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S.A.No.905 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2024

DELIVERED ON : 29.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.No.905 of 2012
and M.P.No.1 of 2012

Marappan

...Appellant

vs.

Sanjeevan

... Respondent

Prayer : Second Appeal filed Under Section 100 of CPC, against the judgment and decree of the Subordinate Judge, Namakkal dated 28.11.2011 made in A.S.No.37 of 2010 in reversing the judgment and decree of the Principal District Munsif, Namakkal dated 30.06.2010 made in O.S.No.357 of 2007.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.C.Jagadish

JUDGMENT

This Second Appeal is filed against the judgment and decree in A.S.No.37 of 2010 passed by the Subordinate Judge, Namakkal dated 28.11.2011 reversing the judgment and decree in O.S.No.357 of 2007 passed by the Principal District Munsif, Namakkal dated 30.06.2010.



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2.The appellant is the defendant and the respondent is the plaintiff in the original suit. As against the reversal judgment of the First Appellate Court, the present Second Appeal is filed.

3.Originally a permanent injunction suit was filed by the plaintiff as against the appellant/defendant.

4.For the sake of convenience, the status of parties will be referred as plaintiff and defendant as referred in the original suit.

5.The plaintiff has filed a suit in O.S.No.357 of 2007 contending that he has a property in Old S.No.401/P and in New S.No.401/1, N.Pudhupatty Village, Namakkal. The plaintiff had contended that originally, the plaintiff enjoying the property as a vacant land and then he constructed a small house in the year 1974 and he is in occupation of the suit schedule property.

6.The plaintiff contends that the defendant has constructed a house on the eastern side of the suit schedule property and he is in possession and enjoyment of the same. As per the Government Order dated 20.08.2007, assignment patta



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was granted to the plaintiff on 28.10.1987. Thereafter, patta was issued to the plaintiff.

7.The contention of the plaintiff is that he is in possession and enjoyment of the suit schedule property at Door No.5/51 and his tax assessment number is 796. The specific case of the plaintiff is that the defendant has no right over the suit schedule property and he was not in possession and enjoyment of the suit schedule property which belongs to the plaintiff.

8.The plaintiff contends that in the defendant's Sale Deed registered in the year 1972, the vacant land of the plaintiff is reflected as the western boundary of the defendant's property. While so, on 04.04.2007, the defendant proclaimed that he also got right over the property and locked the door of the suit schedule property and threatened the plaintiff.

9.Thereafter, a legal notice was issued by the defendant on 05.04.2007 claiming right over the suit schedule property to which the plaintiff has issued a reply notice through his counsel. Therefore, the plaintiff filed the suit for permanent injunction against the defendant in O.S.No.357 of 2007. The



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defendant has filed a Written Statement in the above suit denying the averments of the plaintiff and contended that the plaintiff was never in possession of the suit schedule property.

10.The defendant had admitted the Assignment Patta dated 28.10.1987 issued to the plaintiff, which was marked as Ex.A1. The specific case of the defendant is that as per said patta, the plaintiff is entitled only to an extent of 1.190 sq.ft. which is nearly 3 cents of land. However, the plaintiff is claiming right over a larger extent of land in the suit.

11.The defendant contended that the suit schedule property was purchased by the defendant's father vide Sale Deed dated 14.08.1967, marked as Ex.B2 and on the eastern side of the property, the defendant and his father had constructed a house. After the demise of the defendant's father on 25.05.2002, the defendant was in actual possession of the entire suit schedule property. The defendant specifically contended that the plaintiff was not residing in the village for the past 15 years and the plaintiff owns a property which is 300 mtrs. away from the suit schedule property.



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12.The specific case of the defendant is that when the defendant attempted to put up asbestos sheet, the plaintiff had obstructed the defendant and therefore, the defendant had issued legal notice on 05.04.2007.

13.The defendant had preferred a complaint on 05.04.2007 against the plaintiff before Mohanur Police Station. As no action was taken on the complaint given by the defendant, the defendant had filed a suit in O.S.No.324 of 2007 against the plaintiff.

14.The plaintiff had suppressed all these details and has filed a suit in O.S.No.357 of 2007 as against the defendant.

15.The Trial Court based on the plaint and Written Statement filed by the plaintiff and the defendant had formulated the following issues:

i. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

ii. To what other relief the plaintiff is entitled to?



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16.The plaintiff was examined as PW1 and one Chinnu was examined as PW2 and Exs.A1 to A9 were marked on the side of the plaintiff. The defendant was examined as DW1 and one Soundarapandian was examined as DW2 and Exs.B1 to B4 were examined on the side of the defendant.

17.Admittedly, the plaintiff and the defendant are brothers. According to PW1, he was originally in enjoyment of the suit schedule property which was a vacant land and in the year 1974, he has constructed a small house in the suit schedule property by way of assignment patta dated 28.10.1987.

18.The plaintiff has marked Exs.A3 and A4 which are the property tax receipts for the year 2004-2005 and 2006-2007 dated 05.03.2003 and 24.03.2007 respectively. Ex.A5 is the copy of the legal notice dated 05.04.2007 sent by the defendant to the plaintiff. Ex.A6 is the copy of the reply notice sent by the plaintiff's counsel to the defendant's counsel dated 11.04.2007. Ex.A7 is the acknowledgment card for the receipt of the reply notice sent by the plaintiff's counsel dated 19.04.2007. Ex.A8 is the certified copy of the caveat petition filed by the defendant against the plaintiff before the District Munsif Court Namakkal.



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19.The Trial Court has considered the cross examination of PW1 in which the plaintiff himself has admitted the Sale Deed dated 17.07.1972 executed in favour of the defendant's father which was marked as Ex.A9. The property which was purchased by the defendant's father in which the plaintiff's property is shown as the western boundary of the property.

20.The Trial Court noted that Ex.A9 would only show that the plaintiff's property lies on the Western side and not the extent of the suit schedule property.

21.The Trial Court considered that the original assignment patta marked as Ex.A1 measures to an extent of 1190 sq.ft., approximately 3 cents of land i.e. 35 $\frac{3}{4}$ feet east west and 34 feet south north whereas patta which was marked as Ex.A2 measures to an extent of 1392 sq.ft. which is double the extent which was shown in Ex.A1. The contention of the defendant that patta which was relied upon by the plaintiff is not a genuine one, finds a substantial force with regard to measurement in Exs.A1 and A2.



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22.Before the Trial Court, the plaintiff has admitted in his cross examination that patta was issued only to an extent of 3 cents. However, he is in possession of a larger extent of 4 ¼ cents.

23.It is also the admitted evidence of PW1 that he has filed the suit including the excess 1 ¼ cents of lands, to which patta has not been granted. PW1 has also admitted that he has no other document to show that the excess 1 ¼ cents belongs to him.

24.The Trial Court has considered the complaint preferred by the defendant against the plaintiff before Mohanur Police Station and a bare injunction suit was filed in O.S.No.324 of 2007 before the District Munsif Court at Namakkal which was totally suppressed by the plaintiff. The plaintiff has not stated anything about the aforesaid Police complaint and the suit filed by the defendant which was prior to the present suit.

25.The Trial Court has considered the deposition of DW1 that the plaintiff was not in possession and enjoyment of the suit schedule property and he has no right or connection in the suit schedule property. The Trial Court has



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considered the evidentiary value of the Sale Deed in favour of the defendant's father which was marked as Ex.B2.

26.The Trial Court has also taken into consideration that the service connection in the suit schedule property stood in the name of the defendant and the plaintiff has given a letter to the Electricity Board to cancel the service connection which stood in the name of the defendant and sought for a service connection in his name only after filing of the present suit.

27.DW2 who is the Assistant Engineer in Tamil Nadu Electricity Board has deposed that the service connection stood in the name of the defendant and the same was marked as Ex.B3.

28.The Trial Court while evaluating the evidence of PW2 who is an independent witness found that his statements are of no use to the present case.

29.The Trial Court has taken into consideration of Exs.A1, A2 and B1 to B3 has come to the conclusion that the plaintiff was not in possession of the suit schedule property to an extent of 4 ¼ cents and rejected the relief of



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permanent injunction prayed by the plaintiff. Accordingly, the issues 1 and 2 are decided against the plaintiff and the suit was dismissed.

30. Aggrieved by the Decree and Judgment passed by the Trial Court, the plaintiff filed an appeal in A.S.No.37 of 2010 before the Subordinate Court at Namakkal.

31. The First Appellate Court while testing the correctness of the judgment passed by the Trial Court has taken 2 points for consideration:

i. Whether the plaintiff is entitled for the relief of permanent injunction?

ii. Whether the decree and judgment of the Trial Court is liable to be set aside?

32. The First Appellate Court had evaluated the findings of the Trial Court and held that as the Trial Court did not frame any issue on whether the suit is maintainable for not seeking the relief of declaration, there can be no finding on the same. The First Appellate Court held that the Trial Court is not right in making a decision on this point.



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33.The First Appellate Court held that as the suit property is grama natham, the real owner is the Government, therefore, the Government can assign the extent of 4 ¼ cents to anyone which cannot be challenged by the defendant.

34.While considering Ex.A9 and Ex.B2, the First Appellate Court came to the conclusion that the suit property and the defendant's property are different.

35.The First Appellate Court considered the evidence of DW1 in which the defendant admitted that the plaintiff's elder son is residing in the house near the suit schedule property. Based on the above statement, the First Appellate Court came to the conclusion that the contention of the defendant about the plaintiff's possession of the suit schedule property is not sustainable. The First Appellate Court further held that the documents in receipt of service connection are not the documents of title and possession. Therefore, the claim of the defendant was rejected by the First Appellate Court by disbelieving Ex.B3.



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36.The First Appellate Court has taken a view that the plaintiff has proved his possession of the suit property through oral and documentary evidence and as such he is entitled to the relief of permanent injunction.

37.For the aforesaid reasons, the First Appellate Court reversed the judgment of the Trial Court and allowed the appeal.

38.Aggrieved by the judgment and decree in A.S.No.37 of 2010 dated 28.11.2011, the defendant in the suit had preferred the present Second Appeal.

39.Mr.N.Manoharan, learned counsel for the appellant would contend that Ex.A9 and Ex.B2 which are one and the same were marked by the defendant and the appellant before the Trial Court.

40.The patta which was relied upon by the respondent/plaintiff, marked as Exs.A1 and A2 are not genuine and the patta itself is not a document of title. Neither the Trial Court nor the First Appellate Court has conducted any enquiry with regard to the genuineness of Exs.A1 and A2.



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41.The learned counsel for the appellant would contend that the First Appellate Court has come to the wrong conclusion without ascertaining the recitals and the parties to the Sale Deeds marked as Ex.B2 and Ex.A9.

42.The First Appellate Court failed to note that the assignment patta dated 28.10.1987 marked as Ex.A1 is only for 3 cents whereas Ex.A2 dated 27.11.1992 is the patta granted for an extent of 4 ¼ cents i.e. excess of 1 ¼ cents of land which was not explained by the respondent/plaintiff in the suit.

43.When the suit property was classified as village natham property, the property is vested with the Government and not with the individual. Therefore, the assignment patta stood in the name of the plaintiff in Exs.A1 and A2 and there could not be any excess land in favour of the respondent/plaintiff.

44.The First Appellate Court has misconceived the fact that the respondent/plaintiff had only given a letter to the Electricity Board to cancel the service connection which stood in the name of the defendant's father and this by itself would show that Ex.B2 the Sale Deed and the service connection would reflect that the appellant/defendant was in actual possession from the execution of Sale Deed in Ex.B2.



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45.The First Appellate Court has failed to note that the plaintiff has not marked even a single document to show that he was in actual possession of the suit schedule property.

46.It is not in dispute that in a bare injunction suit, it is sufficient for the respondent/plaintiff to show that he was in actual possession of the suit schedule property. However, the respondent/plaintiff has failed to prove his possession by producing the oral and documentary evidence.

47.The appellant had only marked Exs.A1 and A2 which are the assignment patta and original patta and apart from that, the house tax receipts which were marked as Exs.A3 and A4 for the year 2004-2005 and 2006-2007. Even these documents do not reflect the name of the respondent/plaintiff.

48.The First Appellate Court has miserably failed to take note of the evidence of PW2 Chinnu who corroborated the evidence of PW1. But in the cross examination, PW2 had categorically admitted that he had only affixed the signature in the place where he was suggested to affix the signature by the respondent/plaintiff and he was not aware of the dispute between the



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respondent and the appellant. He was not aware of the extent and survey number of the suit schedule property. The cross examination reveals that PW2 was only an interested witness.

49.Learned counsel for the respondent would contend that the findings given by the First Appellate Court is based on Exs.A1 and A2 which were granted by the Government. Ex.A1 is the assignment patta which is only for 3 cents. Ex.A2 is the original patta to an extent of 4 ¼ cents. This excess land was in occupation by the respondent/plaintiff and only on that basis, the First Appellate Court has reversed the findings of the Trial Court.

50.The submission made by the learned counsel for the respondent is that Ex.B2 the Sale Deed executed in favour of the defendant's father itself would show that the plaintiff's property and the defendant's property are situated on the two end directions of west and east.

51.The next submission of the learned counsel is that the letter given by the respondent/plaintiff to the Electricity Board is only to cancel the service connection in the name of the respondent/plaintiff as the property is owned by the plaintiff/respondent even as per patta Exs.A1 and A2.



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52. Though a dispute is raised by the appellant/defendant with regard to the genuineness of the patta which was marked and relied upon by the respondent/plaintiff, the appellant/defendant has not filed any application before the Trial Court to verify the genuineness of the document. Therefore, the learned counsel for the respondent/plaintiff prayed for dismissal of Second Appeal.

53. The Second Appeal was admitted on the following Substantial Questions of Law:

i. Whether the First Appellate Court has rendered a perverse finding in identifying the suit property to be the one lying on the west of the property purchased under Ex.A9 by the father of the appellant/defendant, whereas in the description of property, the property lying on the east of the suit property is shown to be the property of the defendant?

ii. Whether the First Appellate Court has committed an error in law in holding that Exs.B2 and B3 do not relate to the suit property and rendering a consequent finding that the suit property is not in possession of the defendant and that on the other hand, it is in possession of the plaintiff?



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54.It is clear that during the cross examination of PW2, he had admitted that he was not aware of the suit schedule property and the dispute between the appellant and the respondent as well as the extent. In further examination, PW2 had also not stated anything about the possession of the respondent/plaintiff.

55.The Exs.A1 and A2 though marked by the plaintiff/respondent had not stated anything about the difference of 1 ¼ cents and when the appellant/defendant had disputed the genuineness of Exs.A1 and A2, there was no attempt made by the respondent/plaintiff to adduce the evidence of the Revenue Authorities to establish that Exs.A1 and A2 are genuine and it was granted to him by the Revenue Authorities.

56.The First Appellate Court had miserably failed to note that the suit was filed only for a bare injunction. Therefore, it is for the respondent/plaintiff to establish the actual extent in his possession and occupation. It is the onus vested on the respondent/plaintiff to show that he was in actual possession of the suit schedule property. However, the respondent/plaintiff failed to prove his possession by producing oral and documentary evidence.



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57. On the other hand, the appellant had marked Ex.B2 which is the Sale Deed of the year 1967 in the name of the appellant's father and in his evidence as DW1, he has stated that he was in continuous possession after the demise of his father and he has marked Ex.B1 i.e. copy of the complaint given by the respondent/plaintiff to the Electricity Board to disconnect the service connection which stood in the name of the appellant and he has also produced Ex.B3, the attested copy of the records pertaining to service connection to the suit property in the name of the appellant. The legal notice issued by the appellant to the Electricity Board not to disconnect the service connection and the reply given by the Electricity Board to the defendant's counsel are marked as Ex.B4.

58. It is evident that the respondent/plaintiff had not shown any iota of materials to substantiate that he was in possession of the suit schedule property to restrain the appellant from interfering with the same.

59. The First Appellate Court erred in not considering Exs.B2 & B3 which proves that the defendant was in actual possession of the suit schedule property. The judgment and decree of the First Appellate Court is liable to be



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set aside. Accordingly, all the Substantial Questions of Law are answered in favour of the appellant.

60.In view of the same, the Second Appeal is allowed and judgment and decree passed by the Subordinate Judge, Namakkal in A.S.No.37 of 2010 dated 28.11.2011 is set aside and the judgment and decree passed by the Principal District Munsif, Namakkal in O.S.No.357 of 2007 dated 30.06.2010 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

29.10.2024

Index : Yes/No

Speaking order/Non Speaking order

Neutral Citation: Yes

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To

1.The Subordinate Judge, Namakkal.

2.The Principal District Munsif, Namakkal.



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N.SENTHILKUMAR, J.

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Pre-delivery judgment in
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