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S.A.No.1179 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.08.2024**

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.No.1179 of 2013

A.Srinivasan

... Appellant

Vs.

D.Batcha

.. Respondent

PRAYER: Second Appeal filed under Section 100 of the C.P.C., against the judgment and decree made in A.S.No.117 of 2011 on the file of the Sub Court, Vellore dated 25.06.2013, confirming the judgment and decree dated 05.09.2011 made in O.S.No.299 of 2009 on the file of the District Munsif, Katpadi, Vellore District.

For Appellant : Mr.S.Saranraj

For Respondent : Mr.K.Selvaraj

J U D G M E N T

This Second Appeal is filed by the plaintiff in the suit against the judgment and decree made in A.S.No.117 of 2011 on the file of the Sub Court, Vellore dated 25.06.2013, confirming the judgment and



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decree dated 05.09.2011 made in O.S.No.299 of 2009 on the file of the District Munsif, Katpadi, Vellore District.

2.The appellant/plaintiff contended in his plaint that originally the suit property belongs to one Alamelammal by way of registered settlement deed dated 14.03.1962 which was created in favour of Alamelammal by her husband, Ponnusamy Mudaliar and the appellant has purchased the suit property from the said Alamelammal and her legal heirs by way of registered sale deed dated 06.12.2004. The appellant/plaintiff contended before the Trial Court that the defendant/respondent was a stranger to the suit property and the title of the property belongs to the appellant/plaintiff. The appellant/plaintiff has sought for permanent injunction restraining the defendant, his men, servants and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for costs and other suitable relief.

3.The defendant in the suit is the respondent herein. He has



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filed the written statement. The factum of the registered settlement deed dated 14.03.1962 in favour of Alamelammal executed by her husband Ponnusamy Mudaliar is denied by the defendant. The defendant/respondent in his written statement has contended as follows :-

“7.The defendant submits that the plaintiff's property measures only 2-1/2 feet plus 33 feet East to West on the south 35 feet East to West on the North, 70 feet North to South on the West and 74 Feet North to South on the East. Therefore the claim for East to West 48 feet and North to South 96 feet is false and imaginary. The total square feet of 4608 S.F. mentioned in the plaint is false.”

Therefore, the defendant/respondent has disputed the extent of the suit property mentioned in the plaint.

4.The Trial Court had framed two issues for consideration which are as follows:

- 1) Whether the plaintiff is entitled to the relief of permanent injunction?*
- 2) To what relief the plaintiff is entitled to?*



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The Trial Court also framed the following additional issue:

1)Whether the plaintiff is entitled to the entire extent of the suit property?

5.Before the Trial Court, 4 documents were marked by the appellant/plaintiff viz., Ex.A1 - certified copy of the settlement deed in favour of Alamelammal dated 14.03.1962, Ex.A2 - certified xerox copy of the sale deed dated 06.12.2004 in the name of the plaintiff, Ex.A3 – photo in respect of the suit property and Ex.A4 – Registration copy of the sale deed in favour of Ammakannu executed by one Kumarasamy. The appellant/plaintiff was examined as P.W.1 and the sole defendant was examined as D.W.1. No documents were marked on the side of the defendant.

6.The Trial Court while considering the suit for permanent injunction, found that P.W.1 has deposed that the suit property is remaining as it was purchased under Ex.A2 sale deed. However, in cross-examination, P.W.1 has deposed that the defendant has encroached to an extent of 15 x 96 feet in the suit property. The plaintiff has also admitted



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that he has not pleaded with regard to the encroachment made by the defendant. The plaintiff filed I.A.No.82 of 2009 for appointment of the Advocate Commissioner to measure the extent of encroachment made by the defendant herein. However, an endorsement was made by the plaintiff in the docket of I.A.No.82 of 2009 that the application filed by the plaintiff is not pressed and the same was recorded and an order had been passed on 14.06.2010. As the plaintiff has averred in the plaint that he is in possession of the entire extent of the property and subsequently stated that the defendant has encroached an extent of 15 x 96 feet in the suit property and failed to seek for recovery of possession of the suit property, the Trial Court held that the plaintiff has failed to prove possession of the suit property. For the above reasons, the Trial Court dismissed the suit.

7.The appellant filed an appeal before the Sub Court, Vellore in A.S.No.117 of 2011 challenging the said judgment and decree of the Trial Court.



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8.The First Appellate Court considered the contention of the appellant that the suit property was purchased by the plaintiff from one Alamelammal vide Sale Deed marked as Ex.A2 on 06.12.2004. As there was no document to show that the plaintiff was in possession of entire extent and for the reason that the plaintiff himself has stated that the defendant has encroached 15 x 96 feet in the suit property, the First Appellate Court found that the plaintiff ought to have filed a suit for declaration of title as the defendant has disputed the extent of the suit property owned by the plaintiff. The First Appellate Court concurred with the finding of the Trial Court and decided that the relief of permanent injunction cannot be granted as the plaintiff has failed to prove possession of the suit property. Therefore, the appeal was dismissed. Challenging the judgment and decree of the First Appellate Court, the plaintiff in the suit has filed the present Second Appeal.

9.The Second Appeal has been admitted by this Court on 15.03.2022. This Court has framed the following substantial questions of law:



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a. Whether both the Courts below failed to appreciate that possession follows title insofar as a vacant site is concerned and where the plaintiff is specifically claiming title through Exs.A1 and A2, both the Courts below ought to have granted the relief of permanent injunction based on these documents?

b. Whether both the Courts below were right in finding that the plaintiff ought to have sought for the relief of declaration of title merely on the basis that the defendant raised a plea to the effect that the measurement as shown in the document of the plaintiff is erroneous?

c. Whether the findings of both the Courts below can be termed as perverse due to improper appreciation of the oral and documentary evidence?

10.The learned counsel for the appellant would contend that the plaintiff has produced the sale deed in Ex.A2 to prove the measurements of the suit property. The First Appellate Court erred in holding that the plaintiff has failed to prove his possession, as the plaintiff has established the possession by way of oral and documentary



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evidence. The dispute over the extent of plaintiff's title to the suit property made by the defendant is without any basis, therefore, there is no necessity to file a suit for declaration of title.

11. The primary contention of the learned counsel for the respondent is that the appellant has not filed any document to establish his possession over the suit property. As held by the first appellate court, the appellant has failed to establish his possession. Therefore the appellant is not entitled to the entire extent of the suit property and as such he prayed for dismissal of the second appeal.

12. Admittedly, the defendant has disputed the extent of the suit property and the plaintiff's title and right over the suit property by filing the written statement before the Trial Court. However, the plaintiff who has sought for permanent injunction has not taken any steps to establish the actual extent of the property which is in possession and enjoyment of the plaintiff.



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13.The contention of the plaintiff that he is in actual possession of entire extent of the suit property was disbelieved by the Courts below as the plaintiff himself has made a statement that the defendant has encroached an extent of the suit property, which shows that the plaintiff is not in possession of the entire extent. The plaintiff has failed to ascertain the extent of the land encroached by the defendant. That apart, the application filed for appointment of Advocate Commissioner to measure the extent of encroachment by the defendant was also not pressed by the plaintiff.

14.This Court is of the view that the Courts below have rightly come to the conclusion that the plaintiff has not proved the possession of the suit property. In the absence of conclusive evidence to establish the possession of entire extent of suit property, permanent injunction cannot be granted against the defendant who is in possession of an extent of property which is evident from the cross examination of the plaintiff.



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15.In view of the above, all the substantial questions of law are answered against the appellant.

16.In the result, the Second Appeal is dismissed. The judgment and decree dated 25.06.2013 passed by the Sub Court, Vellore in A.S.No.117 of 2011 is confirmed. There shall be no order as to costs.

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Index :Yes/No
gsa

To

- 1.The Subordinate Judge,
Vellore.
- 2.The District Munsif,
Katpadi, Vellore District.



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N.SENTHILKUMAR, J.
Gsa

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