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S.A No.637 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

Second Appeal No.637 of 2021

and

C.M.P No.13157 of 2021

Senthamaraikannan

... Appellant

..Vs..

Arulanandham

...Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 25.01.2021 passed in A.S No.60 of 2020 on the file of the Subordinate Judge, Chidambaram in reversing the judgment and decree passed in O.S No.15 of 2024 dated 04.01.2020 by the Principal District Munsif, Chidambraam.

For Appellant

: Mr.A.Muthukumar

For Respondent

: Mr.T.Saravanan



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J U D G M E N T

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This second appeal has been filed by the plaintiff in the suit O.S No.15 of 2014 on the file of the Principal District Munsif Court, Chidambaram, challenging the judgment and decree of the lower Appellate Court dated 25.01.2021 passed in A.S No.6 of 2020 on the file of the Subordinate Court, Chidambaram.

2. The suit was filed for bare injunction to restrain the respondent/defendant from interfering with the appellant/plaintiff's peaceful possession and enjoyment of the suit schedule property. The trial Court by its judgment and decree dated 04.01.2020 passed in O.S No.15 of 2014 decreed the suit as prayed for by the appellant/plaintiff by granting the relief of permanent injunction. However, the lower Appellate Court under the impugned judgment and decree dated 25.01.2021 passed in A.S No.6 of 2020 reversed the findings of the trial Court and has dismissed the suit. Aggrieved by the same, the plaintiff has preferred this second appeal.



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3. In the forthcoming paragraphs, the parties are described as per the

litigative status in the suit.

4. The plaintiff has pleaded that he is the absolute owner of the suit schedule property. He has also disclosed in the plaint as to how he has derived title over the suit schedule property. According to the plaintiff, the defendant is interfering with his peaceful possession and enjoyment of the suit schedule property and only under those circumstances, he was constrained to file a suit in O.S No.15 of 2014 on the file of the Principal District Munsif Court, Chidambaram.

5. The suit schedule property is in Chidambaram Taluk, Sivapuri Village comprised in Old R.S No.196/1, New R.S.No.293/9 - 0.0470 sq.mtr (5057 sq.ft.). The boundaries of the said property had also been described in the plaint.

6. On the other hand, the defendant has denied the contentions of the plaintiff as pleaded in the plaint and has also contended that the plaintiff's



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vendor had no right to convey the suit schedule property to the plaintiff.

According to the defendant, the plaintiff did not derive title to the suit schedule property through a sale deed dated 13.11.2009 and that the plaintiff is not in possession of the suit schedule property comprised in R.S No.293/9 measuring 5057 sq.ft. According to the defendant, the plaintiff has not approached the Court with clean hands.

7. Based on the pleadings of the respective parties, the trial Court framed the following issues:

- a) *Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in the suit?*
- b) *Whether the R.S No.293/9 is in possession of the defendant?*
- c) *Whether the Court is having the jurisdiction to try the suit?*
- d) *Whether there is a cause of action for the plaintiff to file the suit?*
- e) *To what other reliefs the plaintiff is entitled to?*

8. Before the trial Court, the plaintiff had filed 6 documents which were marked as Ex.A1 to A6. On the side of the plaintiff, two witnesses



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were examined namely, the plaintiff himself as PW1 and another person by name Arumugam, a neighbour of the plaintiff as PW2. On the side of the defendant, no documents were filed. But, two witnesses were examined namely, the defendant himself as DW1 and another person by name Anbalagan as DW2. Two documents were also marked as Court exhibits namely, the Advocate Commissioner's report was marked as Ex.C1 and the sketch attached to the Advocate Commissioner's report was marked as Ex.C2.

9. The trial Court namely, Principal District Munsif Court, Chidambaram by its judgment and decree dated 04.01.2020 decreed the suit as prayed for by the plaintiff and granted the relief of permanent injunction by rendering the following findings:

a) The plaintiff has proved through the documentary evidence which has been marked as Ex.A1 to Ex.A6 that he is in possession of the suit schedule property. The plaintiff has filed the documents to prove his title over the suit schedule property right from 25.10.1958 which has been marked as Ex.A1 and upto



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13.11.2009 which is the plaintiff's sale deed which was marked

b) The plaintiff has also produced patta standing in his name for the suit schedule property which has been marked as Ex.A6. No documentary evidence has been produced by the defendant to prove his contentions as pleaded in the written statement. The Advocate Commissioner's report which is accompanied by a sketch (Ex.C1, Ex.C2) has also demarcated the plaintiff's property and the defendant's property and the said report also discloses an extent of 5057 sq.ft. in respect of the plaintiff's portion.

10. The trial Court has taken into consideration the evidence available on record and has come to the right conclusion that the plaintiff has proved through oral and documentary evidence that he is in possession of the suit schedule property and has granted the permanent injunction relief as prayed for in the plaint. The trial Court has also considered the *Anathula Sudhakar* case of the Hon'ble Supreme Court in the proper perspective. In view of the



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fact that the defendant has not produced any documentary evidence in support of his contention as pleaded in the written statement and has held that there is no cloud over the title as the defendant has not established that there is a cloud over the title of the plaintiff over the suit schedule property. When the plaintiff has proved that he is in legal possession of the suit schedule property through his oral and documentary evidence, he can be evicted only by following the due process of law and any person cannot interfere with his peaceful possession and enjoyment as he is in legal possession of the suit schedule property.

11. The trial Court has rightly analysed the evidence available on record and has rightly granted the relief of permanent injunction as prayed for by the plaintiff in the suit, by its judgment and decree dated 04.01.2020 passed in O.S No.15 of 2014 on the file of the Principal District Munsif Court, Chidambaram. Aggrieved by the findings of the trial Court, the defendant has filed a first appeal before the Subordinate Court, Chidambaram in A.S No.6 of 2020. However, the lower Appellate Court by its judgment an decree dated 25.01.2021 by the erroneous appreciation of



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the evidence available on record has held that since there is a cloud over the title, the plaintiff is not entitled for the relief of permanent injunction as prayed for in the plaint. The lower Appellate Court has erroneously held that the patta standing in the name of the plaintiff will not entitle the plaintiff for the relief of permanent injunction as prayed for in the plaint. The lower Appellate Court has accepted the dispute raised by the defendant with regard to the extent of the plaintiff's property and on that ground has refused to grant permanent injunction which was earlier granted by the trial Court.

12. The plaintiff had also filed additional documents by filing an application under Order 41 Rule 27 & section 151 of CPC seeking for reception of two documents namely a) original sale deed dated 07.01.1954 executed by the defendant's father namely Perumal Padayachi in favour of Appadurai Padayachi, b) original sale deed dated 19.06.1961 executed by Appadurai Padayachi and his son Ramachandra Padayachi in favour of Thillaigovinda Padayachi who is the predecessor in interest of the plaintiff's vendor. The lower Appellate Court erroneously refused to grant injunction



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on the ground that the aforementioned additional documents were not produced by the plaintiff in the trial Court and he had also not derived his title properly in the plaint.

13. While deciding the suit for bare injunction, the Court will have to see whether the plaintiff is in legal possession or not and nothing more. In the instant case, the plaintiff has filed documentary evidence and has also traced his title through registered documents and he has also produced the sale deeds standing in his name which has been marked as exhibits before the trial Court. The patta standing in the name of the plaintiff has also been produced. Admittedly, no documentary evidence has been produced by the defendant to disprove the plaintiff's contentions, though the defendant has pleaded in the written statement that there is a cloud over the title and that the plaintiff is not entitled for the permanent injunction relief as sought for in the plaint. When the evidence placed on record by the plaintiff proves his legal possession of the suit schedule property and the Advocate Commissioner appointed by the Court has also ratified the same, as seen from the report which has demarcated the plaintiff's property and the



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defendant's property, necessarily the injunction relief sought for by the plaintiff has to be granted. However, the lower Appellate Court despite the fact that the plaintiff is in legal possession of the suit schedule property, had erroneously held that there is a cloud over the title based on the contentions of the defendant as pleaded in the written statement which are not supported by any documentary evidence. The impugned judgment of the lower Appellate Court is perverse and is not based on the evidence available on record and therefore, the said judgment has to be set aside by this Court.

14.This Court had admitted this second appeal by formulating substantial questions of law. The question of law formulated by this Court referred to supra are answered in favour of the appellant by holding that the lower Appellate Court has erred in dismissing the suit, despite the fact that the plaintiff had produced documentary evidence which have been marked as exhibits A1 to A6 to prove that he is in legal possession of the suit schedule property. There was no necessity for the lower Appellate Court to dismiss the petition filed by the appellant seeking for reception of additional documents and the lower Appellate Court without any basis despite the fact that



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the plaintiff had proved his legal possession ought not to have dismissed the suit filed by the plaintiff.

15. For the foregoing reasons, the impugned judgment and decree of the lower Appellate Court namely Subordinate Court, Chidambaram dated 25.01.2021 passed in A.S No.6 of 2020 is hereby set aside and the findings of the trial Court namely Principal District Munsif Court, Chidambaram are confirmed and this Second Appeal is allowed. Since the defendant has raised several contentions in his written statement questioning the title of the plaintiff over the suit schedule property, he is granted liberty to file a suit for declaration of title, if he so desires and the appellant/plaintiff is also permitted to raise all objections available to him under law as and when such a suit is filed. Consequently, connected Miscellaneous Petition is closed. No costs.

21.06.2024

Index:Yes/No
Internet:Yes/No
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ABDUL QUDDHOSE, J.

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To

- 1.The Subordinate Judge
Chidambaram
- 2.The Principal District Munsif
Chidambaram.
- 3.The Section Officer
V.R.Section, High Court of Madras.

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