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S.A.No.746 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.746 of 2024
and
CMP.No.24289 of 2024

Sellamuthu Gounder (Died)

1.Periyammal

2.Selvadurai

3.Tamilazhagan

.. Appellants

Vs.

Sellammal (Died)

Rangasamy Gounder (Died)

1.Kamalam

2.Selvamani

3.Meena

4.Amudha

.. Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 09.01.2024 in A.S.No.7 of 2022 passed by the learned Subordinate Judge, Attur, Salem, confirming the judgment and decree dated 05.04.2022 in O.S.No.223 of 2001, passed by the learned Additional District Munsif, Attur, Salem.

For Appellants : Mr.P.Jagadeesan



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J U D G M E N T

The appellants have filed this Second Appeal against the Judgment and Decree dated 09.01.2024 in A.S.No.7 of 2022 passed by the learned Subordinate Judge, Attur, Salem, confirming the judgment and decree dated 05.04.2022 in O.S.No.223 of 2001, passed by the learned Additional District Munsif, Attur, Salem.

2. Heard, Mr.P.Jagadeesan learned counsel for the appellants and perused the materials available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. The Appellants hearing is the respondents/Defendants in O.S No. 223 of 2001, on the file of the Principal District Munsif Court, Attur, wherein the Plaintiffs filed a suit for declaration and permanent injunction. The Plaintiffs also sought to reclaim the encroached portion occupied by the defendants, as described in the Plaint Scheduled Property.



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5. According to the Plaintiffs, the suit survey number originally belonged to Perumal Gounder, the father of the Plaintiffs, for about 40 years.

Upon his demise, the Plaintiffs continued to enjoy peaceful possession of the property. However, the defendants, who purchased a portion of the property in Survey No. 187/8 through a sale deed from the 2nd and 3rd Plaintiffs on 18-10-1982, attempted to encroach upon the portion of the suit property belonging to the Plaintiffs. Consequently, the suit was filed.

6. The first Defendants, in the written statement, contested the case, asserting that after the purchase, the Plaintiffs had no rights over the suit property. The Defendants also claimed that they had already filed a suit and had been using the suit property up to the Panchayat road. Therefore, the Plaintiffs were not entitled to any relief.

7. Both parties presented oral and documentary evidence before the Trial Court. The Trial Court framed three issues, and a Commissioner was appointed. On the side of the plaintiffs, PW1 to PW4 were examined and Ex.1 to Ex.5 were marked. On the side of the defendants, D.W.1 & D.W.2 were examined. The Commissioner's report was marked as Ex.C-1 to Ex.C-3.



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Revenue officials examined P.W-3, through which additional documents Ex.X1 to Ex.X4 were submitted, including Chitta, Adangal, and FMD of the plan.

8. Upon considering all the documents, particularly the Commissioner's report and revenue records, the learned Trial Judge concluded that the defendants had encroached upon an extent of 72.5 square feet in the suit survey number. Similarly, the Plaintiffs had also encroached upon an equal extent (72.5 square feet) within Survey No. 187/8. As a result, the Trial Court directed both parties to hand over the encroached portions within two months.

9. Challenging this decision, the defendants preferred an appeal A.S. No.7 of 2022, on the file of the Subordinate Court, Attur, Salem, which was dismissed. The learned First Appellate Judge confirmed the findings of the Trial Court, relying on the Commissioner's report and revenue records. The defendants have now filed this second appeal, contesting the findings.

10. The learned counsel for the Appellants argued that the courts below failed to consider that the relief claimed by the Plaintiffs was barred by



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limitation. He contended that the legal principles regarding limitation were not properly examined, and thus, the relief granted should be set aside.

11. The learned counsel for the appellants challenged the findings on various grounds;

i. The lower Court erred in holding that once the amendment petition is allowed the amendments would be deemed to have come in force from as on the date of the suit as per the principle of "Doctrine of Relation Back". This finding is totally erroneous.

ii. The lower Court erred in passing a decree in favour of the plaintiffs by solely relying on the report of the Advocate commissioner.

iii. The lower Courts failed to note that Ex.B1 to Ex.B3, clearly established that the plaintiffs are not having any right or title over the suit property.

iv. The lower Courts erred in holding the appellants have encroached 72.5 sq.feet in S.No.187/14 and granted a decree for recovery of possession of that portion in favour of the plaintiff.

v. The lower Courts failed to note that the plaintiff failed to demarcate the alleged encroached portion in the plaint. The suit is liable to be dismissed



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on the ground that the alleged encroached portion is not properly identified.

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12. The learned counsel for the appellants submitted that substantial questions of law were involved, particularly concerning the issues of limitation and recovery of possession based on legal doctrines.

13. However, it is evident that before the trial court, the Appellants/Defendants did not raise any plea regarding limitation or the doctrine of relation. Without proper pleadings, no evidence can be adduced to establish a substantial question of law. Moreover, the Commissioner's report clearly shows that the Plaintiffs had encroached upon 72.5 square feet of the Defendants' land, and vice versa. Accordingly, the learned trial judge directed both parties to hand over the encroached portions, as discussed in Paragraph 35 of the trial court's findings.

14. Notably, the defendants did not file any objections to the Commissioner's report, nor did they establish that they had been granted the right to use the suit property as a pathway by the plaintiffs or any third parties. In contrast, the plaintiffs/respondents successfully proved their case



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by submitting revenue documents, a title deed, and the Commissioner's report. The courts below rightly granted relief, and no interference is warranted. No substantial question of law arises in this case.

15. Even after the sub-division of the property, the plaintiffs continued to enjoy possession without any objections from the defendants regarding the changes made by the revenue authorities in favour of the plaintiffs. Therefore, the encroachment made by the defendants is not legally established. Since no substantial question of law is involved, and the Trial Court has properly adjudicated the Plaintiffs' rights, no interference is required.

16. Accordingly, the second appeal is dismissed as devoid of merit. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

17. However, the learned counsel for the appellants submits that if the defendants are not permitted to use the disputed pathway, they will have no access to their land. Therefore, they seek an opportunity for mediation, either at Salem or Athur.



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Index : Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

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To

- 1.The Subordinate Judge, Attur, Salem.
- 2.The Additional District Munsif, Attur, Salem.
- 3.The Section Officer, VR Section,
High Court of Madras.

T.V.THAMILSELVI, J.
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