



S.A.No.228 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.228 of 2024
and C.M.P.Nos.7482 and 7483 of 2024

Judgment reserved on 16.04.2024	Judgment pronounced on 22.04.2024
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T.Senthil

... Appellant

VS.

S.Kandan

... Respondent

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 02.03.2023 passed by the Subordinate Judge at Tiruvottriyur in A.S.No.67 of 2022 in confirming the Judgment and Decree dated 06.04.2016 passed in O.S.No.225 of 2010 by the District Munsif Court at Tiruvottriyur.

For Appellant : Mr.P.Balamurugan

J U D G E M E N T

The defeated defendant is the appellant. The respondent/plaintiff filed a suit in O.S.No.225 of 2010 before the District Munsif Court, Thiruvottiur



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seeking for permanent injunction against the defendant in respect of the suit property on the strength of Ex.A1-Sale Deed dated 25.08.2000 and also Ex.A2-Tiruvottriyur Town Survey Field Register dated 28.08.2001.

2. The appellant/defendant resisted the relief of permanent injunction sought for by the respondent/plaintiff filed a written statement alleging that he is a owner of the suit property on the strength of Ex.B2-Sale Deed dated 26.08.2010 and also Ex.B3-Tiruvottriyur Town Survey Field Register dated 21.10.2010.

3. On consideration of oral and documentary evidence adduced before the Court, the Trial Court has formulated necessary issues and oral evidence and documentary evidenced had taken into consideration. The Trial Court after considering the suit property as per Ex.A1 and description of the property as per Ex.B2 (defendant's document), has come to the conclusion that the property is different, the property purchased by the defendant is not a suit property and hence, granted the relief of permanent injunction and decreed the suit.



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4. Aggrieved against the said judgment and decree, the defeated defendant had preferred an appeal in A.S.No.67 of 2022 before the Subordinate Judge, Thiruvottiyur and points for determination have been formulated and confirmed the judgment passed by the Trial Court and dismissed the first appeal and hence, the Second Appeal.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

6. The learned counsel for the appellant would contend that the Courts below had not properly appraise the necessary document and also contend the plaintiff wanted to encroach upon the defendant's property.

7. After hearing the submissions of learned counsel for the appellant, this Court has examined whether the plaintiff has established his possession and enjoyment of the suit property.



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8. The Case of the Plaintiff is that he had purchased the suit schedule property situated at Plot No.6, Puratchi Thalaivar M.G.R.Nagar, Phase III, Thiruvottiyur comprised in Survey No.43 measuring 1200 Sq.feet more fully particularly described in the schedule and the Sale deed dated 25.08.2000 is marked as Ex. A-1. Thereafter, the Plaintiff is in continuous possession and enjoyment of the suit property. The Town Survey Field Register dated 28.08.2001 is marked as Ex. A-2. The Defendant had attempted to invade in the Plaintiff's property. Hence, the plaintiff had lodged the complaint before the Police on 19.11.2010 and the same is marked as Ex. A-4. The Sale Deeds of the adjacent owners were marked as Exs.A6 and A7.

9. It is also seen from the records produced by defendant that the defendant had produced series of Sale Deeds namely Ex.B4 to Ex.B10 to show that the plaintiff had projecting a wrong schedule of property. Both the plaintiff and defendant had relied upon their respective sale deeds and thus, while the suit property has mentioned in the plaint schedule is for the extent of 1200 sq.ft., in S.No.431. However, as per the Sale Deed produced by the defendant Ex.B2 that does not form part of the schedule of the property nor it is surrounded in any one of the four boundaries of the suit property. The



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survey numbers are also found to be difference and hence, both the Courts below has rightly come to the concurrent finding the defendant's property in Ex.B2 is different from plaintiff's property namely suit schedule property.

10. It remains to be stated that it is not the case of the defendant that the defendant's property is adjacent to the suit property or it is situated adjacent to four boundaries of the suit property and therefore, both the Courts below has rightly come to the conclusion that the defendant has neither establish he is in possession of the suit property.

11. The oral evidence of PW.2-Balaraman as well as DW.2-Inspector of Police, Santhangadu Police Station goes to show that there was a property dispute between the plaintiff and defendant with regard to land dispute and hence, the criminal case was closed.

12. The suit is filed for permanent injunction. The plaintiff has filed document to show his title as well as possession while defendant resisted the claim by claiming title to the suit property under Ex.B2. On comparison of the schedule of the property, both the Courts below has rightly come to the



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conclusion that the suit property is not a property of the defendant as stated in Ex.B2.

13. In a *lis* filed under Section 38 of Specific Relief Act, 1963 for the relief of permanent injunction, the plaintiff has to demonstrate that he is in possession of the suit property on the date of filing of the suit and he is in legal possession or lawful possession.

14. In this case, Ex.A1-Sale Deed is filed in favour of the plaintiff. Possession follows the title and independent evidence has also been let in to show that the plaintiff is in possession on the date of filing of the suit and hence, both the Courts below has rightly come to the conclusion that the plaintiff is entitled for the relief. The concurrent finding is based upon the oral and documentary evidence.

15. A detailed discussion has been taken to distinguish the property of the defendant under Ex.B2 with Ex.A1 (plaintiff's property). On the above factual background, I find that the plaintiff is in possession of the suit property on his own strength of the documents and hence, concurrent



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finding of the Courts below does not warrant any interference.

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16. Accordingly, this Court finds judgment of the Courts below does not suffer from any irregularity or illegality or perversity. In this view of the matter, no merits.

17. **In Nutshell:-**

- (i) The Second Appeal is dismissed by confirming the judgement and decree passed by the Courts below.
- (ii) In the facts and circumstances of the case, there shall be no order as to costs.
- (iii) Consequently, the connected civil miscellaneous petitions are closed.

22.04.2024

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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RMT.TEEKAA RAMAN, J.

dm

To

- 1.The Subordinate Judge,
Tiruvottriyur.
- 2.The District Munsif Court,
Tiruvottriyur.

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