



S.A.(MD)No.920 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2024

CORAM:

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

S.A.(MD)No.920 of 2008

1.Muthuraj
2.Sachidhanatha Gopal

...Appellants

-Vs-

Vennila

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 13.03.2007 passed in A.S.No.115 of 2004 on the file of the Principal Subordinate Court, Dindigul, as reversing the judgment and decree, dated 25.11.2003 passed in O.S.No. 289 of 2003 on the file of the I Additional District Munsif Court, Dindigul.

For Appellants : Mr.M.R.Srinivasan
for Mr.R.Nandakumar
For Respondent :Mr.S.Chandasekar
for M/s.Sarvabhauman Associates



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JUDGMENT

The defendants are the appellants. The respondent herein filed a suit for bare injunction. The suit was dismissed by the trial Court. On appeal filed by the plaintiff, the first appellate Court reversed the findings of the trial Court and granted a decree for injunction as prayed for. Aggrieved by the same, the un-successful defendants have come by way of this Second Appeal.

2. According to the respondent/plaintiff, she purchased the suit property from one Balasubramanian under Ex-A1, dated 27.10.2000. The suit property was purchased by the plaintiff as a vacant site and then, she obtained a building plan approval under Ex-A10 and put up a construction. It was claimed by the plaintiff that she had been in possession and enjoyment of the suit property from the date of purchase by putting up a construction and the defendants illegally attempted to interfere with the possession without having any manner of right and hence, she was constrained to file a suit for bare injunction.



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3.The appellants/defendants filed a written statement and resisted the suit by contending that the plaintiff's vendor, Balasubramanian has got only 484 sq.ft., in the suit survey number under a gift deed executed by his mother, Sankarammal and therefore, he had no right to convey more extent than the one covered by the gift deed. The defendants also contended that the Will allegedly executed by Sankrammal in favour of plaintiff's vendor was a forged document and the suit for injunction filed by the plaintiff for larger extent without declaration of title was not maintainable. It was also claimed by the defendants that they were northern and southern neighbours and the plaintiff encroached portion of their property and had put up construction. It was also claimed that the plaintiff also encroached a portion of Panchayat property and hence, the suit was bad for non-joinder of village panchayat. Thus, by denying the right and title of the plaintiff over the entire suit property, the defendants sought for dismissal of the suit.

4.Before the trial Court, the plaintiff was examined as PW-1 and her vendor was examined as PW-2. On behalf of the plaintiff, 11 documents



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were marked as Ex-A1 to Ex-A11. The first defendant was examined as DW-1 and one document was marked on behalf of the defendants as Ex-B1.

5.The trial Court, on appreciation of oral and documentary evidence available on record came to the conclusion that there was a cloud over the title of the plaintiff, except to the extent of 484 sq.ft., and hence, the suit for bare injunction filed by the plaintiff in respect of 1303 sq.ft., was not maintainable. The trial Court also found that the suit is bad for non-joinder of Panchayat, whose land was allegedly encroached by the plaintiff. On these findings, the trial Court dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.115 of 2004 on the file of the Principal Subordinate Court, Dindigul. The first appellate Court, on re-appreciation of the evidence available on record, came to the conclusion that the plaintiff proved her possession over the suit property and hence, she was entitled to injunction, as prayed for. Aggrieved by the same, the defendants have come by way of this Second Appeal.



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6.The learned Counsel for the appellants submitted that the plaintiff has failed to establish her right over the entire extent of the suit property by producing parent documents. When the plaintiff's title over the suit property is specifically denied, it is incumbent on her to prove the same by producing parent title documents. The learned Counsel further submitted that the revenue documents produced by the plaintiff will not confer title over the suit property in respect of the entire portion than the one covered by the gift deed executed by the plaintiff's vendor's mother. The learned Counsel also submitted that the first appellate Court failed to take into consideration the fact that serious cloud is created over the title of the plaintiff and hence, the suit for bare injunction is not maintainable in respect of the larger extent of the suit property than the one covered by the gift deed executed by the plaintiff's vendor's mother. The learned Counsel further submitted that the plaintiff is not able to prove her right over the entire suit property and hence, her possession cannot be termed as a lawful possession and therefore, the first appellate Court is not justified in granting a decree for injunction in respect of the entire property.



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7. On the basis of the arguments made by the learned Counsel for the appellants, the following substantial question of law is taken up for consideration by this Court:

“(a) Whether the lower appellate Court is right in granting a decree for injunction, when there is a cloud over plaintiff's title over entire suit property except 484 sq.ft.?”

8. The learned Counsel for the respondent is heard on the said question of law. The learned Counsel for the respondent by taking this Court to the pleadings of the appellants/defendants submitted that the possession of the plaintiff over the entire suit property has been admitted by the defendants in their written statement. In such circumstances, the first appellate Court was justified in granting a decree for injunction based on the admitted possession of the plaintiff. The learned Counsel further submitted that when the possession of the plaintiff over the suit property is admitted, the Court need not go to the question of deciding the title of the plaintiff in respect of the entire suit property.



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9.The plaintiff claiming right over the suit property under Ex-A1 sale deed executed by one Balasubramanian in her favour. The said Balasubramanian was examined as PW-2 and he deposed in favour of the plaintiff's possession over the suit property conveyed under Ex-A1. The plaintiff also produced patta issued in her favour for the entire suit property, which has been marked as Ex-A8 and Ex-A9. Ex-A8 is the patta issued in favour the plaintiff's vendor's mother and Ex-A9 is the patta issued in the name of the plaintiff. Ex-A1, Ex-A8 and Ex-A9 read with evidence of PW-2 *prima facie* proved the possession of the plaintiff over the suit property. In fact, the possession of the plaintiff over the entire extent of the suit property is admitted by the defendants in their written statement. The relevant portion of the averment made in the written statement reads as follows:

“7.இந்த நிர் வாதி இந்த நிர் எதிர்வாதியின் வடபுற இடத்தையும் 2வது எதிர்வாதியின் தென்புற இடத்தையும் ஆக்ரமித்து வீடுக்கட்டி சன்சேடு வகையரா வைத்து ஆக்ரமிப்பு செய்துள்ளார். இது தவிர வீதியிலும் ஆக்ரமித்து கட்டிடம் கட்டி இருப்பதுடன் படுகளையும் ஆக்ரமிப்பாக கட்டியுள்ளார்.....□



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10.A reading of the averments in the written statement would suggest that the first defendant has got property on the northern side of the plaintiff's property and the second defendant has got property on the southern side of the plaintiff's property. As per the averments of the defendants, the plaintiff encroached into the property of the defendants on the northern side as well as on the southern side and put up building. The building plan approval obtained by the plaintiff was marked as Ex-A10. In the light of the clear admission in the written statement that the plaintiff had encroached the properties of the defendants and had put up construction, the settled possession of the plaintiff over the suit property is admitted. It is settled law that even original owner of the property is not entitled to take law into his own hands and disturb possession of the person in settled possession of the suit property. (Reference may be had to ***Rame Gowda vs M.Varadappa Naidu and another*** reported in ***2004 (1) SCC 769***)

11.In view of the discussion made earlier, the first appellate Court is justified atleast to the extent of granting injunction based on the settled



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possession of the plaintiff, which is admitted by the defendants in their written statement. However, the plaintiff has failed to lead any evidence to show her title over the entire suit property except for 484 sq.ft., land, which is being covered by settlement deed executed by the plaintiff's vendor's mother. Therefore, the plaintiff's title over the suit property except 484 sq.ft., is very much under dispute and a cloud is created over the same. The plaintiff is failed to clear the cloud created over her title and nevertheless by virtue of her settled possession over the suit property, she is entitled to limited injunction restraining the defendants from interfering with her settled possession except by due process of law.

12.The first appellate Court ought not to have granted unlimited injunction restraining the defendants from interfering with the possession of the plaintiff, when the plaintiff failed to clear the cloud created in respect of suit property except 484 sq.ft. Therefore, the judgment and decree passed by the first appellate Court required modification and the same is modified, as decree for injunction restraining the defendants from interfering with the plaintiff's possession over the suit property except by due process of law.



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13.The question of law framed above is answered accordingly and the Second Appeal is partly allowed by modifying the judgment and decree of the first appellate Court, as mentioned above. No costs.

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

cmr

To

- 1.The Principal Subordinate Judge, Dindigul.
- 2.The I Additional District Munsif , Dindiugl.
- 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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