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S.A.No.908 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 908 of 2023
&
C.M.P. No. 29231 of 2023

K.Shafika Begum

...Appellant

Vs.

1.Syed Farooq

2.T.M.Shakir Ahmed

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2022 passed in A.S.No.08 of 2020 on the file of the III Additional District Judge, Vellore at Tirupattur confirming the Jugdement and Decree dated 06.11.2019 passed in O.S.No.13 of 2012 on the file of the Subordinate Judge, Vaniyambadi.



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For Appellant : Mr. K.Thiruvengadam.

JUDGMENT

The plaintiff who has unsuccessfully contested the suit for permanent injunction before the Courts below is the appellant before this Court. The facts in brief preceding the filing of the above Second Appeal is herein below set out and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff has filed the suit O.S.No.13 of 2012 on the file of the Sub Court, Vaniyambadi seeking declaration of her title to the suit schedule property along with the relief of injunction. It is her case that the suit property belongs to her father Kathif Mohamed Ismail Sahib, under a registered partition deed dated 14.06.1988. Thereafter, her father had executed a settlement deed in favour of the plaintiff on 08.09.2004 and the same was registered as a Doc.No.3070 of 2004 on the file of the Sub Registrar Office, Vaniyambadi. The



plaintiff was on the very same day put in possession of the suit property, in which she continues to be in possession to date.

3. It is the contention of the plaintiff that she used the premises to dump waste construction material and other articles. She would submit that the defendants, who are third parties to the property having no semblance of right to it had damaged the fencing on 14.01.2012. The plaintiff had lodged a complaint before the Town Police, Vaniyambadi against the defendants. However, since the defendants had considerable political clout, no action was taken against them. The plaintiff being a pardhasin lady, was unable to lodge a complaint in person but had sent the complaint along with the photos taken by her through Registered post. The defendants had threatened that they would somehow vacate the plaintiff from the property. Hence, the plaintiff has come forward with the suit.

4. The 1st defendant had filed a written statement inter alia



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denying the contents of the plaint and submitting that the plaintiff had come to the Court with a false case. The plaintiff and her sister, one K.Athika Firdoz jointly executed an agreement of sale of the properties belonging to them which are detailed in Schedule A and B in the suit in favour of the defendants. They had agreed to sell the said property at Rs.1350/- per sq.ft., On the date of the agreement, a sum of Rs.25,80,000/- was received by the plaintiff and her sister from the defendants, towards sale transaction.

5. Thereafter, on 12.10.2011 a further sum of Rs.1,00,000/- was received by them. A possession was delivered to the defendants who accepted the same as part performance of the contract of sale. Thereafter, the plaintiff and her sister had extended time of the agreement till 31.01.2012. On 03.01.2012, the plaintiff's sister Athika Firdoz sold her property which is described in Schedule A to the 2nd defendant. In fact, the property of Athika Firdoz was mortgaged with the Bank at Salem for the loan raised by Abrar's leathers. The said



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Athika Firdoz had discharged the loan and got back title deeds and thereafter entered into an agreement with the 2nd defendant.

6. As regards B Schedule property belonging to the plaintiff, the defendants had been ready and willing to execute their part of the agreement. However, the plaintiff has not been coming forward to comply the obligations under one pretext or the other. Therefore, the defendants issued a legal notice dated 20.01.2012 to the plaintiff informing their readiness and willingness to proceed with the agreement of sale and calling upon the plaintiff to be present at the Sub Registrar Office, Vaniambadi, on 01.02.2012. The plaintiff had received the notice but failed to turn up for registration.

7. Thereafter, on 31.01.2012, a reply was received from the plaintiff putting forward false allegations. The allegations of trespass pleaded is absolutely false, since the defendant has already been put in possession of the property pursuant to the agreement of sale entered



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on 04.10.2011. Therefore, the defendants sought to have the suit dismissed. The defendants had also stated that they had filed a suit for specific performance in O.S.No.14 of 2012 on the file of the District and Principal Sessions Judge, Vellore and the same was pending.

8. The Trial Court had framed the following issues:

“(i)Whether the plaintiff is entitled for the relief of declaration as prayed for?

(ii)Whether the plaintiff is entitled to the relief of permanent injunction?

(iii)Whether the suit is properly valid?

(iv)Whether this court has pecuniary jurisdiction?

(v)To what other relief the plaintiff is entitled for?

9. The plaintiff's husband examined himself as P.W.1 and third party witness has been examined as P.W.2. Ex.A.1 to Ex.A.8 were marked on their side. The defendants on their part examined the 2nd



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defendant as D.W.1 and Ex.B.1 to Ex.B.13 were marked.

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10. The Trial Court decreed the suit with reference to declaration and dismissed the suit with reference to permanent injunction.

11. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.8 of 2000 on the file of the III Additional Judge, Vellore. The learned Judge by Judgement and Decree dated 20.12.2022 was pleased to dismiss the appeal, against which the present Second Appeal has been preferred by the plaintiff.

12. Heard the learned counsel and perused the records.

13. The plaintiff has totally suppressed the agreement of sale between her and the 1st defendant as also the suit for specific performance pending between her and the 1st defendant in O.S.No.14



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of 2012 on the file of the District and Principal Sessions Judge, Vellore. Having put the defendants in possession of the property, pursuant to the agreement of sale and receipt of the sum of Rs.25,80,000/- on the date of the agreement i.e., on 04.10.2011 and the further sum of Rs.1,00,000/- on 12.10.2011, the plaintiff has come forward with a false case that the defendants have trespassed into the property. Therefore, the allegation that the defendants had trespassed into the property cannot be countenanced and the Courts below have rightly rejected the decree for permanent injunction.

14. The Trial Court had taken into consideration the fact that the defendants have themselves admitted the title of the plaintiff to the suit property which is obvious from the fact that they have entered into an agreement of sale with the plaintiff and they had filed a suit for specific performance against the plaintiff. Therefore, the Judgement and Decree of the Courts below cannot be found fault with reference to the decree for the permanent injunction.



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15. Both the Courts below have considered the evidence on record and taken into account the fact that the suit for specific performance had been decreed in favour of the defendants. Though the learned counsel for the plaintiff would submit that an appeal has been filed against the Judgement and Decree in O.S.No.27 of 2012, however the same would have no bearing on the instant case, since the Courts below have declared the plaintiff's title to the property and has non suited her with reference to the decree for permanent injunction, only on the ground that under the sale agreement, she has put the defendants in possession of the property which has also been proved by the defendants.

16. Therefore, I see no reason to interfere with the well considered Judgement and Decree of the Courts below and accordingly, the Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.



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To

1.The III Additional District Judge,
Vellore.

2.The Subordinate Judge,
Vaniyambadi.



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P.T. ASHA, J,

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