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S.A.No.728 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.728 of 2021
and
CMP.No.14324 of 2021

Muthulakshmi

... Appellant

..VS..

1. Poongodi
2. Selvam

... Respondents

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 09.02.2021 made in A.S.No.45 of 2018 on the file of Principal Subordinate Judge, Erode in upholding the judgment and decree dated 09.04.2018 partially dismissing the suit in O.S.No.353 of 2014 on the file of II Additional Munsif Court, Erode.

For Appellant : Mr.M.Guruprasad

For Respondents : Mr.N.Manokaran



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J U D G M E N T

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This Second Appeal is arising out of the judgment of the first appellate Court in A.S. No. 45 of 2018 confirming the decree and judgment of the trial court in O.S. No. 353 of 2014.

2. The plaintiff is the appellant in the second appeal. The plaintiff filed the suit for declaration of her title to the suit property and for consequential permanent injunction restraining the defendants, their men, agents from in any manner interfering with her peaceful possession and enjoyment of the suit property.

3. As per the plaint averments, the plaintiff purchased the suit 'A' and 'B' schedule properties by way of sale deeds dated 27.08.1996 and 09.03.2004 respectively. The plaintiff stated that she was in possession and enjoyment of the suit property without any interference by any one. The plaintiff stated that the land of the defendants in R.S. No. 855/1 was situate on the northern side of the suit property. According to the plaintiff, on



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01.08.2014 the defendants who were her adjacent owners attempted to encroach a portion of her property and therefore, she filed the above suit for declaration and permanent injunction.

4. The defendants filed written statement stating that they were not aware of the purchase of the suit property by the plaintiff. The defendants stated that the first defendant purchased the land in survey Nos.854/1 and 854/2 with specific boundaries. It was the specific case of the defendants that in between the land of the plaintiff and their lands, the land of one Vadivelu lay and therefore, the question of the defendants attempting to encroach the suit property on 01.08.2014 did not arise. It was further stated that the vendors of the defendants were also having some lands on the Southern side of their land. The averment of the plaintiff that the defendants were her adjacent owners was denied as incorrect. Therefore, the defendants prayed for dismissal of the suit.

5. The plaintiff filed a reply statement denying the defendants' contention that in between the plaintiff's land and the defendants lands there



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was some other property.

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6. Before the trial Court the plaintiff examined herself as PW1 and marked exhibits Ex.A1 to Ex.A6. The second defendant examined himself as DW1 and marked exhibits Ex.B1 to Ex.B4. The trial Court appointed an Advocate Commissioner to inspect the properties and the Commissioner, after inspection filed a detailed report and plan and the same were marked as exhibits Ex.C1 and Ex.C2.

7. The trial Court based on the oral and documentary evidence, held that defendants neither disputed the title of the plaintiff nor was a cloud created thereof by the defendants, and so, the trial court passed a decree for declaration alone. With regard to the relief of injunction, it was held that there was a land in between the land of the plaintiff and defendants and therefore, there was no opportunity for the defendants to encroach upon the plaintiff's lands. Accordingly, the trial court dismissed the suit for the consequential relief of permanent injunction.



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8. Aggrieved by the judgment and decree of the Trial Court, in so far as it declined the relief of permanent injunction, the plaintiff filed A.S. No. 45 of 2018 on the file of the Principal Subordinate Judge, Erode. The appellate court considering the entire materials on record, confirmed the judgment and decree of the trial Court and therefore, the plaintiff has filed the present second appeal before this Court.

9. At the time of the admission this Court ordered notice to the respondents, and they have appeared through counsel. The second appeal is yet to be admitted.

10. The learned counsel for the appellant submitted that the concurrent judgment of the Courts below are un-sustainable inasmuch as the Court below failed to note that in Ex.B1, Patta, in respect of the land in Survey No. 855/1 the name of the plaintiff is also found. The learned counsel by relying on Ex.B1 submitted that the contention of the defendants that there is a land lying in between the land of the plaintiff and the



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defendant was unsustainable.

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11. On the other hand, the learned counsel for the respondents relying on the evidence of the plaintiff in her cross examination and also the evidence of PW2, Village Administrative Officer submitted that the plaintiff failed to substantiate that the defendants owned property adjacent to the property of the plaintiff. The learned counsel further submitted that the reliance placed by the plaintiff on Ex.B1 was misplaced and it had nothing to do with the suit lands. Further, the learned counsel submitted that there were no merits in the second appeal as no substantial question of law were made out for consideration by this Court and hence the second appeal deserved to be dismissed.

12. The Plaintiff succeeded in getting a decree for declaration before the trial court, which was also affirmed by the first appellate Court. However, both the courts below concurrently held that the plaintiff was not entitled to a decree for permanent injunction against the defendants. Such a conclusion was arrived at by the courts below based on the admission of the



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plaintiff in her cross-examination as PW1. The plaintiff in her cross examination admitted that in between her land and the land of the defendants, the land of Muniyan was lying. In view of the admission of the plaintiff, coupled with the Advocate Commissioner's report Exs.C1 and C2 marked before the trial court, the Court's below concluded that there was no opportunity for the defendant to either encroach upon the land of the plaintiff or disturb her possession in any manner.

13. It is seen from the plaint that the specific plea of the plaintiff as that the defendants own land in Survey no.855/1, adjacent to the plaintiff's land and as the defendants tried to encroach the suit land the plaintiff was constrained to file the suit for the said reliefs. In the written statement filed by the defendants, it was specifically stated that in between the plaintiff's land and the defendants land in Survey No.855/1 the lands owned by one Vadivelu and his two sons namely Karthikeyan and Chandrasekaran were lying and there was no scope for the defendants to interfere with the possession of the plaintiff.



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14. The contention of the plaintiff is that the defendants who were her adjacent owners on the northern side tried to encroach into her lands. The plaintiff in order to prove that the land in Survey No.855/1 belonged to her produced Ex.B1. Ex.B1 is the Patta issued in the name of Muniyan and Poongodi. The said Muniyan is the grandfather of Karthikeyan S/o Vadivelan. It is pertinent to note that Muniyan is the grandfather of Karthikeyan and Chandrasekaran S/o Vadivelan. Ex.B1 contains four other survey numbers that is 852/2, 852/3, 854/2 and 855/1 and the defendants vendors that is Chandrasekaran and Karthikeyan S/o Vadivelan are shown as the owners. Therefore, from the joint patta it is clear that the contention of the defendants that his vendors had land in between his lands and plaintiff's land cannot be ruled out. Further the plaintiff as P.W.1 in her cross examination admitted that between her land and defendants' land, Munian, the vendors of the defendants' land lay. It is further pertinent to note that the plaintiff in her cross examination admitted that she filed the suit without knowledge of the fact that in between her land and the defendants' land, the land of Vadivelu was lying. Even, the Village



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Administrative Officer who was examined by the plaintiff in his chief examination deposed as follows:-

" வாதி, பிரதிவாதிகள் பூமிக்கு இடையில் புல எண்
கொண்ட பூமி இடையில் உள்ளது. அந்த பூமியின் காலை
855/1, 855/1 காலை முனியன் என்பவரின் பெயரில் உள்ளது. "

15. From the aforesaid oral evidence and other materials on record it is clear that the basis of the plaintiff's case in her pleading is belied by her own evidence. The foundation of the case as reflected in the plaint was that the defendants' who were has adjacent owners encroached into her property. The above admission of the plaintiff demolished the foundation of her case. Therefore the findings of the Courts below that the defendants had no opportunity to interfere with the plaintiff's possession cannot be faulted. Both courts below have returned concurrent findings of fact that the plaintiff did not make out any case for grant of permanent injunction against the defendant, this Court, in exercise of powers under Section 100 of the C.P.C, finds no reason to interfere with such concurrent findings of the courts below.

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16. In the result, this Second Appeal is dismissed, confirming the Judgment and Decree dated 09.02.2021 made in A.S. No. 45 of 2018 on the file of Principal Subordinate Judge, Erode confirming the judgment and decree dated 09.04.2018 partially in O.S. No. 353 of 2014 on the file of II Additional Munsif Court, Erode. No costs. Consequently, connected miscellaneous petition is closed.

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

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To

1. The Principal Subordinate Judge, Erode
2. The II Additional Munsif Court, Erode

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