



S.A.No.98 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.98 of 2021
and
C.M.P.No.2112 of 2021

V.Jaiganesh

... Appellant

Vs.

1. Jaya Prakasha Mala
2. Joseph Anand
3. Jansirani
4. Sangeetharani
5. Divya Kavirajan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 08.03.2019 in A.S.No.287 of 2018 passed by the learned XVIII Additional Judge, City Civil Court, Chennai., confirming the judgment and decree of O.S.No.9682 of 2009 dated 28.03.2018 passed by the learned XV Assistant Judge, City Civil Court, Chennai.

For appellant	: Mr.J.R.K.Bhavanantham
For R1	: Mr.I.Rathinavel
For R2 to R5	: Mr.K.M.Mohamed Ziauddin



JUDGMENT

The plaintiff in a suit for bare injunction and mandatory injunction is the appellant herein. The plaintiff's suit was dismissed and the appeal filed by him was also dismissed.

2. The facts are set out in a nutshell hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.9682 of 2009 on the file of the XVIII Assistant City Civil Court, Chennai, for the following reliefs:

(a) for grant of permanent injunction restraining the defendants, their agent, servant, husband, any person claiming through her from interfering in any manner with the plaintiff's possession of the property measuring 17.6 meters east to west on the northern side and 1 meter north to south situated at northern side of the plaint 'A' schedule and marked as ABCD in the plaint sketch and morefully described in



the plaintiff 'B' schedule and using the 'B' schedule property for ingress and egress for the defendant's property at No.359, Anna Salai, Sashtri Nagar, Chennai-39 to have access to Anna Salai to his house and *vice versa*.

(b) for grant of mandatory injunction directing the defendants and any persons through her to remove the iron rod fabrication which is meant for laying concrete slab and the obstructions overlapping the plaintiff 'B' schedule property and shown and marked as ABCD in the plaintiff sketch;

(b)(i) for grant of mandatory injunction directing the defendants, any persons authorized by her agent, servants and any persons claiming through her to remove the grilled gate installed in the western side of the 'B' schedule property facing Anna Salai, Sashtri Nagar, Vysarpadi, 'B' schedule property (amended as per order dated 23.02.2018 passed in I.A.No.2176 of 2018) and remove the superstructure put up by the first defendant in the eastern side of the B schedule property of an extent of 5.4 meters in the 1 meter passage belonging to the plaintiff in the place of 2 imm iron sheets horizontally



running east to west touching the wall of the plaintiff property on the northern side. (amended as per order dated 22.12.2017 passed in I.A.No.14361 of 2017).

2.2. It is the case of the plaintiff that he had become the owner of the superstructure bearing Door No.360, Anna Salai, Shastri Nagar, Chennai-600 039 measuring an extent of 775.6 sq.ft. under a registered sale deed dated 05.09.2005 along with the possessory title over the site of an extent over 1,049 sq.ft. comprised in Survey No.181 as per the patta dated 12.06.2009 issued by the Tahsildar, Purasawalkkam -Perambur Taluk, Chennai – 11 admeasuring east to west on the northern side 17.6 meter, east to west on the southern side 8.3 + 9.8 meters, north to south on the eastern side 3.4 meters and north to south on the western side 5.8 meters and morefully described in the plaint 'A' schedule property. The plaintiff would submit that the defendants are the owners of the premises bearing Door No.359, Anna Salai, Shastri Nagar, Chennai – 600 039 which is situate on the northern side of the plaint 'A' schedule property.



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2.3. The plaintiff would submit that pursuant to G.O.Ms.No.565/66 dated 05.03.1966 and G.O.Ms.No.854/2006 dated 30.12.2006, the Tahsildar, Perambur-Purasawalkkam Taluk, Perambur, Chennai – 600 011 had granted patta to him for the site measuring an extent of 1,049sq.ft. The patta was granted on condition that the ground rent of Rs.100/- shall be payable annually on every 15th of July and that the site was assigned for using it for residential purposes. The terms of the assignment would further state that within 12 months from the date of assignment, the patta holders should construct a permanent superstructure and the property could be alienated only to the citizens of India and if it is alienated to persons other than citizens of India, prior permission should be obtained from the Government.

2.4. When the patta was granted to the plaintiff, the defendant had put up a temporary superstructure with asbestos sheet. Later, the defendant had removed the asbestos roofing and converted the front portion as shop. On 16.09.2009 at 9.30 a.m., the first defendant had commenced construction work by removing asbestos roof on her



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property. The masons started installing centering board for laying concrete roof on the premises and on 17.09.2009, she had started fabrication of the iron rods for laying a concrete roof by extending the same touching the northern wall of the plaint 'A' schedule property over the plaint 'B' schedule (northern side setback portion of the plaintiff's property). The plaintiff immediately lodged a complaint with the local police station. The plaintiff would submit that the defendant had no right or interest over the 1 meter * 17.6 meters which is the northern side setback portion morefully described in the 'B' schedule.

2.5. The plaintiff would submit that the defendants had installed a grilled iron gate on the western end of the plaint 'B' schedule property thereby cutting the access of the plaintiff. That apart, she has also installed 2 mm iron sheets horizontally running east to west which touch the wall of his property on the southern side of the 'B' schedule property. Therefore, the plaintiff has come forward with the suit for the reliefs claimed therein.



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2.6. The defendant filed a written statement denying the allegations contained in the plaint and contended that the plaintiff has no right to the property which was in the possession and enjoyment of the defendant alone. The defendant would submit that no commercial construction has been put up by him and she did not engage in any unlawful activities of land grabbing. The defendant would further submit that the plaintiff has right only to the extent of 775.6 sq.ft. and not 1,049 sq.ft. Even though the patta has been issued to the defendant only for the extent of 67 sq.mts., the plaintiff cannot seek relief against the defendant regarding the 'B' schedule property.

2.7. The defendant has also filed an additional written statement *inter alia* contending that the 'B' schedule property is not a common passage and the plaintiff has no right of access to this area. The possession of this 'B' schedule property is only with the defendant and the Advocate Commissioner's report also confirms the said fact. The defendant would submit that even prior to this suit, there was a grilled iron gate which is reflected in the Advocate Commissioner's report and



it is not the one installed or put up by the defendant during the pendency of this suit. The defendant has filed two other additional written statements and in the final additional written statement, she has taken a plea that the lands in Sassthri Nagar were allotted to Burma repatriates and the same can be allotted only to the Burma repatriates. The plaintiff, admittedly, is not a repatriate and therefore, he cannot purchase the land and as a result, he has not have perfected title to the suit property. Therefore, the defendant sought for the dismissal of the suit for reliefs claimed therein.

TRIAL COURT:

3. The Trial Court, on considering the pleadings, has framed issues which are detailed hereinbelow:

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
- 2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?*
- 3. To what other relief the plaintiff is entitled to?”*



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4. The plaintiff examined himself as P.W.1 and marked Exs.A1 to A10 and the first defendant examined himself as D.W.1 and marked Exs.B1 to B3. The Advocate Commissioner's report was marked as Exs.C1 and C2.

5. The Trial Court held that under Ex.A1 which is a copy of the registered sale deed dated 05.09.2005 executed by one Angeline Victor in favour of the plaintiff, the property conveyed was to an extent of 775.6 sq.ft. However, Ex.A3 - patta would indicate that the patta has been granted for an extent of 1,049 sq.ft. which is over and above the extent purchased by him. The learned Judge has also held that except for the area conveyed by the sale deed, the remaining area is deemed to be the property of the Government. Further, any encroachment in the 'B' schedule property has to be dealt with by the Government.

6. The learned Judge has also taken note of the report of the Advocate Commissioner which clearly shows that the extent of land



allotted to the plaintiff as per the patta has not been encroached upon.

The learned Judge has taken note of admission of P.W.1 that even prior to the purchase, the defendant has been in possession of the 'B' schedule property. Thereby, after analysing the evidences on record, the Learned Judge has dismissed the suit.

LOWER APPELLATE COURT:

7. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.287 of 2018 before the learned XVIII Additional Judge, City Civil Court, Chennai.

8. The learned Judge has also confirmed the judgment and decree of the Trial Court.

10. Aggrieved by the same, the plaintiff is before this Court. When the matter had come up for admission, notice was ordered to the respondents, who are now before this Court.



11. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

12. The plaintiff has come to the Court contending that he is in enjoyment of an extent of land, which, as per patta measures 17.6 meters east to west on the northern side, 8.3 + 9.8 meters east to west on the southern side, 3.4 meters north to south on the eastern side and 5.8 meters north to south on the western side, totally admeasuring an extent of 1,049 sq.ft.

13. The Advocate Commissioner's report which has been marked as Exs.C1 and C2 clearly sets out the measurement of the plaintiff's property as follows:

“Measurement of Plaintiff's house:

In the West: North to South - 5.55 m

In the East; North to South – 3.4 m

In the South; East to West

In the North: East to West - 17.7 m”



13.1. Likewise, the defendant's property measures as follows:

“Measurement of defendant's house:

North to South on the western side - 3.85 m

North to South on the eastern side - 3.09 m”

This also tallies with the patta granted to the defendant where it is stated that the property for which patta has been granted to the defendant measures 4 meters north-south on the eastern side, 3.2 meters north-south on the western side, 12 + 7.5 meters east-west on the northern side and 17.6 meters east-west on the southern side.

14. The Advocate Commissioner's report would indicate that the parties are in enjoyment of their respective extent for which they have obtained patta and 'B' schedule property does not form part of either the plaintiff's or the defendant's property. The Trial Court has held that this extent belongs to the Government. Considering the fact that the plaintiff has not sought for declaration and has not been able to prove his right to the suit property, both the Courts below have rightly dismissed the suit and I see no reason to interfere with the findings of



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the Courts below. The plaintiff has not made out any substantial question of law.

15. However, taking note of the fact that the Courts below have held that the 'B' schedule property does not belong to both the plaintiff and the defendant and it only belongs to the Government, both the parties shall not put up any further construction on this space which has been described as the 'B' schedule property.

With the above observation, this second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. However, there shall be no order as to costs.

30.01.2024

Index : Yes/No

Speaking order/non-speaking order

ssa

To

1. The XVIII Additional Judge, City Civil Court, Chennai.

2. The XV Assistant Judge, City Civil Court, Chennai.

3. The Section Officer, V.R. Section, High Court, Madras.

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P.T.ASHA, J.,

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