



S.A.No.375 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.02.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.375 of 2013

and

M.P.No.1 of 2013

P.Appasamy

... Appellant

-Versus-

1.Dhanabakkiam

2.Srinivasan

... Respondents

Appeal filed under Section 100 of C.P.C. against the judgement and decree in A.S.No.10 of 2012 dated 05.02.2013 on the file of the Principal Sub Judge at Thiruvannamalai confirming the judgment and decree passed in O.S.No.279 of 2007 on the file of the Principal District Munsif Court, Thiruvannamalai dated 05.01.2012.

*For Appellant : Mr.S.V.Karthikeyan
for Mr.S.Udayakumar*

For Respondents : Mr.B.Jawahar

JUDGEMENT

The second appeal arises out of the judgment and decree dated 05.01.2012 in O.S.No.279 of 2007 passed by the learned Principal District Munsif Court at Thiruvannamalai confirming the judgment and decree dated 05.02.2013 passed by the learned Principal Subordinate Judge at



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Thiruvannamalai in A.S.No.10 of 2012.

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2. For the sake of convenience, the parties will be referred to as their ranks in the suit.

3. The plaintiff is the appellant. He filed O.S.No.279 of 2007 on the file of the District Munsif Court at Tiruvannamalai for the purpose of permanent injunction.

4. The case of the plaintiff is that he had been in possession and occupation of the property from 1986 onwards by constructing a hut. As the hut was infested with white ants, he removed the roof and attempted to put up a new superstructure, which was interfered with by the defendants. Hence, he filed the suit.

5. It is the case of the defendants that they are in possession and enjoyment of the property and the plaintiff is not in possession of the same. Their specific plea is that they are in occupation of the suit schedule mentioned property by paying B memo.



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6. On these evidence, the trial court framed the following issues:

“1. Whether the plaintiff is in enjoyment of the suit property?

2. To what relief, the plaintiff is entitled?”

7. On the side of the plaintiff, he entered the witness box and examined himself as PW1 and marked Ex.A1 to Ex.A7. On the side of the defendants, DW1 and DW2 were examined and marked Ex.B1 to Ex.B4.

8. The learned trial judge after a discussion on the merits of the case came to a conclusion that the plaintiff has not proved his possession over the property and dismissed the suit. Aggrieved by the same, a regular appeal was preferred before the learned Principal Subordinate Judge at Tiruvannamalai in A.S.No.10 of 2012.

9. The learned Appellate Judge concurred with the findings of the learned trial judge and dismissed the appeal. Against the concurrent findings, the present second appeal has been preferred before this Court.

10. This Court on 26.06.2013 had ordered notice of motion to the respondents.



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11. Mr.B.Jawahar entered appearance on behalf of the respondents. I heard Mr.S.V.Karthikeyan for Mr.S.Udayakumar for the appellant and Mr.B.Jawahar for the respondents.

12. Mr.S.V.Karthikeyan would submit that pending the appeal, patta had been granted in favour of the plaintiff by the Government for an extent of 87 sq. mtrs. corresponding to 936 sq.ft. Though he had claimed 750 sq.ft. in the suit, he would be entitled by virtue of the assignment deed to the extent, to which the property had been given to him.

13. Mr.Jawahar would point out that both the plaintiff as well as the defendants are not the owners of the property, but it is a land owned by the Government. He would also point out that the assignment which has been given to the plaintiff is for ward No.4, whereas the plea of the plaintiff is that from the municipality tax receipt, it is ward No.22. He would dispute the identity of the property. Apart from that, he would point out that his clients have been in occupation of the property, which is evidenced by the payment of B memo. He would state that the findings of the courts below does not require any interference and would pray for dismissal of the appeal.



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14. I have carefully considered the arguments on either side.

15. The sheet anchor of the case of the plaintiff is an agreement on which he entered possession i.e., to say, by a document dated 12.06.1988.

16. A careful perusal of the said document shows that 750 sq.ft had been given by him by way of a rental agreement on 12.06.1988. However, the said document itself had been sold by the stamp vendor only on 19.06.1988. In other words, the agreement had been entered into seven days before, even the stamp paper had been sold.

17. Apart from that, the claim of the plaintiff is that he is paying property tax for the said property. The said document has been placed before this Court also.

18. Going through the said document, I am able to see that the Thiruvannamalai Municipality had issued a receipt in the name of the plaintiff for property in door No.784-263A of Thenimalai situated at Ward No.27. The



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assessment deed which has been granted, on which Mr.Karthikeyan would vehemently contend is for ward No.4. Therefore, it is clear that the receipt that has been issued by Thiruvannamalai Municipality is not for the property for which assignment has been made.

19. Apart from the document of the year 1988, no other document has been produced before the Court to substantiate that on the date of the filing of the suit, the plaintiff was in possession and occupation of the property.

20. In the light of the above, I do not find any reason to interfere with the judgment and decree of both the courts below. The judgment and decree of the court of Principal Subordinate Judge, Tiruvannamalai in A.S.No.10 of 2012 dated 05.02.2013 confirming the judgment and decree of the court of District Munsif at Tiruvannamalai in O.S.No.279 of 2007 stands confirmed.

21. In fine, the second appeal is dismissed. No costs.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

- 1.The Principal Sub Judge at Thiruvannamalai
- 2.The Principal District Munsif Court, Thiruvannamalai



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V.LAKSHMINARAYANAN, J.

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