant is now before this Court.

12. Heard the counsel for the appellant.



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13. The plaintiff has contended that the suit property belongs to him under a sale deed dated 02.11.1972. The plaintiff's case is that he had purchased a vacant land over which he had put up construction leaving an open space of one and a half feet immediately on the north of his northern side basement. It is also his contention that the defendants, when the plaintiff and his family was away from the suit property, had encroached into a triangular shape portion on the north western side of the suit property and had put up a hollow brick wall there. The defendants had denied these allegations and have stated that the construction has been put up only within their property. However, the plaintiff has not deemed it fit to amend the plaint to include the relief of declaration.

14. The defendants had set up title under sale deeds dated 25.08.1972, 14.02.1975 and 15.02.1980. The defendants have also relied on the fact that they were originally allotted patta no.127 which



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was later re-assessed as TSLR No.27/2. The Lower Appellate Judge had observed that under Ex.A.1 and A.2 the extent of the property purchased by the plaintiff has been described as 39 feet east west and 66 feet north south totally measuring 2574 sq.ft. Whereas, as per the patta, Ex.A.3, the property is said to measure 0.0255.50 i.e. 2750 sq.ft. which clearly indicates that the plaintiff has encroached into a larger extent than what has been purchased by him. The plaintiff as P.W.1 has also admitted to the fact that under Ex.A.1 and A.2 he has purchased only an extent of 2574 Sq.ft. and the plaintiff has now filed the suit in respect of this larger extent over which he has no right. It is needless to state that revenue records do not confer title on the party and in the instant case the excess land is only claimed on the basis of the patta.

15. The Courts below have found that lthough the defendants have purchased a larger extent of land, the patta granted to them is of a lesser extent and the plaintiff has taken advantage of the larger extent given to him in the patta to come forward with the present case.

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Although the defendants have seriously contested the title of the plaintiff to the suit schedule property, the plaintiff has not sought to amend the relief to one for declaration. Therefore, the principals laid down by the Hon'ble Supreme Court in the judgement reported in **2009 (1) MLJ 1001 -AAnathula Sudhakar vs P. Buchi Reddy (Dead)** By **Lrs & Ors** would squarely apply to the facts of the case.

16. The plaintiff has not proved the fact that there has been an encroachment by the defendants and further the Courts below have, on perusing the evidence, come to the conclusion that the plaintiff is in enjoyment of a larger extent whereas the defendants have been granted patta with reference to a lesser extent and it is this difference that the plaintiff is taking advantage of. Therefore, I see no reason to interfere with the concurrent judgement and decree of the Courts below. 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.



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

1. The Sub Court, Thiruchengode.
2. The Principal District Munsif Court, Tiruchengode.



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P.T.ASHA, J.,

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