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S.A(MD)No.959 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.959 of 2006

Krishnan ... Appellant/Appellant/Defendant

Vs.

1.C.Shanmuganathan (died)
... 1st Respondent/1st Respondent/Plaintiff

2.Thavamani

3.Sathya

4.Sathiaraj

5.Santhiya

... Respondents 2 to 5

(Respondents 2 to 5 are brought on record as Lrs
of the deceased 1st respondent vide order
dated 02.08.2024 made in C.M.P(MD)No.9006
of 2024 in S.A(MD)No.959 of 2006)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 24.02.2005 passed in A.S.No.20 of 2004, on the file of the Sub Court, Ramanathapuram, confirming the judgment and decree dated 06.04.2004 passed in O.S.No.75 of 1999 on the file of the District Munsif Court, Ramanathapuram.

For Appellant : Mr.M.Mohamed Ibram Saibu
for M/s.Ajmal Associates

For RR 2 to 5 : Mr.B.Rajesh Saravanan



JUDGMENT

The concurrent Judgments and decrees passed in O.S.No. 75 of 1999 on the file of the District Munsif Court, Ramanathapuram and in A.S.No.20 of 2004, on the file of the Sub Court, Ramanathapuram, are being challenged in the present Second Appeal.

2.Originally, one C.Shanmuganathan as the plaintiff, instituted a suit in O.S.No.75 of 1999, on the file of the trial Court as against the defendant seeking for the relief of declaration to declare that the suit property belonged to the plaintiff and to restrain the defendant from disturbing his peaceful possession and enjoyment of the suit property by granting a permanent injunction.

3.Pending the Second Appeal, the first respondent/plaintiff died. Hence, the respondents 2 to 5 herein are brought on record as the legal representatives of the deceased first respondent/plaintiff.

4.For the sake of convenience, the parties are referred to as, as described before the trial Court.



5. According to the plaintiff, the suit property originally belonged to one Veerabathirapillai and his son Kalidoss and he purchased the same by way of a registered sale deed dated 09.05.1996 and in the sale deed, the suit property has been mentioned as the first schedule property, which was a punja land and the top portion was an agricultural property and in the lower portion, there were karuvelam trees. The plaintiff and his predecessors have acquired the usufructuary right in the said property and they have been in possession and enjoyment of the same, by paying tax and obtained patta No.371 and the suit property was also mortgaged and thereafter, it was redeemed, which was sold to the plaintiff and he was in possession and enjoyment of the said disputed property. In the mortgage deed, patta number has been wrongly mentioned as 271 instead of 371 is a typographical error and there was a channel running on the eastern side of the suit property and beyond the said channel, there is some land, which belonged to one Uma Maheswari, from whom the defendant had usurped and had enjoyed the said property and that the defendant is not having any right or title over the suit property in Survey No.122/1, but tried to interfere with the peaceful possession and enjoyment of the suit property. Hence, the plaintiff had preferred a complaint on the file of the Ramanathapuram Town Police Station and



the parties were called for an enquiry and directed them to measure the suit property. Accordingly, a survey was conducted and survey stones were laid. Thereafter, on 12.05.1999, the defendant unlawfully entered into the suit property and removed the survey stones and cut down the karuvelam trees worth about a sum of Rs.1,000/- and further complaint was also given to that effect. Since the defendant tried to disturb the peaceful possession and enjoyment of the plaintiff, he has filed the suit for the abovestated relief.

6.The defendant had filed a written statement denying the averments made in the plaint. According to the defendant, the said disputed property was in possession and enjoyment of him alone till date and he took possession of the property with specific boundaries by virtue of a lease deed executed on 02.05.1970 by one Mannar S.Ramasetupathy for a period of two years and thereafter, the said lands possession was handed over to the defendant on payment of a sum of Rs.500/- and later on, a sum of Rs.3,500/- was deposited by way of account transfer into the Bank of Madurai in Account No.2271 on 12.09.1978 itself. The said Mannar S.Ramasetupathy agreed to execute a sale deed in favour of the defendant, but on 12.04.1979, he died. Hence, there was no sale deed executed by him and the



defendant expected that his legal heirs would execute the sale deed in favour of him. Only based on that the defendant was claiming right over the property in Survey No.122/1. Though the entire land was used for nanja cultivation, a portion in the north western side was left as punja land, since that portion was situated on a higher elevation and the plaintiff was claiming right over the left side land as punja land. The said suit property stands in the name of Mannar S.Ramasetupathy's family and patta has been issued in favour of the said family and tax has also been paid by the defendant in favour of the said Mannar S.Ramasetupathy's family in Survey No.122/1 and in Survey No.122/1 only, the plaintiff's claim in Survey No.114 is also situated and the plaintiff has got no right over the property in Survey No.122 and he has claimed right only in Survey No.114, but he is trying to usurp the property of the defendant in Survey No.122/1 and prayed for dismissal of the suit.

7.Before the trial Court, on the side of the plaintiff, he himself was examined as P.W.1 and Exs.A1 to A12 were marked. On the side of the defendant, he himself was examined as D.W.1 and one Velu was examined as D.W.2 and Exs.B.1 & B.2 were marked and on the side of the Court, Ex.C.1 to Ex.C.4 were marked.



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8.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

9.Aggrieved by the Judgment and decree passed by the trial Court, the defendant herein as appellant, had filed an Appeal Suit in A.S.No.20 of 2004 on the file of the first Appellate Court.

10.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, dismissed the appeal suit.

11.Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant as the appellant.



12.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'a. Is it correct in law to grant the decree for an injunction in respect of immovable property without a specific finding based on reasonings that the plaintiff is in possession of the suit property?

b. Is it correct in law to overlook the evidence of D.W.1 in respect of his possession and enjoyment over the disputed portion of the property as corroborated by the evidence of D.W.1 and the admission of P.W.1?'

13.The learned counsel appearing for the appellant/defendant would submit that the courts below erred in law in overlooking the specific case of the defendant that the said portion of the suit property which is situated on a higher plain than the rest of the property had been in possession and enjoyment of the defendant for the past several decades which is corroborated by the evidence of D.W. 2 and the admission of D.W.1; the courts below erred in proceeding on an assumption that since the disputed portion was within Survey



No.114, the plaintiff is entitled for declaration and injunction without advert to the fact regarding its possession especially when the same was specifically claimed by the defendant; the Courts below erred in granting the relief of injunction in favour of the plaintiff without considering the fact that the possession of the same is with the defendant and the failure on the part of the plaintiff to show when the possession of the disputed portion of the land was recovered either by himself or his predecessors-in-title; the courts below failed to advert to the specific admission of the plaintiff while deposing as P.W.1 that he purchased only those portion of land occupied and enjoyed by his predecessor and the defendant is in possession of the property lying on the east of the property he purchased; the courts below completely overlooked that in Ex.A.4 under which the plaintiff purchased the suit property one 'thidal' is shown as the eastern boundary of the property and the said 'thidal' is nothing but the disputed portion which is on an elevated plain; the courts below erred in overlooking the further admission of the plaintiff as P.W.1 who stated that the portion shown as 'thidal' forming the boundary of the property also comes within Survey No.114, but the said admission would establish that the disputed portion even if it lies within Survey No.114 has not been purchased by the plaintiff and in any case, the plaintiff was never in enjoyment of the



same; the courts below erred in overlooking that when a person purchasing the property within the specific boundaries, he can claim over the property bound by the said boundaries and not by any survey number or measurement. The boundary shall prevail over the measurement and other descriptions like survey number which could not be ascertained with normal eye. The Appellate Court erred in accepting the additional documents without any justification by the plaintiff, as to why the documents were not produced earlier depriving the right of the defendant to test the veracity of the said documents and the contradictions of the plaintiff in a cross-examination; the Appellate Court erred in relying upon the documents produced as additional evidence without providing an opportunity to the defendant to test the same by way of cross-examination; the Appellate court erred in granting the decree on the reasoning that the defendant has not claimed any right in Survey No.114 on a factual misinterpretation as the defendant was meant to claim right over the property as per actual enjoyment and long user; the Appellate court erred in its finding that the defendant was not entitled to his property overlooking the fact that the suit is for injunction and not concerning the entitlement of the appellant over Survey No.122 and the courts below failed to consider that the commissioner report does not make clear the exact boundaries



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of Survey Nos.122 and 114 and it is not categorically stated that the disputed portion falls within Survey No.114 and prayed for allowing the Second Appeal.

14.The learned counsel appearing for the respondent/plaintiff reiterated the averments made in the suit and the appeal suit and prayed for dismissal of the Second Appeal.

15.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused the records carefully.

16.According to the plaintiff, the suit property originally belonged to one Veerabathirapillai and his son Kalidoss and he purchased the same by way of a registered sale deed dated 09.05.1996 and in the sale deed, the suit property has been mentioned as the first schedule property, which was a punja land and the top portion was an agricultural property and in the lower portion, there were karuvelam trees. The plaintiff and his predecessors have acquired



the usufructuary right in the said property and they have been in possession and enjoyment of the same, by paying tax and obtained patta No.371 and the suit property was also mortgaged and thereafter, it was redeemed, which was sold to the plaintiff and he is in possession and enjoyment of the said disputed property. In the mortgage deed, patta number has been wrongly mentioned as 271 instead of 371 is a typographical error and there was a channel running on the eastern side of the suit property and beyond the said channel, there is some land, which belonged to one Uma Maheswari, from whom the defendant had usurped and had enjoyed the said property and that the defendant is not having any right or title over the suit property in Survey No.122/1, but tried to interfere with the peaceful possession and enjoyment of the suit property. Hence, the plaintiff had preferred a complaint on the file of the Ramanathapuram Town Police Station and the parties were called for an enquiry and directed them to measure the suit property. Accordingly, a survey was conducted and survey stones were laid. Thereafter, on 12.05.1999, the defendant unlawfully entered into the suit property and removed the survey stones and cut down the karuvelam trees worth about a sum of Rs.1,000/- and further complaint was also given to that effect.



17. According to the defendant, the said disputed property was in possession and enjoyment of him alone till date and he took possession of the property with specific boundaries by virtue of a lease deed executed on 02.05.1970 by one Mannar S.Ramasetupathy for a period of two years and thereafter, the said lands possession was handed over to the defendant on payment of a sum of Rs.500/- and later on, a sum of Rs.3,500/- was deposited by way of account transfer into the Bank of Madurai in Account No.2271 on 12.09.1978 itself. The said Mannar S.Ramasetupathy agreed to execute a sale deed in favour of the defendant, but on 12.04.1979, he died. Hence, there was no sale deed executed by him and the defendant expected that his legal heirs would execute the sale deed in favour of him. Only based on that the defendant was claiming right over the property in Survey No. 122/1. Though the entire land was used for nanja cultivation, a portion in the north western side was left as punja land, since that portion was situated on a higher elevation and the plaintiff was claiming right over the left side land as punja land. The said suit property stands in the name of Mannar S.Ramasetupathy's family and patta has been issued in favour of the said family and tax has also been paid by the defendant in favour of the said Mannar S.Ramasetupathy's family in Survey No.122/1 and in Survey No.122/1 only, the plaintiff's claim in



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Survey No.114 is also situated and the plaintiff has got no right over the property in Survey No.122 and he has claimed right only in Survey No.114, but he is trying to usurp the property of the defendant in Survey No.122/1.

18.The trial Court was of the view that the plaintiff has proved that Survey No.114 belonged to the plaintiff and as per the documents and title of the plaintiff, it has been proved that the said disputed land falls within Survey No.114 and if at all, the defendant has got right over the property, he is entitled for Survey No.122/1 to an extent of 1 acre 66 cents and the suit was decreed in favour of the plaintiff.

19.On going through the averments, it could be seen that originally the property belonged to one Veerabathirapillai and his son Kalidoss by way of a registered sale deed which was purchased on 09.05.1996 in Survey No.114 to an extent of 5 acres and 15 cents with appropriate boundary and the defendant who has purchased the property by way of lease deed with the said Mannar Ramanathasethupathy and after the said period of the lease, he has

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paid a sum of Rs.4,000/- in favour of the said Mannar Ramanathasethupathy and before registering the said land, he died and the defendant waited that the legal heirs of the said Mannar Ramanathasethupathy would execute a sale deed in favour of him is the case of the defendant. At that point of time, the suit was filed in the year 1999. It is seen that the said lease period was only for a specified period and when the said person died on 12.04.1979, the defendant's claim that he has got right over the property in Survey No. 122/1 by way of the said lease deed, as per alleged lapsed agreement between the parties is not acceptable. The defendant has taken inconsistent plea by stating that even though the said land has been got it by way of lease deed in Survey No.122/1, the defendant has stated that the plaintiff has occupied Survey No.114 even though it falls in Survey No.114, he is in enjoyment of the same and he claims right over the property which cannot be accepted by this Court and this factual aspect cannot be gone into without any evidence let in by him to prove the same and it is seen that the plaintiff has got every right over the property in Survey No.114 by way of sale deed.



20.It is seen from Ex.B.1, in one of the boundaries, it has shown as eastern side belongs to Survey No.114 and the defendant cannot come and state that Survey No.114 also is in his possession and enjoyment of the defendant when the document itself proves that Survey No.122/1, the extent of 1 acre and 66 cents and that too the lease period is only for two years and the defendant has got no right at all over the said land by claiming right over the property in Survey No.114, if at all he has got right, it is only in Survey No.122/1 as a lessee in the said land. The plaintiff had proved his case and the defendant with no title cannot interfere. Hence, permanent injunction is to be granted.

21.The plaintiff has proved his possession in Survey No.114 by valid sale deed, but the defendant has not proved his possession in Survey No.114 and Survey No.122/1 by marking appropriate documents of revenue department. In the absence of any such proof, his claim is rejected. The plaintiff has produced appropriate documents and established his right through evidence.



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22.P.W.1 has alleged in his plaint that the defendant is trying to interfere with his lawful possession and the complaint before the police department also proved that interference and trespassing by the defendant and there is no such admission made by D.W.1.

23.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the plaintiff and in favour of the defendant.

24.In the result, the Second Appeal stands dismissed. No costs.

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Internet : Yes/No
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To

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- 1.The Sub Court,
Ramanathapuram.
- 2.The District Munsif Court,
Ramanathapuram.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.959 of 2006

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