



S.A.No.192 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.01.2024

Delivered on: 31.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.192 of 2017

and

C.M.P.No.4210 of 2017

Selvakuamari

...Appellant

Vs.

1.M.Yogavelu
2.M.Vijayakumar
3.M.Surulirajan
4.C.Sampath
5.C.Anandan
6.S.Anbu
7.S.Ravi
8.S.Kala

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 18.11.2016 made made in A.S. No.37 of 2006 on the file of the learned Subordinate Judge at Vellore, thereby reversing the Judgment and Decree dated 28.03.2016 made in O.S. No.1052 of 2009 on the file of the learned



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District Munsif at Katpadi, Vellore District.

For Appellant : Mrs.Dakshayini Reddy,
Senior Counsel for
Mr.C.Mahendran

For Respondents : Mr.F.Sebastin for R1 to R3

No appearance of R4 to R8

JUDGMENT

The unsuccessful plaintiff in a suit for permanent injunction is the appellant herein.

2. The plaintiff filed O.S.No.1052 of 2009, seeking the relief of a permanent injunction to restrain the defendants from in anyway interfering with or attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property, including hindering construction of the house, by blocking free ingress and egress thereto and therefrom or disrupting any of the amenities etc., and for costs.

3. The case of the plaintiff before the Trial Court was that the plaintiff



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had purchased the suit property under a registered sale deed dated 11.12.2003 for valuable sale consideration and that she had also obtained permission to construct a residential house vide building license dated 31.03.2004, which was also subsequently renewed on 02.04.2007. The plaintiff has obtained electricity service connection and has been in absolute possession and enjoyment of the suit property. The defendants, utter strangers to the suit property, having no right or interest over the said property were colluding with some Government officials and attempting to illegally trespass into the suit property. Hence, the suit for permanent injunction.

4. The suit was resisted by the 2nd defendant by filing a written statement which was adopted by the other defendants. The crux of the defence pleaded before the Trial Court was that the plaintiff's sale deed was not valid since the vendors of the plaintiff became entitled to the property under a gift deed dated 25.08.1966, which explicitly prohibited alienation of the suit property. Further, the suit is bad for non-joinder of Government which was a necessary party and also being an attempt to harass the



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defendants and their community people who had a right to use the suit property as a passage.

5. The Trial Court framed an issue as to whether the plaintiff is entitled to the relief of permanent injunction.

6. Before the Trial Court, the plaintiff examined herself as P.W.1 and one Mr.P.Seetharaman was examined as P.W.2. Exs.A1 to A19 were marked on the side of the plaintiff. On the side of the defendants, three persons viz., Vijayakumar (2nd defendant), Anandan (5th defendant) and one S.Mani were examined and Exs.B1 to B3 were marked. Ex.X1 viz., the resolution passed by the Management Committee dated 08.11.2003 was marked as Ex.X1. The Trial Court, after analysing the oral and documentary evidence adduced by the parties, came to the conclusion that the plaintiff was in physical possession of the suit property and on the pleadings and evidence, the plaintiff had established and made out a case for grant of a permanent injunction as prayed for.



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7. On appeal, however, the First Appellate Court reversed the findings of the Trial Court and dismissed the suit, as against which the plaintiff has preferred the above Second Appeal.

8. This Court on 18.01.2018, while admitting this Second Appeal, framed the following two substantial questions of law:

“ a) Whether the Lower Appellate Court is right in not granting the relief of permanent injunction based on Ex.A1 to A5, which would support the contention of the appellant/plaintiff in respect of the suit property?

b) When Exs.A1 to A19 clearly do fortify the case of the plaintiff whether the First Appellate Court is right in dismissing the suit for bare injunction?”

9. I have heard learned Senior counsel Mrs.Dakshayani Reddy for Mr.C.Mahendran, learned counsel for appellant and Mr.F.Sebastian, learned counsel for the respondents 1 to 3, who also filed his written arguments dated



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04.01.2024. Additionally, I have also gone through the original records, including the pleadings and deposition of the parties as well as the documentary evidence adduced by both the parties before the Trial Court as well as the First Appellate Court. Infact, before the First Appellate Court, the following additional documents viz., Exs.A20 to A22 were marked, which are certified copies of the order in W.P.No.22736 of 2009; certified copy of decree in O.S.No.1155 of 2009 and certified copy of judgment in O.S.No.1155 of 2009 on the file of District Munsif Court, Katpadi.

10. The learned Senior counsel for the appellant would focus her arguments, attacking the findings of the First Appellate Court and contended that when the defendants are not claiming any right, title or interest in the suit property, the suit for bare injunction was very much maintainable and the First Appellate Court erroneously held that the suit was not maintainable without a prayer for declaration. She would also contend that even though there was a condition in the gift deed in favour of the vendor of the plaintiff, the condition regarding alienation was void and the gift was very much valid.



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In support of her said contention, she would place on the decision of the learned single Judge of this Court in S.A.(MD).No.498 of 2006.

11. With regard to the discrepancy in extent of the suit schedule property as found by the First Appellate Court, the learned Senior counsel would state that the plaintiff had filed sufficient satisfactory documentary evidence, including the patta in Ex.A13 and FMB in Ex.A14 which correlated with her sale deed in Ex.A5. She would also invite my attention to the boundaries in Exs.A4 and A5 and put forth her argument that when the boundaries in these documents matched with Ex.A14 and patta issued, it has to be held that boundaries would prevail over the extent and minor discrepancy in the extent conveyed in favour of the plaintiff cannot be held to be fatal. She would also rely on the revenue records viz., Exs.A13 and A14 to conclude her submissions that when the revenue records clearly proved possession of the plaintiff to the larger extent of 1968 sq.ft as purchased by the plaintiff, the First Appellate Court erroneously dismissed the suit, reversing the well considered finding of the Trial Court.



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12. Per contra, the learned counsel for the respondents 1 to 3 would submit that when the gift deed had specifically included a clause on restraint on alienation of the property, the sale deed in favour of the plaintiff itself was invalid and no rights can be claimed under such a sale deed. He would further submit that this Court in Writ proceedings, which were marked as exhibits at the appellate stage, had clearly held that the plaintiff was blocking the public pathway and therefore the same should also be taken into account and the findings of the First Appellate Court have to be confirmed.

13. To answer the substantial questions of law, the question that is to be seen is whether the plaintiff has proved to be in physical possession of the suit property in order to entitle herself to the relief of permanent injunction. In this regard, I have gone through the records, especially documents Exs.A4,A5,A13,A14 and A20 to A22. Ex.A4 is the gift deed dated 25.08.1966 in favour of Periyar Self Respect Movement represented by its President, E.V.Ramaswamy Periyar. Ex.A5 is the sale deed in favour of the



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plaintiff dated 11.12.2003. The plaintiff has purchased the suit property from Periyar Self Respect Propaganda Institution, represented by Mr.K.Veeramani, who became the owners of the said property under Ex.A4. No doubt, in Ex.A5, the area conveyed is mentioned as 1968 sq.ft and in Ex.A4 though there is no mention of the total extent of the property. On calculating the extent from the admeasurements, the extent comes to only 1704 sq.ft. The question therefore is whether the Periyar Movement could convey a larger extent viz., 1968 sq.ft in favour of the plaintiff. The next question is also whether when there was a clause in Ex.A4 imposing a restraint on alienation, whether the sale in favour of the plaintiff could be held to be valid.

14. As rightly contended by the learned Senior counsel for the appellant, there cannot be a restriction on the power of alienation in a gift deed. Sec.10 of the Transfer of Property Act, 1882 deals with conditions restraining alienation. In terms of the said Section, where a property is transferred subject to a condition or limitation, which absolutely restrains the transferee from parting with or disposing of his interest in the property, then



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such condition or limitation is void. This Court in S.A.(MD).No.498 of 2006 dated 09.02.2023 has held that a condition in the nature of taking away the power of alienation to the donee is void in the eye of law and such condition would be hit by provisions of Sec.10 of the Transfer of Property Act.

15. I am in agreement with the ratio laid down by the learned single Judge in S.A.(MD)No.498 of 2006 and the same would also squarely apply to the facts of the present case. Hence, the sale deed in favour of the plaintiff is held to be valid. The next question that follows is with regard to the possession of the suit property. According to the learned Senior counsel for the appellant, the plaintiff has produced more than sufficient materials to establish the factum of physical possession of the suit property being with the plaintiff.

16. Per contra, the learned counsel for the respondents 1 to 3 would submit that the documents relied on by the plaintiff were pertaining to a different property and not to the suit property and the Trial Court has



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erroneously relied on the said documents to grant a decree in favour of the plaintiff.

17. In this regard, I have perused the relevant exhibits. In Ex.A4, the property gifted to Periyar Movement is mentioned as the property comprised in S.No.265. In Ex.A5-sale deed in favour of the plaintiff, the property conveyed in favour of the plaintiff is also mentioned as S.No.265. In Ex.A5 sale deed the property is mentioned as being comprised in new sub-divided S.No.428/4 and situated in Anna Street. In Ex.A13 patta, there is mention of new S.No.428/4 and the said patta has been issued to the plaintiff. The admeasurements of the property are also mentioned on the reverse of the patta No.3412 in Ex.A14. In resettlement register of the concerned village, there is a reference to the old S.No.265 as Grama Natham lands and the FMB sketch for S.No.428 issued by Head quarters Deputy Thasildar, Katpadi confirms the existence of sub-divided S.No.428/4.

18. On a conjoint reading of the above documents along with the



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description of the suit property in the plaint, it is seen that the property mentioned in Exs.A4,A5, A13 and A14 are referring to only the suit schedule property and not a different property as contended by the counsel for the respondents. Therefore, there is no difficulty in holding that in furtherance of the sale deed Ex.A5, the plaintiff has been in physical possession and enjoyment of the suit schedule property. Further, it is also seen from the planning permissions accorded to the plaintiff vide Exs.A6 and A7, the plaintiff is in possession of the property comprised in S.No.428/4 situated in Anna Street, Katpadi, in respect of which property, planning permission has been accorded to the plaintiff. Therefore, there is no difficulty in holding that the plaintiff is in legal physical possession. The same is also fortified by the electricity service connection issued in the name of the plaintiff.

19. Reliance is next placed on the additional exhibits marked before the First Appellate Court. One another relevant circumstance that I find is that even in Ex.B2, the interim order passed by the Writ Court, the defendants themselves have admitted that the property bears Old S.No.265 and



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New.S.No.428/4 which only the case of the plaintiffs.

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20. The next contention raised by the respondents 1 to 3 is that in the Writ Petition, the husband of the plaintiff was cited as a respondent and interim order was also granted from proceeding with the construction. However, I find that the Writ Petition was subsequently disposed of in and by an order dated 25.07.2012, copy of which has been marked as Ex.A.20 before the First Appellate Court.

21. The First Bench of this Court has recorded the fact that though the extent of 1968 sq.ft comprised in the subject S.No.265/4 and new S.No.428/4 was reflecting the said property to be a Natham common pathway, several sale transactions have taken place between 1955 to 2003 and that an extent of 1701 sq.ft was a private property and only an extent of 267 sq.ft was utilised as pathway leading from Thiruvalluvar street to Mandaveli. The Hon'ble First Bench also recorded the statement of Tahsildar that the encroachments would be removed in accordance with law. The Writ petition was disposed of directing encroachments, if any to be removed by following due process of



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law.

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22. Thus, in view of the final order passed in the above Writ Petition, it is clear that the plaintiff's possession cannot be disturbed, except by due process of law. If the plaintiff's property is ultimately found to be an encroachment or part of it is actually forming part of a common pathway for accessing Mandaveli through Thiruvalluvar Street, it is always open to the authorities to take action. Infact, they have already undertaken so before the First Bench of this Court. Recording the said undertaking alone the Writ Petition also came to be disposed of on 25.07.2012.

23. Having found that the plaintiff has been in physical possession of the subject property, the possession of the plaintiff can be disturbed or interfered with only by due process of law and not otherwise. The specific case of the plaintiff is that the defendants who have absolutely no iota of right or interest in the subject property are intermeddling with her rights in the suit property. The Trial Court has rightly decreed the suit as prayed for by the plaintiff.



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24. However, in view of the order passed by the Hon'ble First Bench of this Court in W.P.No.22736 of 2009, I am constrained to modify the said relief of permanent injunction restricted to being subject to the due process of law that may be initiated by the statutory authorities in pursuance of the order passed in W.P.No.22736 of 2009 dated 25.07.2012. However, the First Appellate Court has erroneously found that the identity of the property is not the same without considering the material documents available on record. Further, the First Appellate Court has also held that the suit for permanent injunction simpliciter without the relief of declaration is also not maintainable. The said finding is also liable to be called in question for the simple reason that the defendants are not persons who have any valid title or interest in the suit property. It is only their case that a portion of the property is a common pathway and that public have a right to use. In such circumstances, in the light of the registered sale deed in favour of the plaintiff and the factum of physical possession of the entire 1968 sq.ft being with the plaintiff, which has been satisfactorily proved by oral and documentary evidence, I do not find it a



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case where the plaintiff would have to necessarily seek for declaration of his title and not a mere relief of permanent injunction

25. For all these reasons, I am constrained to interfere with the judgment and decree of the First Appellate Court in A.S.No.37 of 2016 on the file of the Subordinate Judge, Vellore dated 18.11.2016.

26. In fine, the Second Appeal is partly allowed and there shall be a permanent injunction restraining the defendants, their men or agents or anybody claiming under them, from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property, except by the due process of law and subject to the legal action that may be taken by the statutory authorities in furtherance of the order dated 25.07.2012 in W.P.No.23766 of 2009. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.01.2024.

Internet:Yes
Index:Yes/No

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Neutral Citation:Yes/No
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To

1. The Subordinate Judge at Vellore
2. The learned District Munsif at Katpadi



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P.B.BALAJI, J.,
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Pre-delivery Judgment in
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