



S.A(MD)No.764 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A(MD)No.764 of 2014

and

M.P(MD)Nos.1 of 2014 and 1 of 2015

1.Duraisamy

2.Vairam

... Appellant/Appellants/Defendants

vs.

Sakthivel

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 100 of C.P.C., against the judgment and decree, dated 14.07.2014 made in A.S.No.49 of 2010 on the file of the Sub-Court, Palani, confirming the judgment and decree dated 06.09.2010 made in O.S.No.19 of 2008 on the file of the District Munsif Court, Palani.

For Petitioners : Mr.S.Siva Thilakar

For Respondent : Mr.A.Saravanan

ORDER

The instant second appeal has been filed at the instance of the defendants challenging the judgment and decree, dated 14.07.2014 made in A.S.No.49 of 2010 on the file of the Sub-Court, Palani, confirming the



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judgment and decree dated 06.09.2010 made in O.S.No.19 of 2008 on the file of the District Munsif Court, Palani.

2. For the sake of convenience, the parties are referred to as per their rank before the Court below.

3. Brief facts which give rise to the filing of this second appeal are as follows:

(i) The plaintiff is the absolute owner of the suit properties by virtue of the sale deeds dated 18.10.1989 and 25.08.2005. The plaintiff further states that when he started constructions, the defendants interfered with his possession and therefore, he filed the suit.

(ii) The suit was resisted by the defendants contending that they have got right over the suit properties. Hence, they prayed to dismiss the suit.

(iii) Before the trial Court, the plaintiff has marked as many as eight documents as Ex.A1 to Ex.A8 and on behalf of the plaintiff, two



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witnesses were examined as P.Ws.1 and 2. On behalf of the defendants, two witnesses were examined as D.Ws.1 and 2 and on behalf of the defendants, four documents were marked as Ex.B1 to B4.

(iv) The trial Court after having considered the oral and documentary evidence and based on the sale deeds and other revenue records, has held that the plaintiff has been in possession and enjoyment of the suit properties and decreed the suit.

(v) Aggrieved over the same, the defendants have approached the First Appellate Court. However, the First Appellate Court has concurred with the findings rendered by the trial Court and has ultimately dismissed the first appeal.

4. Being not satisfied with the order of the First Appellate Court, the defendants have moved the instant second appeal.

5. At the time of admitting the second appeal, the following substantial questions of law have been framed.



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“1. Whether the Courts below are correct in law in decreeing the suit for bare injunction based on Ex.A1 and Ex.A2 sale deeds which do not prove the title as well as do not tally with the description of suit property?;

2. Whether the Courts below are correct in law in not holding that the suit filed by the respondent/plaintiff is bared by the principles of res judicata under Section 11 of the C.P.C., when the first appellant had already filed a suit for declaration and consequential injunction against the respondent and the judgment and decree has become final?;

3. Whether the Courts below are correct in law in decreeing the suit fore bare injunction in the absence of relief of declaration of his title, when the appellants have specifically denied the title of the respondent to the suit property?;

4. Whether the Courts below are correct in appreciating the construction of documents marked as Ex.A1 and A2 and Ex.B1 to Ex.B4?

5. Whether the Courts below are correct in law in holding that the respondent has proved factum of possession based on Ex.A1 and Ex.A2 and other irrelevant documents which is not related to the suit property?; and



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6. Whether the lower appellate Court is correct in law in not determining points for determination as required under Order 41 Rule 31 of CPC?”

6. The learned counsel for the defendants would vehemently contend that the trial Court without going into the merits of the matter and without properly appreciating the evidence, had wrongly arrived at a conclusion that the plaintiff is in possession and enjoyment of the suit properties. The learned counsel would further contend that the suit in O.S.No.502 of 2006 filed before the District Munsif Court, Palani, is a *res judicata* to the instant suit. Hence, prayed to interfere with the concurrent findings of the Courts below and prayed to allow this second appeal.

7. Per contra, the learned counsel for the respondent/plaintiff would contend that the finding recorded by the Courts below are based upon the evidence and that the finding is in accordance with the materials on record and there are no grounds to interfere with such finding. Hence, prayed to dismiss the second appeal.



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8. I have given my anxious consideration to the submissions made on either side.

9. The gravamen of the submissions made by the learned counsel for the appellants is that the suit is hit by the principle of *res judicata* in view of the earlier suit in O.S.No.502 of 2006. However, the learned trial Judge and First Appellate Judge, have categorically held that the suit properties mentioned in Ex.B4 in O.S.No.502 of 2006 on the file of the District Munsif Court, Palani and the suit properties in the instant case, are altogether a different one and hence, have held that the judgment and decree, dated 27.11.2006 made in O.S.No.502 of 2006 could not be a *res judicata* to the instant case.

10. I am in full agreement with the reasoning given by the trial Judge as well as the First Appellate Judge. In respect of the possession of the properties, the trial Judge as well as the First Appellate Judge basing reliance upon Ex.A1 and A2 and basing reliance upon the revenue records such as house tax receipts and electricity bill in Exs.A4 and A5 have found that the plaintiff has been in possession and enjoyment of the suit properties.



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11. The learned counsel for the appellants/defendants would contend that such a finding is contrary to the documents Exs.B1 and B2 namely the sale deeds of the appellants/defendants. However, the learned counsel for the appellants/defendants would fairly submit that in respect of Item No.1 of the suit properties, there is no dispute by the defendants. Only in respect of Item No.2 of the suit properties, there is a serious objection raised by the defendants.

12. Whereas, even according to documents of the defendants in Ex.B1 and B2, there is a description of property, wherein on the eastern side, the property of the plaintiff was referred to as a boundary of the defendants' property. Therefore, the trial Court has found that the possession of the plaintiff could be established through the description of the property referred to in Ex.B1 and B2.

13. In view of the above, this Court is of the indubitable opinion that the finding of the trial Court is well merited and there could not have been any other view except the view taken by the trial Court. Therefore, there is no infirmity or perversity in the judgment rendered by the trial Court and the same has been rightly confirmed by the First Appellate



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Court. In view of the above discussion, the substantial questions of law are answered as against the appellants/defendants and in favour of the plaintiff.

14. In the result, this second appeal is dismissed and the judgment and decree, dated 14.07.2014 made in A.S.No.49 of 2010 on the file of the Sub-Court, Palani, confirming the judgment and decree dated 06.09.2010 made in O.S.No.19 of 2008 on the file of the District Munsif Court, Palani, is hereby confirmed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

05.02.2024

Index:Yes/No
NCC:Yes/No
PM

To

- 1.The Sub-Court,
Palani.
- 2.The District Munsif Court,
Palani.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.

PM

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