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A.S.No.219 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.02.2024	Delivered on .2024
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.219 of 2017

V.Nagarajan

...Appellant

Vs.

G.Krishnarajan (died)

1.V.Perumal

2.M.Dharmendran

P.S.Gopal Pillai (died)

3.G.Rajakumari

4.K.Indhumathi

5.Minor K.Swetha

6.Minor K.Vishali

(Minor 5th and 6th respondents represented by their mother Indhumathi, 4th respondent as per order of the District Judge No.II, Kancheepuram in I.A.No.498/2015 dated 21.09.2016.

7.The Assistant Executive Engineer,
TNEB, O & M,
Guduvanchery.

1/12



8. The Executive Engineer,
TNEB, O & M,
G.S.T.Road, Near Ford Company,
Maraimalai Nagar.

9. The Superintendent Engineer,
TNEB, O & M, G.S.T.Road,
Opposite New Bus Stand,
Chengalpattu Taluk,
Kanchipuram District.

...Respondents

Prayer: First Appeal filed under Section 96 of C.P.C. r/w. Order 41 and 41-A of C.P.C. and Order IV of the Madras High Court Appellate Side Rules, against the judgment and decree dated 23.03.2017 passed in O.S.No.234 of 2010 by the learned District Judge - II at Kancheepuram.

For Appellant : Mr.S.Mohan

For Respondents : Mr.J.Manoharan for R1 to R6
(R5 & R6 - Minors rep. by R4)
Mrs.J.Hemalatha Gajapathy for R7 to R9

J U D G M E N T

The defeated 1st defendant is the appellant herein. The brief facts led to filing of the above appeal in the nutshell is as under:-

The original plaintiffs G.Krishnarajan, V.Perumal and M.Dharmendran filed a suit in O.S.No.234 of 2010 for declaration of their



title and for recovery of possession. Pending suit, the said G.Krishnarajan / 1st plaintiff died hence, his legal heirs are brought on record. The suit was filed for declaration of plaintiffs' title to the 'A' schedule property and for the relief of permanent injunction restraining the 1st defendant from interfering with plaintiffs peaceful possession and enjoyment of the 'A' schedule property mentioned as ABCD in rough sketch other than B schedule EFGH mentioned property and for recovery of 'B' schedule property after removing the unauthorized construction put up by the defendant in the 'B' schedule property with a mandatory injunction directing the defendants 2 to 4 (Official Respondents) to disconnect the power supply as stated in the plaint.

2.The respondents / plaintiffs filed a suit in respect of patta land situated at No.112, Adhanur Village, comprised in S.No.342/2 New Sub divided S.No.684 and also on the part of residential plots lay out lies on the A.V.M.Nagar, DTP approved lay out in Adhanur Village under Plot Nos.52 & 53 to a total extent of 3582 Sq.ft. Sriperumbudur Taluk. It is alleged that the 1st defendant has trespassed into the property and put up the shed and using political influence, he has created bogus revenue document and obtained electricity power supply from the official defendants 2 to 4 and



hence, the relief.

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3. The 1st defendant has filed a written statement. He claimed as a bonafide purchaser for valid consideration from the real owner as early as in 1996. According to the written statement, he purchased land to an extent of 1,800 Sq.ft., (60 x 30), which was a vacant site at the time of the purchase. He also claimed that he has been residing there for more than 12 years. The Official defendants also filed a written statement.

4.The Trial Court has formulated the following issues for consideration:-

"1. Whether the plaintiffs are owners of the "A" schedule property ?

2.Whether the plaintiffs are entitle to permanent injunction against 1st defendant not to interfere in the peaceful possession and enjoyment of "A" schedule other than "B" schedule property ?

3.Whether the defendant is encroached in the "B" schedule property ?

4.Whether the plaintiffs are entitle to decree for declaration and recovery of possession as prayed for ?

5.Whether the plaintiffs are entitle to mandatory



injunction against D2 to D4 to disconnect the electricity connection given to D1 in "B" schedule property ?

6. To what reliefs the parties entitled ?"

5. At trial, the 1st plaintiff has examined himself as P.W.1 and one Tr.A.Sasikumar was examined as P.W.2 and Exs.A1 to A15 documents were marked on their side. On the defendants side, the 1st defendant Tr.V.Nagarajan was examined as D.W.1, one Tmt.Sivagami was examined as D.W.2, one Aravindhnan was examined as D.W.3, and Tr.Anbalagam was examined as D.W.4, one Tr.S.Baskar was examined as D.W.5, one Tr.V.Mohan was examined as D.W.6, one Tr.Rajendran was examined as D.W.7, one Damodharan was examined as D.W.8, and one Tmt.Parimalakumari was examined as D.W.9, and Exs. B1 to B24 documents were marked. Exs.C1 to C are marked as court exhibits.

6.After hearing the rival submissions, the following points for determination arose for consideration:-

"i) Whether the respondents / plaintiffs are entitled for the relief of declaration ?

ii) Whether the respondents / plaintiffs are entitled for



the relief of permanent injunction in respect of "A" schedule property ?

iii) Whether the respondents / plaintiffs are entitled to recovery of "B" schedule property ?

iv) Whether the respondents / plaintiffs are entitled for mandatory injunction against D2 to D4 ?"

7.From oral and documentary evidence adduced before the Trial Court, I find that the case of the plaintiffs purely raised upon Ex.A1 / sale deed dated 13.10.2008 and Ex.A2 / sale deed in favour of his Vendor, Ex.A3 / the Patta in favour of R.Narayanan / vendor of the plaintiff and Ex.A8 / patta copy in the name of the 1st plaintiff. It remains to be stated that the Trial Court, based upon the oral evidence of P.W.1 and documentary evidence of Executive Engineer from the Revenue Department namely, P.W.2 and Exs.A9 to A18 come to the conclusion that the plaintiffs have successfully demonstrated the title to the property on the strength of the Exs.A2 and A1 and they are in possession of the property based upon Exs.A3 and A8 and that Exs.A9 to A18 to explain that the revenue records namely, field measurement sketch, land measurement register sketch, chitta, patta, house tax receipts, electricity charges and house tax stands in the



name of the plaintiff.

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8. On the contrary, the appellant / 1st defendant resisted the case on the strength of the Ex.A16. A16 is not the sale deed, it is only a sale receipt issued by the authority in favour of the 1st defendant which is an unregistered document. Even in the said document, the respondent projected the case that he has purchased a vacant site 60 x 30 with boundaries. In the cross-examination, D.W.1 had admitted that it is a oral sale deed. He has not obtained any Patta. He is not aware of the survey number. He says that it is a poromboke land and he has not filed any objection to the Advocate Commissioner's report also assumes significance. D.W.9, the wife of the 1st defendant has categorically admitted that her husband has purchased only a poromboke land and not an approved lay out.

9. On a combined reading of D.W.9 and Ex.A16 shows that the appellant / defendant had purchased only a poromboke land and not patta land, and therefore, the same is not tallying with the Advocate Commissioner's report. It is a specific case of D.W.1 that he has not claimed any patta land, he has nor claimed any ownership on patta land and



therefore, the Trial Court has rightly come to the conclusion that suit property belongs to the plaintiffs and the alleged poromboke land is situated on the eastern side was purchased by the 1st defendant and the 1st defendant has no right or title over the suit 'A' schedule property. On appreciation of the evidence as discussed supra, this Court finds that the evidence rendered by the Trial Court does not suffer from any irregularity or illegality, warranting interference in the appellate stage. Accordingly, the said finding of the Trial Court is confirmed.

10. Coming to the decision with regard to relief of permanent injunction and recovery of possession, based upon the admission of D.W.1, the Trial Court has rightly come to the conclusion that the shed put up by the defendant within the land purchased by the plaintiffs, which is 'B' schedule property from D.W.1 & D.W.9, they are residing in the property from 2001. The suit was filed in the year 2008 and thus, within 7 years, the suit has been filed and therefore, they are not entitled for the relief of adverse possession or prescription of title by possession and the Trial Court has rightly come to the conclusion that the case projected by the defendant on enjoyment of the suit schedule property is within a short period, falling short



of the statutory period which is prescribed for prescription of title by long possession.

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11.The area of the encroachment as found in the Advocate Commissioner's report C1, C2 was not objected to by the defendant in the chief-examination or cross-examination of P.W.1 and therefore, the Trial Court has rightly come to the conclusion that shed put up by the defendant is within the land of the plaintiff and the suit having been filed within the period of limitation, they are entitled for recovery of possession and hence, finding rendered in this regard does not require any interference as the same does not suffer from any irregularity or illegality warranting interference at the appellate stage and therefore, the suit decreed as prayed for by the plaintiffs is well considered and well merited and does not warrant any interference and the appeal is devoid of merits.

12.In the result, this appeal suit in A.S.No.219 of 2017 is dismissed, the judgment and decree in O.S.No.234 of 2010 dated 23.03.2017 by the District Judge – II, Kanchipuram is hereby confirmed and the time for handing over the possession is within three months from the date of receipt



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of a copy of this order and in the event of execution petition being filed by the decree holder, the Executing Court shall complete the process within a period of four months for determining the Execution Petition. No costs.

Consequently, connected miscellaneous petitions, if any, are closed.

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Nuetral Citation :Yes/No



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To:-

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Kancheepuram.



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RMT.TEEKAA RAMAN, J.

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