



SA.No.851 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.851 of 2012

and

MP.No.1 of 2012

Pradish

(Sole appellant is declared as Major and his
mother is discharged from the guardianship
vide order dated 30.11.2023 made in CMP.Nos.9955 & 9956/2023)

... Appellant

- Vs -

1. Venugopal Padayachi (Died)
2. Chinnapillai
3. Valli
4. Thangam
5. Anjali

(R1 died, R2 to R5 brought on record as LR's of the deceased R1
vide order dated 30.11.2023 made in CMP.No.16603/2019)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.03.2012 passed in AS.No.23/2011 on the file of the III Additional Subordinate Court, Cuddalore confirming the judgment and the decree dated 23.11.2010 passed in O.S.No.249 of 2009 before the Principal District Munsif's Court,



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Cuddalore.

For Appellant : Mr.T.Sezhian

For Respondents : Mr.D.S.Thirumavalavan for R2 to R5
R1-Died

J U D G M E N T

The appellant herein was the plaintiff before the Trial Court. The respondent was the defendant in the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant Second Appeal is that, the suit property originally belongs to one Narayanasami, who has got three sons, and the defendant is the son of one Venkatachalam. Likewise, the plaintiff is the great grandson of Chinnathambi. According to the plaintiff, the suit property was originally belongs to Narayanasami Padayachi and that there were oral partition, in which, the suit property was allotted to the plaintiff's grandfather Krishnamurthi. During the lifetime of



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his father Raghavan, he purchased the suit property from Krishnamurthi and another brother. Therefore, by virtue of the sale receipt and through the partition, he became the owner of the suit property. It is also the case of the plaintiff that on 19.09.2006, his father has executed a settlement deed in favour of the plaintiff herein. Whereas the defendant, without having any right over the suit property, is attempting to interfere with the possession. Hence, the plaintiff has come forward with a suit for permanent injunction.

4. The said suit was resisted by the defendant by contending that the suit property and other properties were originally belongs to one Nanni Padayachi, and that after the death of Nanni Padayachi, all the properties including the suit property were orally divided among the children of Narayanasami. In the oral partition, southern half of the suit property was allotted to the defendant's father Venkatachala Padayachi. This defendant further submits that, a patta has also been issued in his name. It is also the case of the defendant that the settlement deed dated 19.09.2006 is not a valid document and also contended that Krishnamurthi had no right, title or possession on the south of the asbestos sheet construction. It is also the



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contention of the defendant that mere filing of the suit for bare injunction, without seeking relief of declaration is not maintainable. Hence, the defendant prayed to dismiss the suit.

5. Before the Trial Court, the plaintiff has examined 4 witnesses as PW1 to PW4 and marked as many as 5 documents as Exs.A1 to A5. On behalf of the defendant, 3 witnesses were examined as DW1 to DW3 and 7 documents have been marked as Exs.B1 to B7. As a Court document, 2 documents have been marked as Exs.C1 and C2.

6. The Trial Court, after having considered the oral and documentary evidence, has found that the plaintiff has not proved his title and has ultimately dismissed the suit. Not satisfying with the judgment of the Trial Court, the plaintiff has preferred the First Appeal. During the pendency of the First Appeal, the plaintiff has moved an application under Order 41 Rule 27 of CPC and the First Appellate Court has allowed the application and before the First Appellate Court, Exs.A6 to A10 have been marked. The First Appellate Court has found that the plaintiff is in possession and



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enjoyment of the half of the suit property, however, since there is no measurement in respect of that portion, in which the plaintiff is in possession, and that since there are no prayer sought for, for declaration, when the defendant disputes the title of the plaintiff, has concurred with the finding of the Trial Court and dismissed the Appeal. Not satisfying with the judgment of the First Appellate Court, the plaintiff has approached this Court by way of this Second Appeal.

7. At the time of admitting the Second Appeal on 25.04.2022, this Court has formulated the following substantial questions of law:-

“a) Whether the defendant has taken a very specific stand that the plaintiff is in possession and enjoyment of half portion of the suit property in the northern side and the remaining half of the suit property in the southern side was in enjoyment of the defendant, whether both the Courts below were right in rejecting the relief in entirety?”

b) Whether both the Courts below ought to have exercised their power and jurisdiction by molding the relief and granting the relief of permanent injunction in favour of the plaintiff atleast for the northern half of the suit property?”

8. The learned counsel appearing on behalf of the appellant would



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strenuously submit, that when there is a specific finding by the First Appellate Court that the plaintiff is in possession of the northern half of the property, the First Appellate Court ought to have granted the injunction in respect of the northern half of the property. It is pertinent to mention here that in the written statement, though the defendant would submit that he is in possession and enjoyment of the southern portion of the property, nowhere he has admitted about the ownership of the plaintiff in respect of the northern portion of the property. It is also pertinent to mention here that even in the written statement, he has specifically disputed the title of the plaintiff over the suit property. However, the First Appellate Court, after gone into various aspects, has found that the plaintiff was in possession and enjoyment of the northern portion of the property.

9. On close reading of the plaint, as well as the description of the property, there is no specific measurement as to what is the linear measurement on four sides. Therefore, though there is a finding given by the First Appellate Court that the plaintiff is in possession and enjoyment on the northern portion of the property, as rightly found it is not safe to



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grant any decree in favour of the plaintiff for the northern portion of the property without any specific linear measurement. However, this Court is of the firm view that the plaintiff may be given a liberty to institute a fresh suit in respect of the northern half of the suit property by referring the linear measurement and by showing the title over the suit property. It is pertinent to mention here that, as rightly held by the First Appellate Court, when the title of the plaintiff was strongly objected and denied by the defendant, the only option available to the plaintiff is to file a suit for declaration and injunction. Here, the plaintiff did not opt to file any suit for declaration and injunction. That was also a ground found by the First Appellate Court to dismiss the appeal.

10. Therefore, from the submissions of the learned counsel for the appellant, this Court could not find any ground to interfere with the finding of both the Courts below and also there are no perversity in the judgment of both the Courts below.

11. In view of the above detailed discussions, the substantial



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questions of law are answered in favour of the respondents.

12. In the result, this Second Appeal is dismissed. However, the plaintiff is given liberty to institute a fresh suit in respect of the northern half of the property subject to proving his title. There shall be no order as to costs. Consequently, connected Miscellaneous petition is also closed.

25.04.2024

kmi

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To

1. The District Munsif Court,
Cuddalore.
2. The III Additional Subordinate Court,
Cuddalore.



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C.KUMARAPPAN, J

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