



S.A.No.704 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 19.02.2024	Judgment Pronounced on 22.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.704 of 2018
and C.M.P.No.20856 of 2018

1.Sundaramma
2.Shruthi
3.Minor Appagi

..Appellants

Vs.

1.Prakash
2.Sivaruthra

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.06.2017 made in A.S.No.24 of 2015 on the file of the Sub Court, Sathyamangalam, reversing the judgment and decree dated 14.03.2014 passed in O.S.No.177 of 2012 on the file of the District Munsif Court, Sathyamangalam.

For Appellants : Mr.R.Babu

For Respondents : Mr.Roshal Atiq



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JUDGMENT

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This Second Appeal has been filed against the judgment and decree dated 22.06.2017 made in A.S.No.24 of 2015 on the file of the Sub Court, Sathyamangalam, reversing the judgment and decree dated 14.03.2014 passed in O.S.No.177 of 2012 on the file of the District Munsif Court, Sathyamangalam.

2.The plaintiffs, in a suit for bare relief of permanent injunction, having succeeded before the Trial Court and suffered dismissal at the hands of the First Appellate Court, are the appellants herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The plaintiffs' case is that the suit properties are their ancestral properties, allotted to them under a Partition Deed dated 27.08.1986. Apart from the said property, the plaintiffs also own adjoining property in S.No.680/2 and in order to fence the same, the plaintiffs planted stones in all the four sides in S.No.680/2. The 1st defendant owns property to the North of



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the plaintiffs property in S.No.680/1. On 23.06.2012, the 1st defendant, assisted by the 2nd defendant, trespassed into the suit property and removed the stones planted by the plaintiffs and in order to protect the property, the plaintiffs approached the Court seeking the relief of permanent injunction.

5.The 1st defendant filed a written statement and the same was adopted by the 2nd defendant. The suit was resisted by the defendants on the ground that the suit properties originally belonged to one Madevappa, son of Madappa and the plaintiffs have created a forged Partition Deed, including the suit properties and claiming rights thereunder. According to the defendants, the 1st defendant was in possession and enjoyment of the suit properties and there is an access through the suit property to the road running on the further West of the suit property and it is mentioned even in the Sale Deed dated 02.08.1938. According to the defendants there is no cause of action for filing the suit.

6.The Trial Court found that the plaintiffs were in possession and enjoyment of the suit property and decreed the suit. On appeal, the first Appellate Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the reversal findings rendered by the First Appellate



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Court, the plaintiffs have preferred the Second Appeal.

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7.The above Second Appeal was admitted by this Court on 30.11.2018 on the following substantial question of law.

“Whether the Lower Appellate Court is correct in law in reversing the judgment and decree of the trial Court on the ground that the trial Court has erred in not considering the right granted in 1938 which totally overlooking the fact that the suit is one for injunction based on possession and the Advocate Commissioner has clearly found the properties of plaintiff and defendants are demarcated by a ridges?”

8.I have heard Mr.R.Babu, learned counsel for the appellants and Mr.Roshal Atiq, learned counsel for the respondents. I have gone through the pleadings, oral and documentary evidence adduced by the parties and judgments of the Trial Court as well as the First Appellate Court.

9.Mr.R.Babu, learned counsel for the appellants would refer to the Advocate Commissioner's report and also Ex.A1 to Ex.A16 to establish that the plaintiffs alone were in possession and enjoyment of the suit property and



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he would contend that in respect of only the western boundary, the parties were at issue.

10.The learned counsel would also state that in paragraph No.6 of the written statement, the defendants have admitted to the right of the plaintiffs. He would also invite my attention to the findings of the First Appellate Court regarding interpretation of Ex.B1 which is a document dated 02.05.1938. He would pray that the Second Appeal being allowed, since the First Appellate Court has not appreciated the evidence on record in a proper perspective.

11.Per contra, Mr.Roshal Atiq, learned counsel for the respondents would place reliance on the Advocate Commissioner's report and the sketch, regarding the lay of the properties and the cart track, being situate on the northern side. Further, the learned counsel for the respondents would also refer to Ex.A1 and Ex.B1 where the cart track is shown to be existing on the western side. He would also refer to the Partition Deed in Ex.A1 to elucidate that no boundaries were mentioned in the schedule to the Partition Deed. He would further contend that the plaintiffs have not produced any documents to establish the ownership of S.No.683/2 (Old.S.No.24) though the plaintiffs claim to have been allotted the same under Ex.A1, Partition Deed. He would



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also refer to the cross-examination of P.W.1, where the plaintiffs admit that the lay of the properties and therefore, the Advocate Commissioner's report also would support the defence plea raised by the defendants. I find from the cross-examination of P.W.1 that the plaintiffs have admitted to the usage of the cart track by the defendants and have also confirmed the findings of the Advocate Commissioner.

12.The First Appellate Court has rightly found that the plaintiffs have not established their possession over the suit property and decreed the suit for bare injunction and the burden is only on the plaintiffs to prove that they have been in physical possession of the suit property on the date of filing of the suit. However, the defendants have succeeded in establishing the plea put forth by way of written statement, which is also supported by the findings of the Advocate Commissioner which in fact have also been affirmed by P.W.1 in his cross-examination. The First Appellate Court has rightly appreciated the oral evidence and come to a right conclusion that the plaintiffs have not established their possession over the suit property. Further, there has been a cart track mentioned even in Ex.B1, Sale Deed dated 02.05.1938 and the inconsistent statements of P.W.1 and P.W.2 regarding the right of the defendants lying East of the suit property and North of the defendants



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property does not help the plaintiffs in any manner.

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13.The Trial Court dealt with the suit as if it is a suit based on an easement and held that the defendants have access to their properties to the road poramboke and therefore, they cannot claim any right in the suit property. The findings of the Trial Court was rightly interfered with by the First Appellate Court and I do not find any illegality or perversity in the findings arrived at by the First Appellate Court, which are based on pleadings as well as evidence adduced by the parties. The substantial question of law is answered against the appellant herein.

14.In fine, the Second Appeal is dismissed. There shall be no order to costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI., J.

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To

- 1.The Sub Court, Sathyamangalam.
- 2.The District Munsif Court, Sathyamangalam.



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

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Pre-delivery judgment made in

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and C.M.P.No.20856 of 2018

22.03.2024