



S.A.No.566 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 566 of 2022
&
C.M.P.No.11269 of 2022

1.Muthayee

2.Jayanthi

...Appellants

Vs.

1.A.V.Rajendran

2.Santhamani

3.Selvi

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Sub Judge, Tiruchengode, Namakkal District made in A.S.No.21 of 2014



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dated 31.10.2019 reversing the Judgement and Decree passed by the learned Additional District Munsif, Tiruchengode, Namakkal District in O.S.No.238 of 2008 dated 11.04.2014.

For Appellants : Mr. K.Muthuganesapandian.

J U D G M E N T

The defendants 1 and 4 are the appellants before this Court challenging the Judgement and Decree of the Subordinate Judge, Tiruchengode in A.S.No.21 of 2014, in and by which the learned Judge has reversed the Judgement and Decree passed by the Additional District Munsif, Tiruchengode in O.S.No.238 of 2008. The facts are briefly set out herein below and for easy understanding, the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff has filed the suit in question for declaration that the plaintiff is the absolute owner of the 1st Item of the suit property,



the encroached portion in S.No.187/2B which is marked in yellow in the plan and to direct delivery of possession to the plaintiff after removing super structure put up in this encroached portion and for permanent injunction restraining defendants, their successors, heirs and agents from digging trench to lay pipeline thereby interfering with the plaintiff's peaceful possession and enjoyment of the 2nd item of the property.

3. The plaintiff would submit that the defendants 2 to 4 are the daughters of the 1st defendant and late Sengodan. The suit property is the ancestral property of the plaintiff. The properties situate in the then S.No.187/2 of Pallipalayam Village and some other properties were allotted to the share of the plaintiff's father Valliyannan under a registered partition deed dated 19.01.1948. This property was taken between the plaintiff's father and his father S.Velappa Gounder and his brother Rangasamy and Gopalsamy. The total extent in this survey number was an extent of 5.21 acres.



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4. Thereafter, the Mettur Irrigation canal project was implemented and for the purpose of laying canal, lands were acquired by the Government on the North West corner and thereafter the property comprised in S.No.187/2 was subdivided as S.No.187/2A (which was the lands acquired by the Government) and the remaining lands belonging to the plaintiff was subdivided as S.No.187/2B, measuring an extent of 2.09.0 Hectare. These lands also comprised a Well and the plaintiff was cultivating his lands in S.No.187/2B through Mettur Canal water and the available Well water.

5. It is the case of the plaintiff that they had planted Coconut Trees on the Eastern and Northern side and also near the Well. The plaintiff's family were raising paddy and other crops depending upon the availability of water. On 01.10.1981, Valliyannan, the plaintiff's father had died intestate leaving behind him surviving the plaintiff,



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his son, his wife Sreerangammal and daughters Saroja and Mallika.

Since there was difficulty in enjoying the properties in common the plaintiff's mother and sisters had released their right in the property in favour of the plaintiff's family for a sum of Rs.75,000/- and a general release deed dated 12.02.2005 was executed in favour of the plaintiff.

6. The plaintiff would submit that the revenue records stand in his name and he has been remitting kist to the Government regularly. Therefore, the plaintiff is the absolute owner of the property comprised in S.No.187/2B. The plaintiff would submit that the defendants are residing in a house in the property described as Oor Natham comprised in S.No.453/5 of Samayasangili Agraharam Village. These lands are situate adjacent and to the east of the plaintiff's property in S.No.187/2B of Pallipalayam Village. When the plaintiff had attempted to put up a compound wall around his property, particularly in the eastern boundary, the defendant and her men made attempts to stall the construction claiming that they own



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lands in the plaintiff's properties in S.No.187/2B.

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7. The plaintiff would submit that the 1st defendant filed O.S.No.338 of 2007 for permanent injunction against the plaintiff based on false allegations. The plaintiff on entering appearance in the above matter had taken out an application for appointing Advocate Commissioner to measure the property of the defendant herein and the plaintiff's land in S.No.187/2B and to fix boundaries between the two.

8. The Advocate Commissioner was appointed in the above suit to execute the warrant in the lines of the prayer made in the said application. The Advocate Commissioner had visited the suit property in the suit O.S.No.338 of 2007, measured the property with the qualified surveyor and Village Administrative Officer and filed his report.



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9. The Advocate Commissioner had submitted his report stating that the defendant herein who was the plaintiff in that suit had encroached the plaintiff's land in S.No.187/2B which has been shown as yellow in the plan drawn to scale. The Advocate Commissioner had also found that the defendant had encroached 700 sq.ft., of the plaintiff's property in S.No.187 / 2B.

10. The plaintiff would submit that in November 2006, the defendants were attempting to construct upon the encroached portion. The defendants had also put up construction in this encroached portion. This construction is illegal and the defendants are therefore bound to hand over vacant possession after removing illegal construction put up thereon.

11. The plaintiff would submit that while so on 02.09.2008, the 1st defendant attempted to dig a trench in the portion coloured green in



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the plaintiff plan for laying pipeline from their lands situate to the North of the plaintiff's property in S.No.187/2B to her house. Therefore, the plaintiff has come forward with the suit in question.

12. The defendant had denied the plaintiff's claim and averments contained therein. The defendant would deny the Commissioner's report regarding their encroached extent of 700 Sq.ft., in the suit property, however, it has to be noted that no objection had been filed by the defendant to the Advocate Commissioner's report.

13. The defendant would deny that they had encroached into the property in the year 2006. The defendant would submit that during her father-in-law's time in the year 1960, a house was constructed. The defendant would further submit that the plaintiff did not seek the proper relief and the suit has been filed belatedly. The defendant



would also plead adverse possession and therefore sought for the dismissal of the suit.

14. The Trial Court had framed the following issues:

“1. Whether the plaintiff is entitled to the declaration and possession as prayed for?

2. Whether the plaintiff is entitled to a permanent injunction as prayed for?

3. To what other relief?

15. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.10. The 1st defendant examined herself as D.W.1 and Ex.B1 to Ex.B.5 were marked on the side of the defendants.

16. The learned Judge had partly allowed the suit by dismissing the relief for declaration and recovery of possession in respect of the 1st item of property and decreed the suit permitting the plaintiff to



claim damages in respect of the portion of the property encroached by the defendant and granting injunction in respect of the 2nd Item of the property.

17. Challenging the said Judgement and Decree, the plaintiff had filed A.S.No.21 of 2014 on the file of the Sub Court, Tiruchengode. This decree was not challenged by the defendants with reference to the portions decreed by the Trial Court.

18. The Appellate Court reversed the Judgement and Decree of the Trial Court in so far as it related to the relief of declaration and mandatory injunction. The learned Judge has relied upon the report of the Advocate Commissioner in the earlier suit O.S.No.338 of 2007 who had taken the assistance of the Village Administration Officer and the Block Development Officer to hold that the defendants have encroached into the plaintiff's property. Therefore, the learned Judge had allowed the appeal which has been filed challenging the



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disallowed portion of the Judgement and Decree in O.S.No.238 of 2008. In short the plaintiff's suit was decreed. Challenging the same this Second Appeal has been filed.

19. Heard the learned counsel for the appellants who made his submissions for admitting the Second Appeal.

20. The suit has been filed to declare that the suit 1st item of the property belongs to the plaintiff and to remove the constructions put up by the defendant in the 1st item of the property and to handover vacant possession of the same to the plaintiff and for an injunction restraining the defendants from in any way interfering with the plaintiff's enjoyment of the suit 2nd item of the property.

21. The records would show that the defendants had earlier filed a suit in O.S.No.388 of 2007 against the plaintiff herein for a bare



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injunction restraining the defendant / plaintiff herein from putting up compound wall in his property in S.No.187/2B. The defendant owned lands in S.No.435/5 of Samayasangili Agraharam Village. These lands are situate to the east of the plaintiff's land in S.No.187/2B. In that suit, the plaintiff herein had filed I.A.No.1160 of 2007 to appoint Advocate Commissioner to demarcate boundaries of both S.No.187/2B of Pallipalayam Village and S.No.435/5 of Samayasangili Agraharam Village.

22. The Advocate Commissioner has inspected the two properties and demarcated the boundaries with the help of surveyor. The Advocate Commissioner had found that the defendants have encroached and extent of 700 sq.ft., in the suit 1st item of the property. The encroachment was marked in yellow colour in the Advocate Commissioner's plan. It was also found that the encroachment has been done in the year 2006.



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23. The Trial Court had partly decreed the suit. The relief of declaration and recovery of possession was dismissed, in lieu of which the learned Judge had directed the plaintiff to file a suit for damages. The relief of injunction with reference to the 2nd item of the property was granted. Challenging the disallowed portion, the plaintiff had filed A.S.No.21 of 2014. The Lower Appellate Court had reversed the Judgment and Decree of the Trial Court stating that in the earlier suit O.S.No.338 of 2007, the Court had found that the defendant herein had encroached into the plaintiff's property. The said Judgement and Decree has not been challenged by the defendant and has attained finality. Therefore, the learned Lower Appellate Judge had allowed the appeal and decreed the suit for the relief of declaration and recovery of possession. It is this Judgement and Decree that has been challenged in this Second Appeal.

24. The present suit is only a sequel to the earlier suit, O.S.No.338 of 2007, wherein, the present plaintiff was a defendant.



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In the earlier suit, the Advocate Commissioner who had been appointed had filed a report clearly stating that the defendant had encroached an extent of 700 sq.ft., into the plaintiff's property. The encroachment had also been demarcated in his plan. The extent of the encroachment was known to the plaintiff only after the Judgement and Decree in the earlier suit. This suit is a sequel to the earlier suit since the defendant had attempted to dig a trench and lay a pipeline through the plaintiff's property in addition to the encroachment. The encroachment had taken place in the month of November 2006.

25. The Lower Appellate Court had discussed the evidence on record and the admissions of the defendant and set aside the Judgement and Decree of the Trial Court with reference to the relief of declaration and recovery of possession.

26. I see no reason to interfere with the above Judgement and



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Decree. Accordingly, the Second Appeal is dismissed. Consequently,
the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The Sub Judge,
Tiruchengode,
Namakkal District

2.The Additional District Munsif,
Tiruchengode,
Namakkal District.

P.T. ASHA, J,

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