



S.A.No.640 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 07.03.2024	Judgment Pronounced on 05.04.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.640 of 2020
and C.M.P.No.13312 of 2020

1.Shanmugam (Died)
2.S.Umamaheshwaran
3.S.Buvaneshwaran
4.S.Sudhagar

..Appellants

[A1 died, A2 to A4 are bring on
record as LR's of the deceased A1
vide order dated 31.10.2023 in
C.M.P.Nos.19813 & 19817 of 2023
in S.A.No.640 of 2020]

Vs.

1.Gangatharan
2.Devaraj
3.Balu
4.Dayalan

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.02.2020 made in A.S.No.184 of 2014 on the file of the Subordinate Judge, Arakonnam, reversing the judgment and decree dated 17.09.2014 passed in O.S.No.2 of 2006 on the file of the District Munsif, Arakonnam.



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For Appellants : Ms.G.Sumitra
For Respondents
For RR1 & 2 : Mr.S.Shanmugasundaram
for Mr.R.Murugabharathi
For RR3 & 4 : No appearance

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 28.02.2020 made in A.S.No.184 of 2014 on the file of the Subordinate Judge, Arakonnam, reversing the judgment and decree dated 17.09.2014 passed in O.S.No.2 of 2006 on the file of the District Munsif, Arakonnam.

2.The legal representatives of the 3rd defendant are the appellants before me.

3.The parties are described as per their litigating status before the Trial Court.

4.The case of the plaintiffs is that the suit property is a Kalyanamandapam, constructed over a vacant site measuring 245 Sq.m. The



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suit property was purchased by the plaintiffs, who are brothers and they are in joint and peaceful possession and enjoyment of the same, as absolute owners. The Government has also issued patta in favour of the plaintiffs even in the year 1996. The plaintiffs also paid property tax and water tax for the suit property and all revenue records were mutated in their names. That being the position, the defendants, who are third parties and not having any right in the suit property, made unlawful attempt to interfere with the plaintiffs' possession and enjoyment on the northern portion of the suit property and in order to protect the plaintiffs' possession, the suit has been filed seeking relief of permanent injunction.

5.The said suit was resisted by the defendants 1 and 2, denying the plaint allegations and contended that the plaintiffs' property was measuring North to South 29 ½ feet and the property beyond the plaintiffs' property belongs to the defendants and only in order to grab the defendants' property, the plaintiffs have filed the suit. The defendants also made it clear even in the written statement that they are not claiming any right in the 29 ½ feet, which belongs to the plaintiffs. It is also stated that the suit filed for bare injunction was not maintainable, without a prayer for declaration. The



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defendants also contended that the plaintiffs have approached the Court only based on the patta issued in the year 1996 and admittedly, the plaintiffs purchased the property in the year 2001. Therefore, the plaintiffs have not come to the Court with clean hands and do not even claim any right under the Sale deed in their favour.

6.The 3rd defendant filed a separate written statement stating that the 3rd defendant purchased the property of the 1st defendant and 2nd defendant under two different Sale Deeds and on and from the date of purchase, the 3rd defendant is in possession and that the plaintiffs have no manner of right or title over the properties purchased by the defendants.

7.The Trial Court dismissed the suit and aggrieved by the same, the plaintiffs preferred A.S.No.184 of 2014. The First Appellate Court reversed the findings rendered by the Trial Court and allowed the appeal, thereby granting the relief of permanent injunction in favour of the plaintiffs.

8.It is against these reversal findings rendered by the First Appellate Court, the 3rd defendant initially preferred the above Second Appeal and



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pending the Second Appeal, the 3rd defendant died and his legal heirs have come on record and are prosecuting the Second Appeal.

9.The above Second Appeal was admitted by this Court on 09.12.2020, on the following substantial questions of law:

“Whether the Lower Appellate Court was right in reversing the judgment and decree of the Trial Court by relying on Ex.A1, patta of the year 1996 and Ex.A13, Sale Deed of the year 2001, which was subsequent to the filing of the suit, in respect of vacant site.”

10.I have heard Ms.Sumitra, learned counsel for the appellants and Mr.S.Shanmugasundaram, for Mr.R.Murugabharathi, learned counsel for the respondents 1 and 2.

11.(a).Ms.Sumitra, learned counsel for the appellants would submit that the defendants' property is lying to the North of the Kalyanamandapam and the dispute is not with regard to the ownership of their respective entitlements but only pertaining to the measurements on the Northern side of the plaintiffs' property. She would state that the plaintiffs rely only on a patta which was issued in the year 1996 and there is absolutely no whisper about



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the plaintiffs' title over the suit property in the plaint. However, subsequently, the Sale Deeds of the year 2000 and 2001 have been registered in favour of the plaintiffs and therefore, the plaintiffs case was not definite.

(b).Further, the learned counsel would take me through the findings of the Trial Court, where the Trial Court has found that the plaintiffs have failed to even identify their property. That apart, she would also take me through the evidence of P.W.2, who is the vendor of the plaintiffs and the Sale Deed, marked as Ex.A19, which is also marked as Ex.B1. She would also refer to Ex.A18, Sale Deed, where the sale in favour of the vendor is only in respect of an extent of 960 sq.ft., whereas in Ex.A19=Ex.B1, the extent conveyed in favour of the plaintiffs is 1200 sq. ft. Therefore, according to the learned counsel for the appellants, the plaintiffs' vendor did not have any right to convey the additional 240 sq. ft., in favour of the plaintiffs.

(c)The learned counsel for the appellants would also contend that the plaintiffs have not established as to when they got possession and what was the extent of the property which they became entitled to. She would also refer to the description of the suit property and contend that the same was



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improper and therefore, applying the mandate of Order 7 Rule 3 of Code of Civil Procedure, she would contend that the plaintiffs were not entitled to any decree. She would also rely on the title documents exhibited by the defendants and the linear measurements in the title documents of the plaintiffs as well as the title documents of the 3rd defendant. She would also refer to cross-examination of the plaintiffs and the plaintiffs vendor as P.W.1 and P.W.2.

(d) The learned counsel for the appellants would also rely on the decision of the Hon'ble Supreme Court in *Mary Pushpam Vs. Telvi Curusumary and Others* reported in (2024) 1 MLJ 662 (SC) and in *Anathula Sudhakar Vs. P.Buchi Reddy (Died) by Lrs and Others* reported in (2008) 4 SCC 594, for the proposition that the suit for bare injunction was not maintainable. She would therefore pray for the Second Appeal being allowed.

12.(a).Per contra, Mr.S.Shanmugasundaram, learned counsel for the respondents would submit that the claim of the plaintiffs was never based on title and it is only a suit for permanent injunction, necessitated in view of the



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interference attempted by the defendants. Further, the learned counsel would take me through the different documents under which the Kalyanamandapam has been purchased and also the patta being issued in favour of the plaintiffs. The learned counsel would also contend that the defendants never took steps for cancellation of the patta and only in 2006 when there was cause of action for filing a suit for permanent injunction because of the disturbances caused by the defendants, the suit came to be filed.

(b). The learned counsel would further state that the boundaries would prevail over the extent and the properties purchased by the plaintiffs and consolidated as Kalyanamandapam were clearly defined by four boundaries and therefore, the suit being only to protect the physical possession of the plaintiffs, the relief of declaration was not necessary and therefore prayed for the judgment of the First Appellate Court being confirmed.

13.I have carefully considered the submissions advanced by the learned counsel on either side and I have also gone through the pleadings, oral and documentary evidence adduced by the parties and also the judgments of the Trial Court as well as the First Appellate Court.



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14. Admittedly, the plaintiffs have approached the Court, claiming right under patta issued by the Special Tahsildar, in pursuance of which the plaintiffs have been in peaceful possession and enjoyment of the suit property. It is not their case that they had title to the suit property on the date of institution of the suit. However, it has come to light that subsequently, pending the suit, the plaintiffs have purchased lands in and by three different Sale Deeds namely, Exs.B1, B8 and B9. Ex.B1, Sale Deed is in favour of the 1st plaintiff, under which he has purchased the property from one Padmanabhan, who has been examined as P.W.2. In the Sale Deed, North-South measurement is shown as 29 ½ feet including common area. The dispute is only with regard to North-South measurement and in so far East-West measurements, the parties are not at variance. The defendant claims title to his property under Ex.B7 to Ex.B9 and the 1st item was purchased under Ex.B8, where the North-South measurement is 22 feet. Similarly, the 2nd item was purchased under Ex.B2 is measuring 84 feet North-South, thus having a total extent of 106 sq. ft., with backyard portion. Under Ex.B9, the 2nd defendant has purchased 27 feet North-South shown in the 1st item and 4 ½ feet shown in the 2nd item. In all, the defendants have purchased 61 ½ feet North-South through Ex.B8 and Ex.B9. However, while conveying the same



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to the 3rd defendant, the North-South measures has shown as 70 feet. It is clear that the 2nd defendant has conveyed an extent to which he was not entitled to entirely.

15.However, being a suit for permanent injunction, the burden of proof is only on the plaintiffs to establish that they have been in possession of the suit property on the date of institution of the suit. No doubt, on the date of filing of the suit, the plaintiffs had not purchased the suit property and much later in the year 2001 alone they acquired title. This has weighed in the mind of the Trial Court to non suit the plaintiffs. The plaintiffs never claimed that they were having title to the suit property. What all they stated is that the Government had issued patta in favour of the plaintiffs and that they have constructed a Kalyanamandapam on the Southern side of the property and they have been in enjoyment of the suit property, paying taxes.

16.Admittedly, the suit filed does not disclose about their Sale Deeds. The Sale Deeds under which the plaintiffs purchased the property have been exhibited by the defendants in Ex.B1 to Ex.B3. They are all found to be Sale Deeds prior to the filing of the suit. Though the learned counsel for the



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respondent would invite my attention to the averments in the said Sale Deeds in the year 2000 and 2001, I am unable to countenance the arguments of the learned counsel for the respondents that the suit is based on possession, namely, the patta. When admittedly, the plaintiffs had acquired title to the suit property under the registered Sale Deeds, it was the bounden duty of the plaintiffs to have disclosed the same in the plaint and ought not to have approached the Court as if they were claiming right only under the patta issued by the Government in the year 1996.

17.Moreover, even though the schedule of the property set out in the plaint gives the total measurement of the property at 245 sq.m with reference to the existence of Kalyanamandapam and four definite boundaries, when the dispute pertains to the North-South measurement, the plaintiff ought to have described the property specifically with ad-measurements. Unfortunately, the plaintiffs have not ventured to do so and the schedule of the property set out in the plaint does not even speak about the ad-measurements.

18.Further, I am able to see that in Ex.A18, Sale Deed in favour of the vendor of the plaintiffs, namely Padmanabhan, who was also examined as



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P.W.2, the extent conveyed in favour of the said Padmanabhan was 960 sq.ft (16/60feet). However, under Ex.B1=Ex.A19, when Padmanabhan, P.W.2 sold the property, he has mentioned the extent as 1200 sq.ft (16/75feet). Therefore, there is contradiction even in the title documents of the plaintiffs' vendor. Further, I find that evidence of P.W.2, who has sold the property to the plaintiffs has spoken contrary to the Sale Deed covenants and has virtually set up a new case. P.W.1 in fact admits that the property is as described under Ex.A1 and especially, when the defendants dispute the measurements of the property, the burden is on the plaintiffs to establish the identity of the suit property. Though they have claimed 29 ½ feet to be existing on North-South, it is seen that 4 ½ feet out of the said 29 ½ feet is comprising of a passage and what remains after adjusting the passage is only 25 feet. The plaintiffs have not adduced any evidence whatsoever to clarify or establish their entitlement to the entire 29 ½ feet on the North-South boundary.

19.I am also unable to accept the contention of the learned counsel for the respondents that since the property is identified by four definite boundaries, the boundaries would have to prevail over the extent. The said



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argument may have been acceptable if the plaintiffs had taken steps to appoint an Advocate Commissioner and get the physical measurements of the property. Unfortunately, the plaintiffs have not undertaken such an exercise, even after the written statement came to be filed by the defendants, disputing the plaintiffs entitlement. Moreover, in the written statement, the defendants have denied the title of the plaintiffs and also questioned the patta issued to them even prior to the Sale Deeds in their favour. According to the defendants, the North-South entitlement of the plaintiffs was admittedly 29 ½ feet and the property beyond the said 29 ½ feet was not belonging to the plaintiffs but only to the defendants.

20. In the light of such specific defence raised in the written statement, though admitting the plaintiffs title, not seriously creating any doubt or cloud on title of the suit property at the hands of the plaintiffs, the question of actual measurements of the property would have clinched the issue with regard to the entitlement of the plaintiffs. Unfortunately, the plaintiffs have not taken any steps to have a Commissioner appointed and bring relevant material facts to the notice of the Court. The Trial Court has rightly found that the property was not identified by the plaintiffs and from the available



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oral and documentary evidence, the plaintiffs were not able to establish their entitlement to the relief of permanent injunction.

21.The learned counsel for the appellant has also placed reliance on ***Mary Pushpam Vs. Telvi Curusumary and Others*** reported in (2024) 1 ***MLJ 662 (SC)***, where the Hon'ble Supreme Court held, referring to Order 7 Rule 3 of Code of Civil Procedure, in a suit concerning immovable property when there is absence of identifiability of the suit property, the suit is liable to be dismissed. She would also place reliance on the decision of the Hon'ble Supreme Court in ***Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and Others*** reported in 2008 4 ***SCC 594***, where the Hon'ble Supreme Court discussed filing of suit for injunction simpliciter and also set out cases where declaration has to be necessarily prayed for and merely suing for injunction would not be maintainable. However, I have already found that there is no serious cloud on title with regard to the plaintiffs' property and the dispute is only with regard to North-South boundary and its measurements. The plaintiffs have not able to prove the same by letting in satisfactory oral and documentary evidence. The Trial Court has rightly dismissed the suit finding that the plaintiffs had not established how they get possession and what was



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the extent of the property to which they became entitled to and especially, the measurements, which alone was crucial to decide the issues in the suit.

22.Unfortunately, the First Appellate Court has held that the plaintiffs possession alone matters and the defendants having not challenged the patta issued to the plaintiffs, the non filing of the Sale Deeds under which the plaintiffs became owners was not fatal. The First Appellate Court has lost sight of the fact that the actual dispute was only with regard to measurements and not the possession in general.

23.It is the specific case of the plaintiffs that the plaintiffs are entitled to the suit property measuring 245 sq.m., and it has come out in evidence that the plaintiffs and the defendants are adjoining owners and the dispute was only with regard to North-South boundaries and not anything else. That being the case, the plaintiffs ought to have let in satisfactory oral and documentary evidence or at least sought for appointment of an Advocate Commissioner to measure the properties belonging to both the plaintiffs and the defendants, to establish their entitlement to the suit property. The First Appellate Court has overturned the well considered findings rendered by the Trial Court and erroneously placed the burden on the defendants to establish their entitlement when it was the plaintiffs who had approached the Court



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seeking a relief of permanent injunction, that too, based on patta and for reasons not known, suppressing the Sale Deeds under which the plaintiffs acquired title to the suit property subsequently, however, well before even the institution of the suit. Thus, I find that the plaintiffs were not entitled to the relief of permanent injunction as prayed for, having approached the Court hiding material facts and circumstances, especially, the Sale Deeds under which they acquired title even before filing of the suit.

24. For the above reasons, the judgment and decree of the First Appellate Court is liable to be set aside. In fine, the substantial question of law is answered in favour of the appellants herein. In the result, the Second Appeal is allowed. The judgment and decree dated 28.02.2020 made in A.S.No.184 of 2014 on the file of the Subordinate Judge, Arakonnam, is set aside and the judgment and decree dated 17.09.2014 passed in O.S.No.2 of 2006 on the file of the District Munsif, Arakonnam is restored on file. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

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



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P.B.BALAJI., J.

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Pre-delivery judgment made in
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