



S.A.No.939 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.07.2024

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.939 of 2013

and

M.P.Nos.1 & 2 of 2013

1. Jothi Chetty
2. Kuppan (Died)
3. Sornambiga
4. Yuvaraja
5. Puppy

.. Appellants

Vs.

1. Amsaveni
2. Mallikeswaran
3. S.Jayaraj
4. S.Kumaravelu
5. S.Mohan
6. S.Ayyadurai

.. Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree, dated 29.02.2012, passed in A.S.No.28 of 2010 on the file of the Subordinate Judge, Tiruttani confirming the judgment and decree, dated 23.08.2007, in O.S.No.74 of 2002 on the file of the District Munsif, Tiruttani.



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For Appellants : Mr.R.Venkata Varathan

For Respondents

1 to 6 : : Mr.N.Subbarayalur
for
M/s.G.Jeremiah

JUDGMENT

The Second Appeal has been filed to set aside the Judgment and decree passed by the learned Subordinate Judge, Tiruttani in A.S.No.28 of 2010 confirming the judgment and decree, dated 23.08.2007, in O.S.No.74 of 2002 on the file of the learned District Munsif, Tiruttani.

2. The learned Counsel for the Appellants would submit that the Plaintiffs in O.S.No.74 of 2002 are the Appellants in the Second Appeal. The Plaintiffs' father had purchased the 'A' schedule property vide registered sale deed dated 04.04.1961 in Document No.818 of 1961 registered at the office of the Sub-Registrar, Tiruttani. From the date of purchase, the Plaintiffs' father is in possession and enjoyment of the 'A' Schedule property. The 'B' Schedule property is a Poromboke land which is situated to the north of the 'A' Schedule property. Thus, the 'B' Schedule property is contiguous to 'A' Schedule property and it is part and parcel of



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'A' Schedule property. The 'B' Schedule property is being used by the Plaintiffs as their backyard for tethering their cattle. Further, the 'B' Schedule property is being used by the Plaintiffs to store the cattle manures. The Vendor of the Plaintiffs' father had purchased the said property in the year 1934. Therefore, 'A' and 'B' Schedule properties were in possession and enjoyment of the Plaintiffs' father and after him, the Plaintiffs' are in possession and enjoyment of the 'A' schedule along with 'B' schedule properties. While so, the Defendants are the adjacent land owners of the suit property and they attempted to encroach the 'B' Schedule property. Therefore, the Plaintiffs was constrained to file a suit in O.S.No.74 of 2002 on the file of the District Munsif Court, Tiruttani for the relief of permanent injunction. After filing the suit, the Defendants encroached the subject property and put up yard. Therefore, the Plaintiffs have amended the plaint by filing amendment petition and seeking relief of declaration of possessory right of 'B' Schedule property.

3. The Defendants entered appearance and filed written statement claiming the right of the 'B' Schedule property through settlement deed. After filing of written statement, the learned District Munsif, Tiruttani had



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framed issues. During the Trial, the Plaintiffs were examined as P.W-1 and P.W-2 and the documents were marked as Ex.A-1 to Ex.A-5. The Plaintiffs have filed an application for the appointment of Advocate Commissioner to inspect the suit property. The said application was allowed by the Trial Court. The Advocate Commissioner submitted his report, the said report and rough sketch were marked as Ex.C-1 and Ex.C-2. The Defendant-3 examined himself as D.W-1 and 2 other witnesses were examined as D.W-2 and D.W-3 and the documents were marked as Ex.B-1 to Ex.B-11. The learned District Munsif, Tiruttani after careful consideration of oral and documentary evidences passed judgment and decree dated 23.08.2007. Aggrieved by the same, the Plaintiffs have preferred an Appeal in A.S.No.28 of 2010 before the learned Sub Judge, Tiruttani.

4. The learned Counsel appearing for the Appellants submitted that the points raised in the memorandum of grounds in the First Appeal were not at all considered by the learned Sub Judge, Tiruttani and passed judgment and decree dated 29.02.2012 in A.S.No.28 of 2010. The learned Sub-Judge, Tiruttani in the judgment had raised only one point, whether the Judgment of the learned District Munsif, Tiruttani in O.S.No.74 of 2002



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dated 23.08.2007 is to be set aside. The learned Sub-Judge, Tiruttani had not at all considered the grounds raised by the learned Counsel for the Appellants in the grounds of Appeal and mechanically dismissed the Appeal and thereby confirmed the judgment and decree passed by the learned District Munsif, Tiruttani. Aggrieved by the same, the Plaintiffs have preferred the Second Appeal arising the following substantial questions of law.

i) Whether the Courts below are right in holding that the word "Vaalveechu Puzhakadai" marked as Ex.A.3 is not reflected in Exhibit.A1 and A2 and therefore the Appellant is not entitled to get the relief of declaration?

ii) Whether the judgment of the first appellate Court has to be set aside for non-framing of points for determination?

iii) Whether the Courts below are right in mechanically relying on the Advocates commissioner's report regarding possession?

5. The learned Counsel for the Respondents vehemently objected that the framing of substantial questions of law raised by the Appellants are only based on the facts. The learned Counsel for the Respondents had relied on the amended plaint. After filing of the written statement, in the written statement the Defendants have clearly stated that the 'B' Schedule property



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is Patta land belonged to Defendants, in which the Defendants claimed under settlement deed. In respect of such pleadings by the Defendants, the Plaintiff filed an amended plaint and stating that the 'B' schedule property is a poromboke land situated to the north of the 'A' Schedule property and it is part and parcel of 'A' Schedule property. The learned Counsel for the Respondents also submitted that the learned Trial Judge on proper appreciation of evidence dismissed the suit stating that the prior title deed of the Plaintiffs' father and his vendor did not contain the word 'Vaalveechu Puzhakadai" which means one portion is length and other portion is short, whereas, only in Ex.A-3, it is mentioned as 'Vaalveechu Puzhakadai".

6. The learned Counsel for the Respondents invited the attention of this Court that in the Advocate Commissioner's report, wherein the measurement of the property is marked as Ex.C-1 and Ex.C-2. The length of the property as per the sale deed relied by the Plaintiffs are 111 feet North South. Out of 111 feet, they left 10 feet for laying road in the Mettu Street. Therefore, based on the physical features as mentioned by the Advocate Commissioner, after inspecting the suit property, the learned District Munsif in the Judgment had clearly observed that there is no encroachment



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of the property as claimed by the Plaintiffs as per the title deeds, Defendants are in possession of the 'B' schedule property. Therefore, the Plaintiffs claim is rejected.

7. The learned Counsel for the Respondents submitted that the learned Sub Judge, even though had not framed separate points for determination and reassessed the entire evidence, arrived at a conclusion that the judgment of the learned District Munsif, Tiruttani is a well reasoned judgment.

8. Particularly the learned Counsel for the Respondents invited attention of this Court in the discussion of evidence by the learned first Appellate Judge in Para 11, 12 ,13 of the judgment. The learned Counsel relied on the concluding portion wherein it is stated that the learned District Munsif on perusal of evidence had stated that the Plaintiffs are entitled for 111 feet. P.W-1 deposed that they are entitled to 133 feet and they left 10 feet for laying road in the Mettu Street. The trial Court pointed out that in the evidence of P.W-1, in the 111 feet, when 100 feet were enjoyed by the Plaintiffs by constructing house and 10 feet was left for laying road. The



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trial Court questioned how the Plaintiffs claiming the right over the 'B' Schedule property is not explained and this contention of the Defendants are acceptable and convincing one. Since, there is no evidence regarding the possession of 'B' Schedule property by the Plaintiffs, the learned District Munsif, Tiruttani dismissed the suit. The learned first Appellate Judge confirmed the finding of the learned District Munsif, Tiruttani as a well reasoned judgment and does not warrant any interference.

9. It is further submitted by the learned Counsel for the Respondents that in the discussion of evidence, the learned first Appellate Judge also confirmed the finding of the learned District Munsif. Therefore, substantial questions of law does not arise at this stage and sought to dismiss the Second Appeal.

10. Considering the submission of the learned Counsel for the Appellants and the Respondents, on perusal of the judgment of the learned District Munsif, Tiruttani and learned Sub Judge, Tiruttani as pointed out by the learned Counsel for the Respondent, the 'B' Schedule property is concerned, the Defendants claimed as Patta land based on the settlement



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deed. Whereas the Plaintiffs have claimed it as part of 'A' Schedule property under Ex.A-3. The learned District Munsif, Tiruttani had pointed out that the prior title deeds of the Plaintiffs did not contain the word "Vaalveechu Puzhakkadai" as pointed out by the learned Counsel for the Respondent. The trial Court had rejected the claim of the Plaintiffs in the light of the Plaintiffs document and in the light of the amendment made in the plaint. When the Defendant had Patta land based on the settlement deed and the Plaintiffs themselves admitted that they are not in possession of the 'B' Schedule property and they cannot claim right over the same and the nature of the said property was not clearly explained by the Plaintiffs. The Plaintiffs themselves admitted in the amended plaint that the 'B' schedule property is a Poramboke land which is situated to the North of the 'A' schedule property. The Plaintiffs failed to prove through documents that they are in possession and enjoyment of the 'B' Schedule property. Therefore, both the Courts had given concurrent finding that there is no question of law. The submission of the learned Counsel for the respondents is justified in the light of the points raised by him.



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WEB COPY 11. This Second Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

1.The Subordinate Judge, Tiruttani

2.The District Munsif,
Tiruttani.



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