



S.A.No.473 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 473 of 2021

M.Jaanaki

...Appellant

Vs.

1.Uthriyadoss

2.Govindammal

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 11.03.2020 passed in A.S.No.383 of 2018 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the Judgement and Decree dated 25.07.2018 in O.S.No.4156 of 2015 on the file of the XIV Assistant Judge, City Civil Court, Chennai.



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For Appellant : Mr. R.Karunagaran.

For Respondent 1: Mr. K.Kannan

For Respondent 2: No Appearance.

JUDGMENT

The plaintiff in a suit for recovery of possession is the appellant before this Court. The plaintiff seeks to challenge the concurrent Judgement and Decree passed against her. The facts are briefly set out herein below and for ease of understanding, the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed a suit O.S.No.4156 of 2015 on the file of the XIV Assistant City Civil Court, Chennai seeking a direction to the defendants 1 and 2 to quit and handover possession of the suit property in favour of the plaintiff.



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3. The property in question is described herein below:

“All the piece and parcel of land and hut situated at D.No.14, Cox Street, Chindathripet, Chennai – 600 002, comprised in RS.No.-149/19 Part, Block No.5, Chindathripet Village, Mylapore – Triplicane Taluk, having an extent of 250 ft., land out of 630 sq.ft., encroached.

Bounded on the

North by : Common way leading to Cox Street,

South by : House belongs to Gurumoorthy,

East by : House belongs to Doss,

West by : House belongs to Venkatesh.

Admeasuring

North to South on both sides – 15 feet

East to West on both sides – 15 feet

situated within the Sub Registration District of Periamedu and Registration District of Central Chennai.”



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4. It is the case of the plaintiff that she had purchased a larger extent of suit property from one Udayakumar and Vinayaki for a total sale consideration of Rs.5,00,000/- under a sale deed dated 08.04.2010 and had paid the entire sale value. The vendor had assured the plaintiff that there was no encumbrance in respect of the suit property. The suit property originally belonged to one Natarajan who had acquired the same under a partition suit in O.S.No.7519 of 1983 followed by a final decree in I.A.No.1725 of 1985. The said Natarajan was in possession and enjoyment of the portion allotted to him till his death. Subsequent to the death of the said Natarajan his only son Udayakumar succeeded to the property and on the death the said Udayakumar, the plaintiff's vendor, namely, the wife and daughter of the said Udayakumar had succeeded to the suit property. They had got the title to sell the property under a partition deed dated 05.04.2010.

5. The plaintiff would submit that after the sale in her favour she had taken possession of the suit property. The plaintiff would state that



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she came to learn that the defendants 1 and 2 who are the owners of adjacent property had encroached an extent of 250 sq.ft., over the suit property by putting up temporary structure over it. The plaintiff had lodged a police complaint which did not yield any result. Since patta had also been issued, the plaintiff had approached the defendants on 15.07.2010 to hand over the encroached portion. Though the defendants had agreed to handover the vacant possession of the property within 12 months, however, contrary to this assurance they had taken out an application before the District Revenue Officer, Chennai, for cancellation of patta. After enquiry, the DRO, Chennai found that the defendants had encroached into the property without any valid title and declined to cancel the patta by order dated 13.03.2012. Therefore, the plaintiff having waited so long has come forward with the present case.

6. The defendants had filed a written statement inter alia denying the plaintiff's claim as false and frivolous. They would further submit that the description of the suit property differs from the earlier plaint.



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It is their contention that the property comprised in R.S.No.149/19 at Chindadiripet Village which was bounded on the North by S.No.149/15 & 149/18, East by S.No.148, South by S.Nos. 149/20, 149/21, 149/22 and West by S.Nos.149/11, 149/12 & 149/13, belonged to one Athimoolam who is the grand father of the 1st defendant. On his demise, his legal representatives (five of them) have filed a suit for partition in O.S.No.7519 of 1983 on the file of the IV Assistant City Civil Judge, Chennai, seeking for a partition of the property into 6 shares and to allot a share to the 2nd defendant herein. A preliminary decree was passed and thereafter a final decree was passed, wherein the Commissioner was appointed to divide the property into 6 shares and allot it to the respective parties. The 2nd defendant is the mother in law of the 1st defendant.

7. The defendants would submit that as per a sketch attached to the Commissioner's report, the 1st defendant mother was allotted the B – Schedule property. The 2nd defendant was allotted the C - Schedule property. A – Schedule property was allotted to Yesammal. The other



legal representatives, namely, Natarajan and Visvanathan had died during pendency of final decree proceedings. Therefore, the final decree proceedings in respect of the deceased was dismissed. Natarajan had died issueless (However, the plaintiff has come to Court stating that her vendors are the wife and daughter of the said Natarajan's son Udayakumar). Therefore, they would submit that the plaintiff cannot claim title through the deceased Natarajan and the said claim is baseless. The defendants would submit that the vendors of the plaintiff, namely, U.Vinayagi was total stranger to the deceased Natarajan

8. The defendants would further submit that they are in possession of the property without any interference in possession. The defendants would further submit that as per division effected by the Commissioner, each sharer was entitled to an extent of 180 Sq.ft., and would therefore submit that even assuming that the said Natarajan was allotted a share his share was only an extent of 180 sq.ft. However, the plaintiff would contend that she had purchased 630 sq.ft. Therefore, the



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contention that the defendants have encroached into the property is absurd. The defendants would submit that even as per the schedule to the plaint, the suit property only measures an extent of $15 \times 15 = 225$ sq.ft., and not 250 sq.ft. Therefore, the plaintiff has not proved her title to the extent of 630 sq.ft and that there has been an encroachment. They therefore sought for the dismissal of the suit.

9. The learned XIV Assistant City Civil Judge, Chennai, had framed the following issues:

“(i) Whether the plaintiff is entitled for direction directing 1st and 2nd defendants to quit and handover the possession of the suit schedule property as prayed for?

(ii) Whether the plaintiff is entitled for cost?

(iii) What other relief?”

10. The plaintiff had examined herself as P.W.1 and marked Ex.A.1 to Ex.A.5. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and had marked Ex.B.1, which is the final



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decree in I.A.No.1725 of 1985 in O.S.No.7519 of 1983.

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11. The learned Judge on perusing the pleadings and evidence, at the outset would point out the discrepancy in the measurement of the alleged encroachment. In the pleadings, the plaintiff had stated that an extent of 250 sq.ft., has been encroached, but however in the schedule an extent of 225 Sq.ft., is claimed to be the encroached area.

12. The learned Judge had also taken note of the fact that the commissioner's report in O.S.No.7519 of 1983 has been admitted by both parties and the learned Judge had also observed that the plaintiff has not come forward to prove that they are the legal representatives of the deceased Natarajan, more particularly when the defendants had come forward with the case that Natarajan had died issueless leaving behind no legal representatives.

13. The learned judge observed that the plaintiff had not proved as to *Whether the defendants are encroachers or not*. Therefore, in the



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absence of proof of the encroachment and also since the plaintiff was not able to prove the measurement of the encroached land co-relating it with the survey number and boundaries, the trial court had dismissed the said suit.

14. Challenging the said dismissal, the appellant had filed A.S.No.383 of 2018 on the file of the VI Additional City Civil Court, Chennai. The learned Appellate Judge also rendered the very same finding and had dismissed the appeal. Challenging the same, the appellant is before this court.

15. The second appeal has been admitted on the following substantial question of law:

“Is not trial Court and more particularly First Appellate Court being a Court of fact after returning factual findings that defendants’ title has not been established and that their denial of plaintiff’s title is evasive, non suiting the plaintiff i.e., passing decree run



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into the factual findings and contrary to the factual findings making judgments of Courts below so perverse warranting interference under Section 100 of The Code of Civil Procedure, 1908?”

16. Both the parties traced title to the partition suit in O.S.No.7519 of 1983. The plaintiff would submit that she has purchased the property from the legal representatives of one of the decree holder Natarajan. The plaintiff would submit that the said Natarajan who is one of the sharers had been allotted an extent of 630 square feet, which fell to the share of his son Udayakumar and on whose death it devolved on the vendors of the plaintiff.

17. On the contrary the defendants would submit that the said Natarajan and one Viswanathan had died issueless and had no legal representatives. Further, under the partition deed, each sharers were only entitled to 180 square feet. However, the plaintiff would submit that she has purchased 630 square feet and out of this 630 square feet



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250 square feet had been encroach.

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18. The Courts below have concurrently found that a perusal of the final decree proceedings (Ex.B.1) would clearly and categorically show that the plaintiff's vendor is not entitled to an extent of 630 square feet and the plaintiff has not made out the case that 250 square feet had been encroached by the defendants. The Courts below which are the courts of facts have appreciated and re-appreciated the facts, evidence on record both oral and documentary to come to the conclusion to hold that the plaintiff is not entitled to a decree. Therefore, the substantial question of law is answered against the plaintiff.

19. In the result, the Second Appeal stands dismissed. No cost.

24.01.2024

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To

1.The VI Additional Judge,
City Civil Court,
Chennai

2.The XIV Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

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