



S.A.No. 291 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 291 of 2021
&
C.M.P.No. 5832 of 2021

Catherinal Ammal

...Appellant

Vs.

Sammansunathan (Died)

1.Melchior

Kaspar (Died)

2.Rathinamary

3.Mary

4.Antonymary

...Respondents



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.87 of 2019 by the III Additional District and Sessions Judge, at Cuddalore, Vridhachalam dated 09.01.2020 partly confirming and dismissing the Judgement and Decree passed in O.S.No.542 of 1999 dated 26.03.2018 on the file of I Additional District Munsif, Vridhachalam.

For Appellants : Mr. B.Singaravelu

For Respondents : Mr. V.Anand.

J U D G M E N T

The plaintiff who has suffered dismissal in the Courts below has moved this Second Appeal. The facts of the case is briefly set out herein below and the parties are referred to in the same rank as before the Trial Court.



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2. The plaintiff had filed the suit O.S.No.542 of 1999 on the file of the I Additional District Munsif, Vridhachalam for declaration and permanent injunction or in the alternative for recovery of possession. The suit property is an extent of 2 cents out of an extent of 40 cents situate in S.No.97/1 in Narumanam Village, which is a vacant plot. Originally the suit property belonged to one Pushpanathan and Alphonse, after their enjoyment they had sold the same to the plaintiff under a sale deed dated 02.12.1998. The plaintiff has been in enjoyment of the same by using it as a pathway and for keeping her cattle. She has been enjoying the property openly and continuously without opposition from anyone. Therefore, she has prescribed title to the property by adverse possession.

3. On the western side of the suit property, the plaintiff's house and garden are situate. The plaintiff is using the suit property to reach this property on the western side. The defendants own property to the south of the suit property and they are attempting to encroach onto the



suit property and annex along with their property. Therefore, they called upon the plaintiff to sell property. She had denied the same, hence enraged by the refusal, the defendants had put up fencing on 23.10.1999. Therefore, the plaintiff has filed the suit.

4. Pending the suit, the 1st defendant had died and his legal representatives were impleaded as defendants 4 to 6. Similarly, the 3rd defendant had died and since his wife and minors had left the village and were residing permanently at Karaikal, the plaintiff prayed to have the suit dismissed against them.

5. The deceased 1st defendant had filed a written statement denying the averments contained in the plaint and had contended that the total extent of land in R.S.No.97/1 was 40 cents. The very same property was already the subject matter of the suit O.S.No.29 of 1989, in which the plaintiff was also a party as 2nd defendant. However, the plaintiff has suppressed the suit in O.S.No.29 of 1989 and has filed the present suit.



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6. The defendants would submit that 40 cents originally belonged to the 1st defendant's father Irudhayasamy and his brother Chinnappan. Out of 40 cents, 20 cents was sold by the 1st defendant's father on 13.12.1945 to one Deivasagayam, the said Deivasagayam in turn sold the very same property to the 1st defendant on 19.12.1947 and at that point in time the 1st defendant was a minor. The 1st defendant had also purchased the share of his junior paternal uncle Chinnappan on 28.10.1954. Therefore, he become absolute owner of the entire extent of 40 cents, where the 1st defendant has constructed two houses and also planted several trees and the property was being enjoyed by the defendants. When they attempted to fence the property, the plaintiff disturbed their enjoyment and therefore they had filed the suit O.S.No.29 of 1989. They therefore sought for the dismissal of the suit.

7. The 3rd defendant had filed an additional written statement inter alia contending that the earlier suit O.S.No.29 of 1989 had been



decided in favour of the defendants and it was stated that the plaintiff herein would be entitled to limited rights to use a suit property as a way and she is entitled to the relief of declaration and injunction. The present suit is therefore hit by res judicata.

8. Along with the suit in question, the plaintiff had filed another suit in O.S.No.261 of 2007 for mandatory injunction to remove the electrical lines and both the suits were tried together.

9. The learned I Additional District Munsif, Vridhachalam, had framed the following issues in the suit in question:

“1. Whether the plaintiff entitled for declaration and permanent injunction reliefs?

2. Whether the suit is maintainable?

3. Whether the suit property belongs to the plaintiff and her vendor?

4. Whether the plaintiff is having right and



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enjoyment in the suit property?

5.To what other reliefs the plaintiff is entitled?

Additional Issues:

1.Whether the suit is hit by resjudicata?

10. All the suits were tried together and the evidence was recorded in the suit O.S.No.542 of 1999, which is the suit subject matter of the Second Appeal.

11. The plaintiff had examined herself as P.W.1 and the Village Administrative Officer was examined as P.W.2. Ex.A.1 to Ex.A.40 were marked on the side of the plaintiff and on the side of the defendants, the 2nd defendant had examined himself as D.W.1 and the 16th defendant in O.S.No.261 of 2007 was examined as D.W.2. Ex.B.1 to Ex.B.22 were marked on the side of the defendants. UDR patta in the name of the 1st defendant is marked as Ex.X.1.



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12. The learned I Additional District Munsif, Vridhachalam, on considering the evidence on record held that the plaintiff had failed to prove the title of her vendor to the suit property and apart from filing Ex.A.1, sale deed in her favour the plaintiff had not produced any other documents. Therefore, the learned Judge held that she was not entitled to decreetal relief.

13. With reference to the relief of permanent injunction, the learned Judge observed that even in the year 1984, S.No.97/1 had been subdivided into 97/1A and 97/1B1. The patta, Ex.A.11 is the patta in respect of S.No.97/1A. This patta was jointly issued to the plaintiff as well as one Vanathaiyan. The patta reads that they are in joint possession of one cent in S.No.97/1A. However, Ex.X.1 would indicate otherwise.



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14. A perusal of Ex.A.11 would show that the suit survey number has been inserted into the documents and the ink used is different from the ink used in the original entry. The reverse of the patta, the map for S.No.97/1B1 was not available. The Trial Court, therefore held that the document was a manipulated one. Further, Ex.A.11 patta would show that the plaintiff and Vanathaiyan are jointly possessing an extent of 1 cent in S.No.97/1A. The learned Judge therefore held that the plaintiff was entitled to enjoy the right in respect in one cent. Ultimately, the suit was partly decreed granting an injunction restraining the defendants from disturbing the plaintiff's use of the one cent of land as given in Ex.X.1, A Register copy. The suit for declaration and recovery of possession was dismissed.

15. Aggrieved by the said Judgement and Decree only the plaintiff had filed an appeal in A.S.No.87 of 2019. The Lower Appellate Court dismissed the appeal and while dismissing the appeal, the Lower Appellate Court had also set aside the Judgement and Decree



of the Trial Court with reference to the relief of injunction. The Lower Appellate Court had taken note of the fact that the 1st defendant had purchased the entire extent in S.No.97/1 under a sale deeds of the years 1947 and 1954. The learned Judge had also noticed the contradiction in the patta and the A Register. The plaintiff had sought a relief with reference to two cents and 0.01 ares. However, in the A Register, the extent was larger and the claim was with reference to 0.00.5 ares. Therefore, the Lower Appellate Court has reversed the Judgement and Decree of the Trial Court.

16. Challenging the same, the plaintiff / appellant has approached this Court.

17. When the matter had come up for admission, this Court has granted notice and the learned counsels have entered appearance and argued the matter.

18. Mr. B.Singaravelu, learned counsel for the plaintiff /



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appellant would make a primary argument challenging the Judgement and Decree of the Trial Court by stating that the defendants have not challenged the Judgement and Decree of the Trial Court, however, the Lower Appellate Court has dismissed the entire suit on the plaintiff's appeal against the disallowed portion. He would further contend that in the earlier proceedings, the plaintiff's right to use the extent of one cent had been granted. Therefore, he would submit that the Trial Court has rightly granted the decree for permanent injunction, which is now upset by the Lower Appellate Court.

19. Per contra, Mr. V.Anand, learned counsel appearing on behalf of the defendants would submit that the extent of the property over which the plaintiff claims a right has not been described by her. In her plaint, the plaintiff had described the property as two cents of vacant site out of 40 cents in S.No.97/1 and had further described the encroachment as an extent of 0.01.0 ares (0.02 cents) in S.No.97/1B1. The A Register would describe the land in S.No.97/1B1 measures 0.01.0 ares and the endorsement will also reflect that a rectification has



been carried out on 22.12.2009, much after the filing of the suit. In all these documents, the extent is shown as 2 cents. Therefore, he would submit that the Lower Appellate Court has rightly dismissed the suit in its entirety.

20. Heard the learned counsels and perused the records.

21. The plaintiff who claims a right to the suit property on the basis of a sale in her favour has not filed parent documents to show how her vendors have derived title to the property. On the contrary, the defendants have filed sale deeds of the year 1947 and 1954, to prove that they have purchased the entire extent in S.No.97/1.

22. It is also the admitted fact that the total extent comprised in S.No.97/1 is 40 cents. Once the entire extent is purchased by the plaintiff, it is not known as to how the Trial Court had granted injunction with reference to one cent, particularly when the injunction has been granted on the basis of an earlier Judgement and Decree,



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copies of which had not been produced and which is not even filed as evidence. The Trial Court has based its Judgement after holding that Ex.A.11 patta is a manipulated still proceeded to grant the decree for injunction which has been rightly reversed by the Lower Appellate Court.

23. Therefore, I see no reason to interfere with the Judgement and Decree of the Lower Appellate Court. Hence, the Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The III Additional District and Sessions Judge,
Cuddalore,
Vridhachalam.

2.The I Additional District Munsif,
Vridhachalam.



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P.T. ASHA, J,

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