



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

S.A.No.491 of 2012

Gunavalli

.... Appellant/Respondent/Plaintiff

Elango

Vs.

... Respondent/Appellant/Defendant

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree of lower appellate Court dated 25.02.2011 passed in A.S.No.33 of 2010 on the file of the learned Sub Judge, Ponneri reversing the judgment and decree dated 18.06.2010 passed in OS.No.36/2005 on the file of the District Munsif Court at Ponneri and also the second appeal.

For Appellant : Mr.V.Manohar

For Respondent : Mr.M.Sidhardan
for M/s.D.Gopal

JUDGMENT

The plaintiff is before this court on appeal. The second appeal is filed challenging the judgment and decree of lower appellate Court dated 25.02.2011 passed in A.S.No.33 of 2010 on the file of the learned Sub Judge, Ponneri reversing the judgment and decree dated 18.06.2010 passed in O.S.No.36 of 2005 on the file of the District Munsif Court at Ponneri.



2. For the sake of convenience, the parties are referred as per their ranking before the trial court.

3. According to the plaintiff, she is the absolute owner and possession of an extent of 0.08 cents of land in S.No.49/3A which was settled in her favour through a settlement deed dated 01.10.1991 and registered as Document No.1967/1991. Originally, the suit property owned and possessed by her husband and was later settled in favour of the plaintiff and from the date of settlement, the plaintiff is in actual possession and enjoyment of the property. The plaintiff had put up pucca building and paying kist to the Government from the year 1992 and she is the absolute owner of the property. The defendant, who is the resident of Gummidipoondi Village had attempted to trespass into the suit property on 16.02.2005. But the same was prevented by the plaintiff. Even earlier, when an attempt was made on 08.03.1992 by his father, plaintiff has filed a suit in O.S.No.180 of 1992 as against the defendant's father and the suit was decreed in favour of the plaintiff on 15.07.1992. But still since the defendant attempted to trespass into the suit property, the plaintiff has come up with this suit for bare injunction.



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4. The defendant resisted the suit contending that the land bearing in S.No.49/3 measuring an extent of 2.25 acres belongs to the ancestral property of the defendant. One Kulandai Reddy is the absolute owner and was in enjoyment. As absolute owners, the defendant ancestors had alienated the property to various persons, which was sub-divided as S.No.49/3A with an extent of 1.50 acres which has been formed as residential sites. The suit property which was also a subject matter of the *lis* in O.S.No.180/1992 was earmarked as park in the approved layout plan. Even though it has been earmarked as park, the ancestors have not transferred or gifted it to the government. The said piece of land always vested with the ancestors. The remaining land in S.No.49/3 has been sub-divided as S.No.49/3B with an extent of 0.75 cents. According to the defendant, since the said Kulanthai Reddiyar had partitioned the remaining lands, there was a shortage in respect to the share allotted to one Pattammal and therefore, the defendants ancestors are entrusted with the possession from the year 1989.

5. In the suit filed by the plaintiff in O.S.No.180/1992 against the defendant, he entrusted the matter to one Advocate who took steps to amicably settle the dispute. On the basis of the settlement arrived and individual



ownership, the plaintiff put up pucca construction. Similarly the defendant also started with the construction in respect of a small extent which was allotted in his favour in subsequent mediation and the respective portions have been in possession and enjoyment of the plaintiff as well as the defendant.

6. Even though it was assured and promised that the compromise decree would be obtained in O.S.No.180/1992, only later the defendant came to know that the suit was decreed exparte on 15.07.1992 and also the plaintiff has preferred further suit in O.S.No.102 of 1995. As such, the defendant was forced to file O.S.No.334 of 1995 and also took steps to set aside the exparte decree. Hence, sought for dismissal of the suit.

7. During trial, before the trial Court, the plaintiff examined herself as PW1 and examined her husband as PW2 and marked Ex.A1 to Ex.A3. On the other side, the defendant examined himself as DW1 and marked Ex.D1 to Ex.D7. Further Ex.X1 and Ex.X2 were marked by the Court.

8. After appreciating the evidence and documents, the trial Court decreed the suit. The trial Court found that the plaintiff has filed the documents and established her possession and also her right has been declared in the



earlier suits. Trial Court found that the defendant is not the legal heir of the said Pattammal and also he is not connected in anyway to the suit property. But his father is having a property adjacent to the suit property. Aggrieved by the same, the defendant filed appeal in A.S.No.33 of 2010 on the file of the Sub ordinate Judge, Ponneri. The lower appellate Court, after re-appreciating the evidence, allowed the appeal and set aside the decree of the trial court. The appellate court had observed that the plaintiff has not filed any document to prove that she is in possession of the suit property. Aggrieved by the reversal of the findings, the plaintiff is before this Court by way of filing the appeal.

9. This Court vide order dated 05.02.2024, framed substantial questions of law as follows;

"i. Whether the lower appellate court is correct its approach to reverse the judgment and decree of the trial Court just because there is different view is possible to be arrive.

ii. Whether the lower appellate Court is incorrect in ignoring the best piece of evidence in the form of admissions from the defendant to decide the case in contrary."



10. The learned counsel appearing for the appellant argued that when the plaintiff has filed a suit for bare injunction and filed the settlement deed/Ex.A1 executed in her favour and also the plaintiff had filed the documents in Ex.A1 to Ex.A8 which are the house tax receipts and EB bills and kist and had established that she is in possession and enjoyment of the property and the trial court decreed the suit, the appellate court had ignored these documents and rendered a finding that no document has been filed by the plaintiff to establish her case.

11. The learned counsel further contended that the defendant himself had categorically admitted in the written statement that pursuant to the settlement and individual ownership, the plaintiff had put up pucca construction in the suit property. But only contends that he is also in possession of a small extent of the property. The learned counsel further contended that when the defendant had categorically admitted title and possession, there was nothing left for the plaintiff to prove and she is entitled for injunction against the defendant.

12. The learned counsel also contended that the suit filed by the plaintiff as against the defendant's father already was decreed and the



defendant only contends that proper steps were not taken by his Advocate and that will not allow the defendant to breach the decree. He further contended that when admittedly the defendant has not established any ownership and also not established that he is the legal heir of Pattammal and when the legal heirs of pattammal who are available have not disputed the possession and title and when the defendant is not having any better title, the trial Court has rightly decreed the suit. But whereas the lower appellate court erroneously reversed the decree by not considering the document in Ex.A2 to Ex.A8 and the admission of the defendant. Therefore, submitted that the findings of the lower appellate Court is perverse and sought for allowing the appeal.

13. Per contra, the learned counsel for the respondent argued that when the plaintiff's husband was only entrusted with the work of development of the property belonging to the legal heirs of the said Kulanthai Reddiyar and the plaintiff's husband had developed the property and subsequently the same was converted into lay-out and house sites have been sold to the parties, the plaintiff's husband did not have any right in respect of 0.08 cents in the suit property to execute a settlement deed in favour of his wife. The learned counsel further argued that since there was a partition in the family, there was a shortfall in respect of the share allotted to Pattammal and to rectify the same,



the suit property was entrusted to Pattammal which came to the possession of the defendant. The learned counsel further contended that when the plaintiff has not established the title to the suit property, the trial court mechanically decreed the suit which has been rightly set aside by the lower appellate Court.

14. The learned counsel further contended that since the findings arrived at by the lower appellate Court, is based on the available materials, no interference is required and sought for dismissal of the appeal.

15. Heard the learned counsel for both sides and perused the materials available on record.

16. The Appellant/Plaintiff has come up with the suit for bare injunction based on the settlement deed executed in her favour on 01.10.1991/Ex.A1. Based on the settlement deed, the plaintiff had put up constructions in the suit property and the plaintiff had filed the documents in Ex.A2 to Ex.A5 are the house tax receipts. The documents in Ex.A6 & Ex.A7 are the receipts issued by the Electricity Board and Ex.A8 is the kist receipt. The documents in Ex.A9 & Ex.A10 are the plaint filed in O.S.No.180 of 1992 and O.S.No.102 of 1995. The suit in O.S.No.180/1992 has been filed by the



plaintiff as against the defendant's father and the other suit in O.S.No.102 of 1995 has been filed by the plaintiff as against the defendant. Further, Ex.A11 to Ex.A13 has been marked, which are the plaint, written statement and the Advocate Commissioner Report, in O.S.No.334 of 1995 filed by the defendant as against the plaintiff.

17. From the documents filed by the plaintiff, it could be seen that the suit property has been settled in her favour on 01.10.1991, pursuant to which, she has put up construction. In respect of the building put up by her, Ex.A2 to Ex.A8 has been issued. It is also seen that there had been already a dispute between the plaintiff and the father of the defendant, for which, two suits have been filed by the plaintiff as against the father of the defendant and later against the defendant. The trial court has decreed the suit. As far as the suit filed by the defendant in O.S.No.334/1995 against the plaintiff is concerned, it has been dismissed and against which, no appeal has been filed. Thereby, the plaintiff being owner having title and is in possession and enjoyment of the suit property, had also exercised her right as against the defendant and his father in the earlier proceedings which has ended in her favour.



18. The defendant claimed that the properties originally belonged to one Kulandai Reddiyar and his three legal heirs entrusted the property to the plaintiff's husband. Based on which, the power of attorney was executed and the property was developed into the residential house sites and in the approved lay out, a portion was earmarked as a Park and the defendant's ancestors did not execute any deed and continued to retain the possession of the suit property. However, contrary to the claim, the defendant has categorically admitted in his written statement that based on a settlement and on individual ownership, the plaintiff has put up a pucca construction and the same is extracted hereunder;

"13. The defendant further submits that on the basis of settlement and individual ownership, the plaintiff herein has put up her pucca constructions, similarly the defendant is also stated construction upto the basement, which is measured North to South 27-1/2 feet and East to West 23 feet with breadth of 1-1/4 feet and depth of 6 feet and spend a sum of Rs.25,000/- The remaining area in the allotted property the defendant have raised the floor level by filling 35 lorries of mud, which is worth about Rs.10,000/- Subsequent to the mediation, the respective portions have been in possession and enjoyment by the plaintiff as well as the defendant herein."

19. Further, DW1 in his evidence, had admitted that he is not the legal heir of the said Pattammal and also the legal heirs of Pattammal is residing at Gummidipoondi. It is also admitted that the legal heirs of the said



Pattammal are aware of the suit proceedings. DW1 also further admitted that he is not having any document in respect of the property in S.No.49/3B which belongs to his father and his father is not a party to this proceedings. As on date, he is not having any right over that property also. DW1 further admitted that in the earlier suit in O.S.No.180 of 1992 filed by the plaintiff, decree was passed in favour of the plaintiff and also the suit filed by him in O.S.No.334 of 1995 as against the plaintiff and her husband was dismissed on 27.11.2003.

20. Further when the defendant claimed that there was a compromise entered into between the parties, based on which, he is in possession of a portion of the said suit property, however he has admitted in his evidence that there is no document to prove that they have entered into any such compromise. Contrarily, in his evidence, it is also admitted that the plaintiff has constructed a house in the suit property and obtained electricity service connection and is in enjoyment of the suit property by paying tax to the Government. The defendant also admitted that till date, he has not filed any proceedings seeking for demolition of the house in the suit property or challenging the settlement deed.



21. PW2/husband of the plaintiff had deposed that the land entrusted have developed and converted as house sites and in respect of 8 cents of the suit property, he has made all the payments for the entire consideration as early as 25.02.1975 and they have been in possession of the suit property from 1975.

22. From the document filed Ex.A1, it could be seen that the property was settled in favour of the plaintiff by way of registered document and the plaintiff has constructed a building in the suit property. To prove their possession, Ex.A2 to Ex.A8 has been marked. The defendant had also categorically admitted that the plaintiff has put up the construction in the suit property based on the individual ownership.

23. When the defendant only claims that he is also in possession of small portion of the property, he has not filed any document to establish the same. In fact, his statement is contrary to the averment that the suit property was earmarked for Park in the layout. When admittedly the defendant is not the owner of the suit property and he is not being the legal heir of Pattammal and when admittedly, the patta stands in the name of Pattammal and it is also admitted that the legal heirs of the said Pattammal are available, who has not questioned the title and possession of the plaintiff and the defendant having



not established any relationship with Pattammal, he cannot interfere in the possession.

24. The plaintiff has established her possession of the suit property and more particularly, the defendant himself had admitted that based on the individual ownership, the plaintiff has put up a construction. The plaintiff is entitled for a decree of permanent injunction, particularly when the defendant is not having any better title than the plaintiff.

25. When the documents in Ex.A2 to Ex.A8 are available on record and also categorical admission of the defendant in respect of the possession of the plaintiff for the suit property is also available, the appellate court has reversed the findings of the trial court observing that the plaintiff has not filed any document to show that she is in possession of the suit property which is perverse. Even in the earlier suits filed by the parties, admittedly the suit filed by the plaintiff had ended in her favour and also suit filed by the defendant was dismissed against which no further proceeding has been taken and the rights between the present parties has already been decided and crystallised in the earlier proceedings.



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26. In view of the same, the substantial questions of law are answered in favour of the appellant and against the respondent. In the result, the Second Appeal is allowed and the judgment and decree dated 25.02.2011 in A.S.No.33/2010 on the file of the Subordinate Judge, Ponneri are set aside and the judgment and decree dated 18.06.2010 passed in O.S.No.36 of 2005 on the file of the District Munsif Court, Ponneri, stands restored. No costs.

20.03.2024

Internet; Yes/No
Index: Yes/No
Speaking order/Non-speaking order
rli

To

1. The Sub Judge, Ponneri
2. The District Munsif Court at Ponneri



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G.ARUL MURUGAN, J.

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S.A.No.491 of 2012

20.03.2024



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ORDER

The Second Appeal is listed under the caption “for being mentioned”, pursuant to the note put up by the Registry.

2.The Second Appeal was heard and the judgment was dictated in open Court on 20.03.2024, allowing the Second Appeal. Now, as per the note put up by the Registry, the P.A. concerned, who had taken the dictation in the open Court had typed the judgment, but, however, inadvertently, the judgment was not placed for signing and instead, the prepared order copy was placed along with the file and sent to the records. The learned counsel for the appellant had applied for certified copy of the judgment and decree on 25.03.2024 and had been pursuing it with the Registry. Only now, the mistake occurred in the Registry was found out and after conducting enquiry in this regard, the Registry has put up the note, based on which, the case is listed today.

3.Now, both the learned counsel appearing for the appellant and also the learned counsel appearing for the respondent, in unison, submitted that since the Second Appeal was heard and the judgment was dictated in the open Court on 20.03.2024, allowing the appeal and as the judgment delivered is available with the file, recalling the same and again posting the appeal for hearing would



not serve the interests of both the parties and they submitted that they have no objection for the judgment to be signed now and the judgment and decree could be issued expeditiously, as the parties have been waiting for a long time.

4. In view of the submissions made and considering the fact that the Second Appeal was heard and allowed in the open Court and the judgment is also readily available in the file, in the interests of justice and considering the interests of the parties also, Registry shall issue the judgment and decree to the parties as expeditiously as possible, preferably, within a period of three weeks from today.

30.03.2026

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