



S.A(MD)No.1044 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1044 of 2009

and

M.P(MD)No.1 of 2009

J.Edison Jayaraj

... Appellant/Respondent
Defendant

Vs.

T.Malar

... Respondent/Appellant
Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the reversing judgment and decree in A.S.No.35 of 2008 on the file of the Additional Subordinate Judge, Thanjavur, dated 20.07.2009 against the judgment and decree in O.S.No.134 of 2004 on the file of the District Munsif, Thanjavur, dated 27.03.2008.

For Appellant : Mr.V.Chandrasekar

For Respondent : Mr.G.Karnan



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JUDGMENT

The unsuccessful defendant in the suit is the appellant herein.

2. The respondent filed a suit for bare injunction. The suit was dismissed by the Trial Court. On appeal filed by the respondent / plaintiff, the First Appellate Court reversed the findings of the Trial Court and decreed the suit. Aggrieved by the same, the defendant is preferred the appeal.

3. According to the respondent / plaintiff, she purchased suit property from one Pattammal under sale deed, dated 03.11.1998. It was claimed by the plaintiff that after purchase, she put up a terraced building and has been residing thereon. It was also claimed that she has been paying building tax, water tax and electricity charges to the concerned authorities for the building situated in suit property. It was also averred by the plaintiff that the defendant without having any manner of right attempted to interfere with her possession and hence, she was constrained to file a suit for bare injunction.



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4. The defendant filed a written statement and claimed that he filed a suit for injunction in O.S.No.159 of 2004 against the plaintiff in respect of the very same property and obtained a decree. Therefore, when the decree for injunction obtained by defendant has been in operation, the plaintiff was not entitled to maintain a suit for bare injunction. The defendant also claimed that the suit property originally belonged to one Abdul Razack and he sold the same to Srinivasa Nadar on 24.05.1993 and the plaintiff entered into an agreement with Srinivasa Nadar and Razack for purchase of the suit property and since the suit property is a Government poromboke, he could not get the sale deed registered. The defendant claimed that sale deed executed by Pattammal in favour of plaintiff was invalid. The defendant also denied the title as well as possession of the plaintiff over the suit property and claimed that he has been in possession and enjoyment of the same.

5. Before the Trial Court, the plaintiff was examined as P.W.1 and 2 other witnesses were examined on her side as P.W.2 and P.W.3. On behalf of the plaintiff, 40 documents were marked as Exhibits A.1 to A.40. The defendant was examined as D.W.1 and 2 other witnesses were examined on his side as D.W.2 and D.W.3. On behalf of the defendant,



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18 documents were marked as Exhibits B.1 to B.18.

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6. The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that plaintiff failed to prove her right and possession over the suit property and hence, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.35 of 2008 on the file of the Additional Sub Court, Thanjavur. The First Appellate Court on re-appreciation of oral and documentary evidence available on record came to the conclusion that plaintiff proved her possession over the suit property and consequently, allowed the appeal. Aggrieved by the same, the unsuccessful defendant has come by way of this Second Appeal.

7. The learned Counsel appearing for the appellant submitted that the defendant already filed a suit for bare injunction against the plaintiff in respect of the very same property and obtained a decree in O.S.No.159 of 2004 and when a decree for injunction passed against plaintiff was operating, the present suit for bare injunction is not at all maintainable. The learned Counsel further submitted that the sale deed relied on by the plaintiff is an un-registered document and therefore, the same will not



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convey any title to the plaintiff and the Courts below ought not to have considered the un-registered document and granted decree in favour of the plaintiff.

8. The decree obtained by defendant in O.S.No.159 of 2004 was marked as Exhibit B.10. A perusal of the same would suggest the subject matter of the said suit was described as 1200 square feet of plot in S.No. 1, Jawan Colony, Gandhi Nagar, Thanjavur Town with following four boundaries:

'East of Sasidharan Nair plot

West of 3 and a half feet lane leading to plot of Malar

South of Railway Road and North of plot belonging to Malar'

9. However, the present suit property has been described as plot No.2 together with terrace building situated in Jawan Street, Gandhi Nagar, ITI Backside, near Daniel Thomas Nagar, Nilgiri South Thottam, Thanjavur. The four boundaries of the present suit property has been mentioned as follows:

'East of Sasidharan Nair Plot

West of Murugesan Plot

North of property belong to society and South of road'



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10. Therefore, the boundary description in the plaint schedule and the boundary description in Exhibit P.10 decree obtained by the defendant would suggest four boundaries of the properties are not tallying with each other. The boundaries on eastern side and the southern side are different. Therefore, the submission made by the learned Counsel for the appellant that decree in O.S.No.159 of 2004 was obtained by the defendant against the plaintiff in respect of the very same property is not acceptable to this Court and consequently, the said submission is rejected.

11. Though the plaintiff relied on un-registered sale deed to claim right over the suit property, Exhibits A.2 to A.19 are various document like family card, tax receipts application submitted to Electricity Board, receipt for payment of electricity charges, receipt for payment of water charges etc., would help the plaintiff to establish her physical possession over the suit property. Though the plaintiff cannot establish her title under un-registered Exhibit A.1, the Courts below by taking into consideration various document filed by the plaintiff under Exhibits A.2 to A.19 came to the conclusion that physical possession of the plaintiff over the suit property was proved. The said finding is based on proper



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appreciation of Exhibits and the same is not vitiated by any perversity.

Therefore, I do not find any reason to interfere with the final conclusion of the First Appellate Court. The plaintiff has not made out any case to interfere with the findings of the First Appellate Court and as a necessary consequence, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Additional Subordinate Judge,
Thanjavur.
- 2.The District Munsif,
Thanjavur.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

BTR

Judgment made in
S.A(MD)No.1044 of 2009

Dated:
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