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S.A.No.39 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.39 of 2024
and
C.M.P.No.867 of 2024

A.K.Sathiyamoorthy

... Appellant

Vs.

K.Ravishankar

. . . Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and decree dated 26.11.2018 made in A.S.No.10 of 2010 on the file of the Additional Subordinate Judges Court at Namakkal confirming the Judgement and decree dated 11.12.2009 made in O.S.No. 309 of 2007 on the file of the Principal District Munsif Court at Namakkal.

For Appellant : M/s.T.L.Thirumalaisamy



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JUDGEMENT

The defendant is the appellant before this Court. The facts are set out briefly herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.309 of 2007 on the file of the Principal District Munsif Court at Namakkal for a bare injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property.

3. It is the case of the plaintiff that the property comprised in O.S.4789 of Mettupatty Village, Namakkal measuring an extent of 2.16.5 hectares belonged exclusively to the plaintiff. Periyasamy Pillai, Ramasamy Pillai and Palanisamy Pillai who are the sons of Parimanam Pillai had filed a suit in O.S.No.198 of 1985 on the file of the



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Additional District Munsif, Namakkal for a declaration and permanent injunction stating that the property belongs to them exclusively. After Trial, the said suit was dismissed and an appeal preferred against the same was also dismissed.

4. Subsequently at the instigation of the defendant, their relatives had started interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Hence, the plaintiff had filed suit O.S.No.543 of 1997 on the file of the District Munsif, Namakkal for injunction. The defendants in the said suit remained ex parte and the plaintiff had obtained an ex parte decree. The plaintiff would submit that the patta in respect of the property stood in the name of his father Krishnamoorthy. Since the plaintiff and his father were residing away from the suit property, the sons of Parimanam Pillai took steps to include their names in the patta which fact came to the knowledge of the plaintiff much later. However, the plaintiff is in possession and



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enjoyment of the suit property. He had also obtained a loan on the security of the suit property.

5. Meanwhile, the legal heirs of Parimanam Pillai along with one Kailasam who is the son of the 3rd plaintiff in O.S.No.198 of 1985 created a general power of attorney in favour of the defendant who is his close friend and a sale deed came to be created. The said sale deed would not bind the plaintiff or affect his right over the suit property. Neither the defendant nor his vendor has ever been in possession and enjoyment of the suit property.

6. The plaintiff would further submit that one of the vendors of the defendant is the 1st plaintiff in O.S.No.198 of 1985. The defendant having purchased the property from persons who have no right or title to the suit property, the said sale deed would not convey any title on the defendant. The defendant had attempted to interfere with the



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plaintiff's peaceful possession and enjoyment of the suit property.

Therefore, the plaintiff had come forward with the suit in question.

7. The defendant had filed a written statement inter alia denying the allegations contained in the plaint. It is the contention of the defendant that suit property belonged to Parimanam Pillai, the father of the defendant's vendors Periyasamy, Ramsamy and Palanichamy. The said Parimanam Pillai along with his sons had mortgaged the suit property and obtained a loan on 26.10.1950. The property was thereafter redeemed on 30.06.1969 and they have been in possession and enjoyment of the same. It is their contention that the revenue records have also been mutated in their name. During the Estate Abolition Act, the plaintiff's father managed to get patta mutated in his name and on the basis of the same he had filed a suit O.S.No.198 of 1985 and the same was decreed in his favour.



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8. The sons of Parimanam Pillai had thereafter filed an appeal before the District Revenue Officer, Namakkal and got the patta transferred in their name. Further, the plaintiff had managed to get an ex parte judgement and decree in O.S.No.553 of 1997 by giving the wrong address of the defendants therein who are the vendors of the defendant herein.

9. He would submit that the President of the Panchayat Board, Metupatty had certified that it was only Parimanam Pillai's sons who are in enjoyment of the suit property. The legal heirs of Ramasamy and Palanisamy Pillai had given a power of attorney in favour of the Kailasam, the son of Periyasamy Pillai. Subsequently, the said Kailasam had sold the suit property to the defendant on 29.03.2007. The suit property was never in possession and enjoyment of the plaintiff.



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10. The Trial Court had framed the following issues.

- 1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?*
- 2. Whether the decree in O.S.No.198/1985 will bind the defendant ?*
- 3. To what other relief the plaintiff is entitled to?*

11. On the side of the plaintiff 2 witnesses were examined and Ex.A.1 to A.13 were marked. On the side of the defendant, 3 witnesses were examined and Ex.B.1 to B.16 were marked.

12. Ultimately, the Trial Court had decreed the suit on considering the oral as well as documentary evidences. Challenging the said judgement and decree the defendant had filed A.S.No.10 of 2010 on the file of Additional Subordinate Judge, Namakkal.



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13. The learned Appellate Judge confirmed the judgement and decree of the Trial Court and dismissed the appeal. Challenging the same the defendant is before this Court.

14. Heard the counsel for the defendant/appellant.

15. A perusal of the records would indicate that earlier a suit O.S.No.198 of 1985 was filed by the vendors of the defendant against the plaintiff herein and his father for a declaration and injunction on the file of the Additional District Munsif, Namakkal. The learned District Munsif, on perusing the evidence dismissed the suit and held that it was the the defendants therein, namely, the plaintiff herein and his father who were in possession and enjoyment of the suit schedule properties. The learned Judge had observed that the plaintiff herein and his father had proved their title to the property in question by



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producing the documents issued in his favour under the Inam Estates Abolition Act.

16. The learned Judge had also observed that the suit has been filed only to extract money from the plaintiff and his father who were the defendants therein as soon as the plaintiffs therein, namely, the vendors of the defendant herein had come to know that the plaintiff and his father were proposing to put up a factory in the suit property. The said suit was dismissed and the appeal filed against the same also ended in a dismissal.

17. The plaintiffs (in O.S.No.198 of 1985) whose suit for declaring their title over the suit property had been dismissed had sold the property to the defendant herein. The possession of the plaintiff in the instant suit has been confirmed in the earlier suit. Therefore, the defendant cannot claim any right over the suit property on the basis of



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the sale deed executed in his favour by persons whose suit for declaration of title had been dismissed.

18. Considering the fact that the plaintiff has proved his possession over the suit property and was facing interference from the defendant, the Courts below have rightly decreed the suit in favour of the plaintiff and I see no reason to interfere with the same. Further, the defendant/appellant has not made out any substantial question of law warranting the interference of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

13.02.2024

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



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To

1. The Additional Subordinate Judges Court at Namakkal.
2. The Principal District Munsif Court at Namakkal.
3. The Section Officer,
V.R.Section,
High Court, Madras.

P.T.ASHA, J.,

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