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S.A.No.443 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 04.07.2024**

**CORAM:**

**THE HON'BLE MRS.JUSTICE.N.MALA**

**S.A.No.443 of 2024**

D.Neelakandan

... Appellant

Vs.

A.D.Sudharsanam

... Respondent

**PRAYER:--**

This Second Appeal is filed under Section 100 of the Civil Procedure Code r/w Order 41 Rule 1 CPC, to allow this appeal by setting aside the Judgment and Decree dated 31.01.2024 made in A.S.No.233 of 2013 on the file of the II Additional City Civil Court, Chennai confirming the Judgment and Decree dated 11.01.2012 made in O.S.No.10914 of 2010 on the file of the XV Assistant City Civil Judge, Chennai and to decree the suit and to pass such other orders or orders as this Court may deem it and proper in the facts and circumstances of the case.

For Appellant : Mr.K.Jayaraman

\* \* \* \* \*



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## **J U D G M E N T**

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This Second Appeal is filed to allow this appeal by setting aside the Judgment and Decree dated 31.01.2024 made in A.S.No.233 of 2013 on the file of the II Additional City Civil Court, Chennai confirming the Judgment and Decree dated 11.01.2012 made in O.S.No.10914 of 2010 on the file of the XV Assistant City Civil Judge, Chennai and to decree the suit

2.The plaintiff in the suit is the appellant in the second appeal.

3.The parties will be referred to as per their ranking in the trial court.

4.The plaintiff filed the suit for mandatory injunction directing the defendant to remove the thatched hut put up by him in his property to an extent of 88.40 sq.ft. as listed in the plaint schedule and for other reliefs. The plaintiff claimed title to the suit property on the basis of Ex.A1 dated 03.03.2006. According to the plaintiff he was settled the land of an extent of 1054 sq.ft., under a registered settlement deed executed by his father on 17.07.2003 in his favour. The plaintiff stated that apart from the land covered by the settlement deed his father also sold land situated in the



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south of the settled land measuring 88.40 sq. ft., under the sale deed dated 03.03.2006 and the plaintiff in pursuance of the above documents decided to put up construction and engaged a surveyor to measure the property. The plaintiff stated that the surveyor informed the plaintiff that a small hut was constructed in his property. The plaintiff further stated that the defendant who was his adjacent owner, encroached into his property and put up the hut. According to the plaintiff he tried to settle the issue with the defendant, who was his aunt's grandson but the talks failed. The plaintiff stated that the defendants by lodging frequent complaint against him was causing him mental torture and therefore he was constrained to file the above suit for the aforesaid relief.

5.The defendant in his written statement stated that he purchased land measuring an extent of 505 sq.ft., hut in R.S.Nos.440/96 and 440/112 part, from one R.Parthasarathy vide the sale deed dated 15.12.2004 and put up the hut thereon. The defendant stated that ever since his purchase he was in peaceful possession and enjoyment of the said property. The defendant stated that the plaintiff being his adjacent owner on the northern side attempted to interfere with his peaceful possession and enjoyment and therefore the defendant filed a suit in O.S.No.2601 of 2006 praying for several reliefs including for permanent injunction restraining the



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plaintiff (Defendant in O.S.No.2601 of 2006), from in any manner interfering with his peaceful possession and enjoyment of the property being land together with a hut and other structures thereon, measuring an extent 505 sq.ft. comprised in R.S.No.440/96, R.S.No.440/112 part. The said suit was decreed partly and the relief for permanent injunction was granted in favour of the defendant. According to the defendant, the plaintiff suppressed the aforesaid material fact and filed the suit. According to the defendant after settling the land to an extent of 1054 sq.ft. in favour of the plaintiff vide registered settlement deed dated 17.07.2003, the plaintiff's father did not have any land left with him and therefore, the sale deed in favour of the plaintiff of the suit property was void ab-initio. According to the defendant, the plaintiff had no right to the suit property, as it was he who was in peaceful possession and enjoyment of the suit property. The defendant therefore prayed that the suit was vexatious and the same deserved to be dismissed.

6.Before the trial Court, the plaintiff examined himself as P.W.1 and marked Ex.A1. The defendant examined himself as DW1 and marked Ex.B1 to Ex.B3. The trial Court after framing necessary issues dismissed the suit on the premise that the plaintiff had failed to prove that his father had more extent of land in R.S.No.440/1996 other than 3162 sq.ft. settled by his grand father in his favour. The



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trial Court rejected Ex.A1 on the ground that the plaintiff failed to prove that his father had any title or interest in the suit property to convey the same to the plaintiff.

The trial Court further found that the defendants title to the suit property was proved by Ex.B2 and Ex.B3. The trial Court on its finding that the failure of the plaintiff to seek declaration of title when a cloud was raised by the defendant on his title was fatal to the plaintiff's case, dismissed the suit. Aggrieved by the Judgment and Decree of the trial Court, the plaintiff filed the appeal before the II Additional City Civil Court, Chennai. The lower appellate Court on similar findings as that of the trial Court, rejected the appeal. Aggrieved by the Judgment and Decree of the Courts below, the plaintiff has filed the above second appeal.

7.The plaintiff claims title to the suit property on the basis of Ex.A1 sale deed executed by his father in his favour. The defendant on the other hand claims that the plaintiff's father was settled 3134 sq.ft. under a settlement deed dated 03.04.1973 by his father Cunniah Naidu. The plaintiff's father, thereafter settled the aforesaid property equally (i.e.) 1054 sq.ft. each, to his three sons, namely M.D.Vasudevan, M.D.Bhaskar and M.D.Neelakandan (the plaintiff). Therefore according to the defendant and the plaintiff's father had no lands left with him for selling the same to the plaintiff. The plaintiff neither produced the settlement deed executed by his father



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in his favour nor the original sale deed dated 03.03.2006, Ex.A1. Be that as it may, the defendant has produced the settlement deed Ex.B3 dated 14.07.2003, to drive home the point that the entire lands acquired by the plaintiff's father were settled by him to his 3 sons and therefore there were no lands remaining with the plaintiff's father for him to effect the sale under Ex.A1 in favour of the plaintiff. The trial Court on appreciation of Ex.B1 concluded in favour of the defendant. The lower appellate court considered Ex.B1 and found that there was no mention of Ex.A1 property in it. The lower appellate Court referring to the boundaries in Ex.A1 of the 'A' schedule property (i.e.) the property obtained by the plaintiff under Ex.B1, found that the southern boundary was shown as the defendant's property, and held that if really the plaintiff's father retained any lands then it should have read as remaining lands of plaintiff's father. After considering the documents, the Courts below concurrently found that the plaintiff's father had no title to convey suit property to the plaintiff. I find that the findings of the Courts below are based on proper appreciation of the evidence on record and therefore do not call for any deviation.

8. When the defendant raised serious dispute on the title of the plaintiff by filing Ex.B1 and Ex.B3, the plaintiff ought to have prayed for declaration of title also. In my view, the plaintiff having failed to establish his title to the suit property the bare



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suit for mandatory injunction is not maintainable. I am fortified in my view by the latest Judgment of the Hon'ble Supreme Court in the case of The Tehsildar, Urban Improvement Trust and Another Vs. Ganga Bai Menariya (Dead) through Lrs. And others in Civil Appeal No.722 of 2012 wherein the Hon'ble Supreme Court held as follows:

*“21. Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants. In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction. Reference can be made to the Judgment of this Court in Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs. and Ors.”*

9. Even on possession, I find the plaintiff's own evidence is sufficient to non-suit him. The plaintiff categorically admitted that he was never in possession of the suit property and also that the suit thatched hut was in existence for over 10 years. In the light of the plaintiff's own oral evidence, it is clear that the plaintiff was not in possession of the suit properties on the date of the suit and hence not entitled to the relief of injunction.



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10. It is relevant to note here the Judgment of the Hon'ble Supreme Court in the case of Chandrabhan Vs. Saraswati reported in 2022 SCC Online SC 1273. The Hon'ble Supreme Court laid down the contours of Section 100 CPC. The following extract is relevant.

*“33. The principles relating to [Section 100](#) of the CPC relevant for this case may be summarised thus:*

*(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*

*(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding*



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*precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*

*(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."*

11. Applying the above principles to the case on hand, it is seen that the Courts below have properly appreciated the evidence and the inferences drawn on the basis of the evidence for their findings on facts are also reasonable and proper. The appellant has not been able to demonstrate any infirmity in the appreciation of the evidence by the Courts below. This Court sitting in second appeal finds no justifiable or compelling reasons to interfere with the concurrent factual findings of the Courts



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below. Even the substantial questions of law framed amply establishes that no substantial questions of law raise for adjudication by this Court and hence, the Second Appeal is dismissed as meritless. However, there shall be no order as to costs.

**04.07.2024**

NCC : Yes /No

Index : Yes / No

Speaking Order / Non-speaking order

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To

1.The II Additional City Civil Court,  
Chennai.

2.The XV Assistant City Civil Judge,  
Chennai.

3.The Section Officer,  
Vernacular Records,  
High Court,  
Madras.



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**N.MALA, J.**

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