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S.A.No.896 of 2022

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. 896 of 2022

T.Soundaraj

...Appellant

Vs.

D.Sankaran

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.04.2022 passed in A.S.No.3 of 2021 on the file of the Principal Sub Judge, at Ponneri, Thiruvallur District, setting aside the Judgement and Decree dated 30.04.2019 passed in O.S.No.96 of 2016 on the file of the District Munsif, Thiruvottriyur.

For Appellant : Mr. M.Sankar

For Respondent : Mrs. Hema Sampath
Senior Counsel

for Mr. R.Suryaprakash.



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JUDGMENT

The defendant is the appellant before this Court challenging the Judgement passed by the Principal Sub Court, Ponneri in A.S.No.3 of 2001 in and by which the learned Sub Judge has reversed the Judgement and Decree passed by the District Munsif, Thiruvottriyur. The brief facts which has culminated in the filing of the above Second Appeal are as follows and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the above referred suit for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. It is the case of the plaintiff that he had purchased an extent of 11262 ½ sq.ft., of gramanathan land comprised in S.No.288/1 under a sale deed dated 09.07.2004 from five persons, namely, Karpagam, Nagappan, Meiyalagan, Vedhachalam and Kiliyammal. Since the date of the



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purchase, the plaintiff has been in peaceful possession and enjoyment of the suit property.

3. The plaintiff would submit that since March 2016, certain antisocial elements were trying to disturb the plaintiff's possession and on 27.03.2016, the defendant with the help of these antisocial elements tried to forcibly enter the suit property which was successfully prevented by the plaintiff. The defendant is a local politician and have considerable clout in the area.

4. The plaintiff had lodged a Police complaint and both the parties were directed to approach the Civil Court. Therefore, the suit.

5. The plaintiff has also filed a suit in O.S.No.213 of 2016 to declare the settlement deed dated 17.06.2011 executed by the 1st defendant therein in favour of his sons in respect of the suit property as null and void and the said suit was also pending.



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6. The defendant had filed a written statement denying all the allegations contained in the plaint. It is the case of the defendant that the suit property is an ancestral property of the defendant and has been in their possession for over 10 decades. On 17.06.2011, the defendant had settled the suit property on his three sons, Silambarasan, Kuralarasan and Kalaiarasan. However, these persons have not been made a party in the instant suit. The patta has also been issued in favour of the settllees. The defendant had further contended that no cause of action has been pleaded against the defendant and therefore the suit has to be dismissed. The defendant had denied the plaintiff's title to the property.

7. The learned District Munsif had framed an issue as to *Whether the plaintiff was entitled for permanent injunction as prayed for?*.

8. The plaintiff had examined himself as P.W.1 and Ex.A.1 to Ex.A.3 were marked on his side. The defendant had examined himself



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as D.W.1 and Ex.B.1 to Ex.B.12 were marked on his side.

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9. Ultimately, the learned District Munsif had dismissed the suit on the ground that though there has been serious contest to the plaintiff's title over the suit property, the plaintiff has not filed a suit for declaring his title to the suit property. Even the suit O.S.No.213 of 2016 has been filed only to declare the settlement deed executed by the 1st defendant in favour of his children as null and void.

10. Challenging the said Judgement and Decree, the plaintiff had filed A.S.No.3 of 2021 on the file of the Sub Court, Ponneri. The learned Sub Judge, Ponneri, has on hearing the arguments and considering the documents allowed the appeal and set aside the Judgement and decree passed by the learned District Munsif. The learned Sub Judge had observed that the properties of the defendant and the plaintiff are different and tax receipts which have been filed by the defendant shows different door numbers. Further, the description of the property in Ex.B.2 and Ex.B.4 are totally different. The learned



Sub Judge had also observed that Ex.A.1 reflected title of the appellant to the suit schedule property.

11. Challenging this Judgement and Decree, the above Second Appeal has been filed.

12. Heard the learned counsels on the either side.

13. From the arguments the following substantial question of law arises and arguments have also been advanced on the same:

“Whether the plaintiff is entitled to a decree for permanent injunction?”.

14. The plaintiff has come to the Court on the basis that he has purchased an extent of 11262 ½ in S.No.288/1 from Karpagam and four others on 09.07.2004. This sale deed has been marked as Ex.A.1. The plaintiff in this suit has pleaded that the defendant had attempted to enter the property on 27.03.2016 and that a Police complaint was



lodged. It is their further contention that on the advice of the Police authorities, the present suit has been filed. The plaintiff has not filed the Police complaint which has been lodged by them.

15. Further, the plaintiff who claims to have purchased the property from the original owner in the year 2004 did not have the revenue records mutated in his name. Ex.A.3, containing four original house tax receipts has been filed. These house tax receipts relate to door number 3/21B. The tax receipts have been filed from the year 2009. However, a perusal of the schedule given in the suit property does not reflect the existence of the building and therefore the documents filed does not relate to the suit property which is described as a vacant land.

16. That apart, the schedule given in the other suit O.S.No.213 of 2016 shows an extent of 12800 sq.ft of gramanatham land. Even in this schedule the existence of the building is not found. Though the plaint in O.S.No.213 of 2016 has not been filed before the Courts



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below, a copy of the same has been filed along with the typed set of papers and the institution of this suit has not been denied by the plaintiff. Apart from the sale deed, Ex.A.1 there is no other document to show the possession of the property by the plaintiff.

17. As stated earlier, Ex.A.3 relates to a building bearing door No.3/21 B which building is not reflected in the suit schedule properties. Further, the suit has been filed on the ground that there has been an attempt of trespass by the defendant along with the other antisocial elements on 27.03.2016. This fact has not been proved by the plaintiff. Therefore, the cause of action as pleaded not having been proved the Judgement of the Lower Appellate Court has to necessarily be set aside.

18. Though there has been a serious contest to the title of the property, the plaintiff has not chosen to seek a declaration of the title to the property. Even in the subsequent suit in O.S.No.213 of 2016, the plaintiff has not sought for the relief. Therefore, the general principle



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stated in the Judgement in *Anathula Sudhakar Vs. Buchi Reddy*

((2008) 4 SCC 594) = AIR 2008 SC 2033 would apply to the facts of the above case and the suit for bare injunction without seeking declaration is not maintainable since the plaintiff's title to the property is questioned and the defendant has set up title on himself. However, it is left open to the parties to raise all the defense in the suit O.S.No.213 of 2016.

19. Consequently, the Second Appeal is allowed. No costs.

02.01.2024

Index : Yes/No
Internet : Yes/No
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To

1.The Principal Sub Judge, at Ponneri,
Thiruvallur District.

2.The District Munsif,

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Thiruvottriyur.

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P.T. ASHA, J,

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