



S.A.No.1061 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1061 of 2021
and C.M.P.Nos.20149 and 20151 of 2021

A.Satheesh

...Appellant

Vs

K.Shanmuga Reddy

...Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.13 of 2017 dated 30.07.2021 on the file of the Subordinate Judge at Tiruvallur confirming the judgment and decree passed in O.S.No.50 of 2010 dated 30.06.2016 on the file of the District Munsif cum Judicial Magistrate at Uthukottai, Thiruvallur District.

For Appellant : Mr.M.L.Ramesh

For Respondent : Mr.N.R.Anantha Rama



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JUDGMENT

The plaintiff who has filed the suit for injunction seeking to restrain the defendants their men, agents and servants from trespassing into the suit property for digging a bore well or for any other purpose in O.S.No.50 of 2010 on the file of the District Munsif cum Judicial Magistrate, Uthukottai, is the appellant herein.

2. The facts are briefly set out herein below and the parties, for ease of understanding, are referred to in the same ranking as before the trial Court.

3. The plaintiff had filed the above referred suit, stating that the suit property is his family property and that since 1917, the plaintiff's family has been in peaceful possession and enjoyment of the said property. The patta in respect of the suit property also stands in the name of the plaintiff and his family members.



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4. The plaintiff would further submit that in an oral partition between the family members, the suit property and other properties were allotted to the share of the plaintiff and he has been in peaceful possession and enjoyment of the same. The plaintiff would further contend that his right and title to the suit property has been confirmed in an earlier suit by the learned District Munsif, Thiruvallur in O.S.No.338 of 1987 in which the mother of defendants 1 and 2 is one of the parties to the suit (4th defendant therein). The plaintiff would submit that defendants 3 and 4 are the supporters of defendants 1 and 2. Challenging the decree in O.S.No.338 of 1987, defendants 1 and 2 had preferred an appeal, which was not even numbered. The defendants had successfully dragged on the proceedings till the death of the first plaintiff therein, who was aged 91 years.



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5. The plaintiff would submit that defendants 1 and 2, with the active support of defendants 3 and 4, were attempting to trespass into the suit property for a week before the institution of the suit. They had also attempted to dig a bore well in one portion of the suit property. Therefore, the plaintiff has come forward with this suit in question.

6. It appears that the defendants 1 and 2 were called absent and set *ex-parte*. The fourth defendant alone had contested the suit. He had filed a written statement *inter-alia*, denying the allegations contained in the plaint. The fourth defendant would submit that he is not disputing the findings in O.S.No.338 of 1987, but calling him a trespasser is absolutely false. The properties were never under the direct cultivation and physical possession of the plaintiff. The property was leased out and the tenants are in possession of the same. The fourth defendant was in possession of the suit property as a tenant. He had executed a



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Muchilika in favour of the deceased first plaintiff and others. The lease deed has also been marked in the earlier suit O.S.No.338 of 1987. The earlier suit was dismissed, holding the fourth defendant to be a cultivating tenant under the deceased first plaintiff.

7. The fourth defendant would submit that he raised paddy in the suit land, which is ripe for harvesting. The contention that he had trespassed into the suit property is absolutely false as that he is a cultivating tenant has been upheld in the suit O.S.No.617 of 1989, which was tried alongside O.S.No.338 of 1987. The plaintiff has suppressed these facts. He would submit that the suit lacked a cause of action. Therefore, the suit has to be dismissed.

8. An additional written statement came to be filed by the fourth defendant once again, reiterating the allegations contained in the earlier written statement and also stating that the Will alleged to have been



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executed by the deceased first plaintiff in favour of the second plaintiff was not a genuine and valid will.

9. The trial Court had framed the following issues:

- 1. Whether the plaintiff is is possession and enjoyment of the suit property?*
- 2. Whether the Will dated 21.10.2003 is true, genuine and valid?*
- 3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
- 4. To what other relief?*

10. On the side of the plaintiff, three witnesses were examined and Exs.A1 to A18 were marked. On the side of the defendants, one Shanmugam was examined as D.W1 and Exs.B1 to B10 were marked. The learned Judge, taking note of Ex.A6-judgment in O.S.No.338 of



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1987 and the admission of P.W1 in his cross examination that the fourth defendant was a cultivating tenant under the deceased first plaintiff, proceeded to dismiss the suit. That apart, the learned Judge observed that the plaintiff has not proved that the fourth defendant has been subsequently dispossessed from the suit property. The learned Judge also observed that the plaintiff has not able to prove his exclusive possession of the property. The learned Judge, taking note of a few discrepancies in the evidence of P.Ws 2 and 3, held that the plaintiff had not fully discharged the burden of proving the genuineness and authenticity of the Will-Ex.A10. Consequently, the suit came to be dismissed. Aggrieved by the judgment and decree, the plaintiff had filed appeal A.S.No.13 of 2017 on the file of the Subordinate Judge, Tiruvallur and had also filed an application in I.A.No. 1 of 2019 for receiving the additional documents. This application was dismissed by the learned Judge stating that if the documents are admitted, the plaintiff should be given a chance to cross



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examine the witness. Ultimately, the learned Judge concurred with the finding of the trial Court with reference to possession and dismissed the suit. Challenging the same, the appellant before this Court.

11. When the mater had come up for admission, this Court had ordered notice to the respondent on 20.12.2021. Notice has been served and a counsel has also entered appearance on behalf of the respondent.

12. Heard both learned counsels and perused the materials available on record.

13. The plaintiff has instituted the suit on the ground that the suit property belonged to him and that defendants 1 and 2 had trespassed into the suit property with the help of defendants 3 and 4 a week before the institution of the suit. The defendants had attempted to dig a bore



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well in one portion of the suit property. The plaintiff had also submitted that he had earlier filed a suit O.S.No.338 of 1987 against the mother of defendants 1 and 2 for declaration and injunction. The suit was decreed in his favour. The fourth defendant had filed a written statement, *inter-alia*, denying the allegations that he has trespassed into the suit property. On the contrary, it is his contention that he is a cultivating tenant under the deceased first plaintiff and in physical possession of the property; that he is a cultivating tenant has been recognised in the earlier proceedings O.S.No.617 of 1989 which tried along with O.S.No.338 of 1987 which was filed by the plaintiff. Therefore, he would submit that the very basis upon which the suit has been filed is absolutely false since, admittedly, possession is with the plaintiff. An additional written statement also came to be filed wherein the fourth defendant had denied the truth and validity of the Will dated 21.10.2003. The fourth defendant would contend that the first plaintiff himself has no right or title over the suit property and did not have the



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right to execute the lease deed in favour of the defendants. Ex.A6 is the judgment in the suit O.S.No.338 of 1987. In this suit, it has been held that the fourth defendant is a cultivating tenant in respect of the suit property. Therefore, the basis on which the plaintiff has come to Court seeking a bare injunction is without any basis and the fourth defendant is the person who is in actual occupation of the suit property, which is evident from the perusal of Ex.A6. The second plaintiff had stated that the deceased first plaintiff had executed a Will in his favour. There were certain discrepancies in the evidence of P.Ws 2 and 2 who had been admitted as attestors. The lower appellate Court has observed that the second plaintiff had not fully discharged his onus of proving the validity and genuineness of Ex.A10-Will as per the procedures contemplated. Therefore, the second appeal is dismissed. While dismissing the suit, the following observations are made:

(i) The issue with reference to the validity of Ex.A10-Will is left open for consideration in the



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subsequent suit O.S.No.41 of 2016 which has been filed by the appellant herein on the file of the District Munsif, Uthukottai for declaration and injunction, where the issue is not only with reference to possession unlike the instant case.

(ii) The original Will-Ex.A10 shall be returned to the appellant, subject to filing a certified copy of the same.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.02.2024

Index: Yes/No
Speaking order/non-speaking order
srn



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To

1. The Subordinate Judge at Tiruvallur
2. The District Munsif cum Judicial Magistrate at Uthukottai,
Thiruvallur District.
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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