



S.A.(MD)No.556 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.556 of 2008

Lawrance

...Appellant

-Vs-

1.Anny George Varghese
2.Dilip George Varghese
3.Divya Sayira George

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 25.10.2005 passed by the learned First Additional Subordinate Judge, Nagercoil at Padmanabhapuram in A.S.No.148 of 2004 by reversing the judgment and decree of Additional District Munsif, Padmanabhapuram, dated 27.08.2004 in O.S.No.180 of 2004.

For Appellant : Mr.S.Ramesh

For Respondents : No Appearance



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JUDGMENT

The defendant in the suit for declaration of title and recovery of possession is the appellant herein. The suit filed by the respondents/plaintiffs was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the sole appellant had come by way of this Second Appeal.

2. According to the respondents/plaintiffs, they purchased the suit property from Dr.S.Manakavalaiperumal and four others on 14.01.1992 under Ex-A1. The vendors of the plaintiffs got the suit property allotted to them in a partition that had taken place on 22.04.1977. The plaintiffs asserted that they had been in possession and enjoyment of the suit property from the date of purchase by planting rubber trees in the suit property. It was further pleaded that the first plaintiff has filed a suit for bare injunction against the defendant in O.S.No.73 of 1997 and the same was decreed confirming the possession of the first plaintiff. Later on, the defendant encroached the suit property by putting up new fencing and hence, the plaintiffs were constrained to file a suit for declaration and



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3.The suit was resisted by the appellant/defendant by disputing the identity of the suit property. According to the defendant, there was a partition suit among Ponnian, Sivasubramanian and others in O.S.No.716 of 1960 and the entire suit property thereon was divided into 18 plots. A common pathway was formed in the middle of the divided plots and the suit property lies on the east of the common pathway. The defendant further claimed that the rubber trees planted in the suit property were raised by him and the plaintiffs had no right over the same. It was further claimed that the suit property lies on the east of the common pathway and the plaintiff had no right over the suit property, which lies on the east of the common pathway mentioned in the final decree in O.S.No.716 of 1960.

4.Before the trial Court, two witnesses were examined on behalf of the plaintiffs and 18 documents were marked as Ex-A1 to Ex-A18. The defendant was examined as DW-1 and on his behalf, four documents were marked as Ex-B1 to Ex-B4.



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5.The trial Court on consideration of evidence available on record came to the conclusion that the plaintiffs proved their right over the suit property and granted the decree for declaration of title and recovery of possession. Aggrieved by the same, the defendant filed an appeal in A.S.No.148 of 2004 on the file of the First Additional Subordinate Court, Nagercoil at Padmanabhapuram. The first appellate Court also affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the defendant is before this Court.

6.The learned Counsel for the appellant submitted that the main dispute in the suit is with regard to the identity of the suit property. He further submitted that the defendant claimed that the suit property lies on the east of the common pathway and the plaintiffs had no right over the suit property on the east of the common pathway. The Courts below failed to identify the suit property by appointing an Advocate Commissioner and hence, the Courts below ought not to have granted the decree for declaration of title and recovery of possession without properly identifying the suit property.



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7.It is seen from the records that the first plaintiff earlier filed a suit for bare injunction in O.S.No.73 of 1997 in respect of the suit property against the defendant and the same was decreed. In the said suit, an Advocate Commissioner was appointed to identify the suit property and he filed a report stating that the suit property lies on the west of the common pathway, as claimed by the plaintiffs. Accepting the said Advocate Commissioner's report and plan, the suit for bare injunction filed by the first plaintiff was decreed and the said decree was not challenged by the appellant/defendant by filing an appeal and therefore, the findings rendered in the earlier suit between the parties that the disputed property lies on the western side of the common pathway has also attained finality. Therefore, the defendant is not entitled raise the very same issue in the subsequent suit for declaration of title and recovery of possession.

8.The decree passed in O.S.No.73 of 1997 has been marked as Ex-A10. Along with Ex-A10, the Advocate Commissioner's plan has been annexed. The Courts below, on perusal of Ex-A10 and the Advocate Commissioner's plan annexed therewith, came to the conclusion that the suit property lies on the western side of the common pathway, as claimed by the plaintiffs and therefore,



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the case of the defendant, as if the suit property lies on the eastern side of the common pathway was rejected and therefore, the submission of the learned Counsel for the appellant that the Courts below granted the decree for declaration of title and recovery of possession without properly identifying the suit property is not acceptable to this Court.

9.The Courts below based on Ex-A10, the decree for injunction obtained by the first plaintiff in the earlier suit, rightly came to the conclusion that the suit property lies on the west of the common pathway and granted the decree for declaration of title and recovery of possession by properly identifying the suit property and therefore, the contention of the learned Counsel for the appellant with regard to the non-identification of the suit property is rejected. Finding no substantial questions of law in the Second Appeal, the same stands dismissed by confirming the judgments and decrees of the Courts below. No costs.

04.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cmr



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To

- 1.The First Additional Subordinate Judge, Nagercoil at Padmanabhapuram.
- 2.The Additional District Munsif, Padmanabhapuram.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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