



S.A.(MD)No.679 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTAR**

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Durairasu (Died)

1.N.Vellaichamy

2.N.Senthil

3.R.Kanmani

4.R.Sudhakar

5.V.K.Radhakrishnan

6.D.Renugadevi

7.D.Pratheepkumar

8.D.Premkumar

...Appellants

-Vs-

P.S.Murugadass

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 11.03.2008 made in A.S.No.129 of 1998 on the file of the Subordinate Court, Periakulam thereby reversing the well considered judgment and decree, dated 01.12.1998 in O.S.No.588 of 1996 on the file of the District Munsif Court, Periakulam.

For Appellants : Mr.S.Ramachandran

For Respondent : Mr.V.K.Vijayaraghavan



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JUDGMENT

The defendants in the suit are the appellants. The suit is for bare injunction. The trial Court partly decreed the suit by granting a decree for permanent injunction in respect of the suit property except the property in S.No.64/2. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.129 of 1998 on the file of the Subordinate Court, Periyakulam. The first appellate Court reversed the findings of the trial Court and allowed the appeal by granting the decree for injunction in respect of the entire suit property including S.No.64/2. Aggrieved by the same, the defendants have come by way of this Second Appeal.

2.According to the plaintiff, the suit property was allotted to the share of the plaintiff's father Samidurai in a partition deed, dated 25.01.1959. After the death of the plaintiff's father, he has been in possession and enjoyment of the suit property. The defendant without having any manner of right or possession, attempted to interfere with the possession of the plaintiff over the suit property and hence, the suit for bare injunction was filed.



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WEB COPY 3. The suit was resisted by the defendants by denying the title as well as the possession of the plaintiff over the suit property. The defendants claimed that the property in S.No.64/2 has been in possession and enjoyment of their family for more than statutory period. It was also claimed by them that the said property was allotted to their fore fathers in an oral partition that had taken place long back.

4. Before the trial Court, the plaintiff was examined as PW-1 and 7 documents were marked as Ex-A1 to Ex-A7. The second defendant was examined as DW-1 and five documents were marked on the side of the defendants as Ex-B1 to Ex-B5. The Advocate Commissioner's report and plan were marked as Ex-C1 and Ex-C2.

5. The trial Court on consideration of oral and documentary evidence available on record came to the conclusion that the plaintiff failed to establish their possession over the suit property in S.No.64/2 and hence, dismissed the suit in respect of the said suit portion. The trial Court granted a decree for injunction, as the defendants did not oppose the prayer in respect of the other



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portion of the suit property. Aggrieved by the dismissal of the suit in respect of S.No.64/2, the plaintiff preferred an appeal and the first appellate Court on re-appreciation of evidence, came to the conclusion that the plaintiff had proved his possession over S.No.64/2 also and hence, allowed the appeal. Aggrieved by the same, the defendants have come by way of this Second Appeal.

6.The learned Counsel for the appellants submitted that when the defendants proved their possession over S.No.64/2 by producing “A” register, the same has not been taken into consideration properly by the first appellate Court. The learned Counsel further submitted that in Ex-A1, the old sale deed, the property in question has been described as property of V.K.Rajaram, father of the defendants 4 and 5. The first appellate Court ignoring these two material documents, came to an erroneous conclusion, as if the plaintiff proved his title over the suit property.

7.The plaintiff claimed right over the suit property under a partition deed, dated 25.01.1959. The said document has been marked as Ex-A1. The



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plaintiff also produced Patta No.443 stands in his name in respect of the suit property and the same has been marked as Ex-A2. The kist receipts paid by the plaintiff for the period from 1992 to 1996 have been marked as Ex-A3 to Ex-A7. Thus, by producing his title document and patta, kist receipts, etc., the plaintiff proved his title as well as possession over the suit property.

8.As far as the defendants are concerned, they claimed that the suit property was allotted to their fore fathers in an oral partition. In support of the same, they have not produced any documents. Therefore, the defendants have no clinching evidence in their favour to prove their title over the suit property. The “A” registrar extract obtained on 14.03.1996 in the name of V.K.Subramanian was produced by the defendants.

9.It is submitted by the learned Counsel for the appellants that when there is a conflict between the revenue documents produced by both parties, the Courts below ought not to have relied on the revenue documents filed by the plaintiff alone. However, the plaintiff have not only produced revenue patta in his name, but also produced title document in his name. Therefore,



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the right and possession of the plaintiff over the suit property is established by preponderance of probabilities under Ex-A1 to Ex-A7. Merely because, in Ex-B1, the sale deed between third parties, a reference has been made to the suit property, as if it was the property of father of defendants 4 and 5, we cannot come to a conclusion that the defendants' possession over the suit property stands proved, when the plaintiff was not a party to the said document. Therefore, the submission made by the learned Counsel for the appellants based on Ex-B1 and Ex-B3 is not acceptable to this Court.

10.The first appellate Court on proper appreciation of Ex-A1 to Ex-A7 came to a conclusion that the plaintiff proved his possession over the property in S.No.64/2 and granted an injunction in his favour. The said factual conclusion with regard to possession of the plaintiff was reached by the Courts below on proper appreciation of oral and documentary evidence available on record. Therefore, when the approach of the Courts below is not vitiated by any perversity, this Court is unable to accept the submission made by the learned Counsel for the appellants and interfere with the said finding. I do not find any substantial question of law to disagree with the conclusion reached by



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the Courts below. Accordingly, the Second Appeal stands dismissed. No costs.

11.At this juncture, the learned Counsel for the appellants submitted that the respondent had already filed a suit for declaration of title and other consequential relief in respect of the property in S.No.64/2. Any observation made by this Court in this Second Appeal arising of a suit for bare injunction will not affect the rights of both parties in a title suit. Consequently, connected miscellaneous petition is closed.

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

To

1.The Subordinate Judge, Periakulam.
2.The District Munsif, Periakulam.
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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