



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.493 of 2021
and
C.M.P.No.9661 of 2021

Pullikutty @ Mususamy

... Appellant

Vs.

1.Kuppammal

2.Senthilkumar

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the judgement and decree dated 20/01/2021 made in AS.No.55 of 2015 on the file of Additional Sub Judge, Dharmapuri in confirming the judgement and decree dated 07/07/2015 made in O.S.No.246 of 2009 on the file of the District Munsif Court, Dharmapuri.

For Appellant : M/s.C.Prabakaran

For Respondent : Mr.V.Sakharapani [R.1 and R.2]



JUDGEMENT

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The defendant who has concurrently lost before the Courts below is the appellant herein. The facts are briefly set out herein below and the parties are referred to in the same array as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.246/2009 on the file of the District Munsif, Dharmapuri for a declaration, recovery of possession and permanent injunction.

3. It is the case of the sole plaintiff (who pending the suit had passed away) that he is the absolute owner of the suit property and in its exclusive possession and enjoyment. The plaintiff had offered to sell the suit property to the defendant for a total sale consideration of Rs.50,000/- and an unregistered sale agreement dated 06.11.2008 came to be entered into. The defendant had paid an advance of Rs.5,000/- on the date of the agreement and it was agreed that the balance amount would be paid within a period of 3 months.



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4. It is the case of the sole plaintiff that the defendant was never ready and willing to perform his part of the contract to get the sale deed executed. Therefore, the plaintiff had terminated the sale agreement and the plaintiff had issued a legal notice dated 26.08.2009 to this effect. The defendant had received the legal notice, however there was no response. On 25.09.2009 when the plaintiff had gone to Tirupathi with his family members the defendant had encroached into 30 cents of the suit property described as the A schedule property and cultivated rice crops into the encroached portions. The plaintiff's property is described as the B schedule property. The plaintiff had preferred a police complaint on 02.10.2009, however, no action was taken. Therefore, the plaintiff had come forward with the above suit. Pending the suit, the sole plaintiff had died and his legal representatives were brought on record as plaintiffs 2 and 3.

5. The defendant had filed a written statement inter alia denying the allegations contained in the plaint. The defendant would submit



that to the north and east of his property, there was a Government Kuttai Poramboke land. The suit property was also described as a Kuttai Poromboke. The defendant has been in possession of these lands for a very long period and has never encroached into the plaintiff's property. The defendant would submit that since the plaintiff's land was situate adjacent to his lands, the plaintiff had requested the defendant to cultivate his land. This was refused by the defendant and therefore enraged by the refusal, the suit has come to be filed.

6. The Trial Court had framed the following issues:-

1. Whether the suit 'A' schedule property belongs to the plaintiff?

2. Whether the plaintiff is entitled to the relief of declaration of title with respect to 'A' schedule property?

3. Whether the plaintiff is entitled to the relief of recovery of possession with respect to 'A' schedule property?



4. Whether the plaintiff is entitled to the relief of declaration of title with respect to 'B' schedule property?

5. Whether the plaintiff is entitled to the relief of permanent injunction with respect to 'B' schedule property?

6. To what further reliefs the parties are entitle to?

7. On the plaintiff's side, the 3rd plaintiff had examined himself as P.W.1 and one Munusamy as P.W.2 and Ex.A.1 to A.8 were marked. The defendant had examined himself as D.W.1 and one Maadhan D.W.2. However, no documents were marked on the side of the defendant. The Commissioner's Report and Plan were marked as Ex.C.1 and Ex.C.2 respectively.

8. The Trial Court on considering the evidence on record



proceeded to decree the suit. Aggrieved by the said judgement and decree, the defendant had filed A.S.No.55 of 2015 on the file of the Sub Court, Dharmapuri. The learned Additional Sub Judge on considering the evidence on record dismissed the appeal and confirmed the judgment and decree of the Trial Court. Aggrieved by which the defendant/appellant has filed the above Second Appeal.

9. Heard the learned counsels on either side.

10. The defendant has countered the suit filed by the plaintiff contending that the suit property belongs to the defendant. The suit property is comprised in S.No.424/2 of Nathahalli Village in Dharmapuri Taluk. The 1st plaintiff was allotted patta no.344 in respect of the said property and plaintiffs 2 and 3 had inherited the same on the demise of the sole plaintiff. The plaintiff would submit that patta no.344 has been issued in respect of an extent of 1.09.5 hectares in S.No.424/2 and 0.12.0 hectares in S.No.424/3 which is the suit



property. The Chitta extracts have also been marked as Ex.A.1 and Ex.A.2. The Chitta reflects the patta no.344 is allotted to the deceased sole plaintiff. The defendant has admitted having entered into an agreement of sale with the sole plaintiff. Therefore, it is clear that the defendant had recognized the plaintiff's right and title to the suit property and have therefore entered into an agreement of sale with the sole plaintiff. Therefore, it does not lie in the mouth of the defendant to now contend that he is the owner of the property. Even in his oral evidence the right and title of the plaintiff to the suit property has been admitted by the defendant as D.W.1.

11. An Advocate Commissioner had been appointed to measure the suit property and note down the physical features. The Advocate Commissioner has submitted a report which would clearly show that the A schedule property has been encroached by the defendant. In the cross examination, the defendant had admitted to the fact that the plaintiff had filed a police complaint under Ex.A.8 and that an enquiry had been held by the police. The defendant had also admitted the fact



that he had encroached into the property and the police had advised him to return the property back to the plaintiff. In the light of this categoric admission and the fact that the defendant has himself entered into an agreement of sale with the plaintiff for purchasing the suit property, the title of the plaintiff to the suit property stands proved and the encroachment by the defendant also stands proved.

12. Therefore, both the Courts below have rightly analyzed the evidence on record and decreed the suit concurrently. I see no reason to set aside the concurrent judgment and decree of the Courts below. Further no substantial question of law have been made out in the above appeals, accordingly, the Second Appeals stand dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
shr



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To

1. The Additional Sub Judge, Dharmapuri.
2. The District Munsif Court, Dharmapuri.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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