



S.A.(MD)No.152 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.152 of 2015

Tmt.Victoriasamy

... Appellant

Vs

V.Rajdendran

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 14.11.2014 made in A.S.No.16 of 2014 on the file of Additional Sub Judge, Dindigul, confirming the judgment and decree dated 10.02.2014 made in O.S.No.250 of 2011 on the file of District Munsif, Nilakottai.

For Appellant : Mr.R.Suriya Narayanan

For Respondent : Mr.K.Kevin Karan



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JUDGMENT

The plaintiff is the appellant. She laid a suit for bare injunction. The suit was dismissed by the trial Court and the findings of the trial Court was affirmed by the first appellate Court. Aggrieved by the concurrent findings against her, the plaintiff is before this Court.

2. According to the appellant/plaintiff, she purchased the suit property under Ex.A1, dated 30.10.1981 as a vacant site. Thereafter, she had put up superstructure and let out the same to 9 tenants and she had been in possession and enjoyment of the suit property as such. The respondent/defendant without having any right over the suit property, issued a lawyer notice to the tenants of the appellant and attempted to interfere with her possession and hence, she was constrained to file a suit for bare injunction.

3. The respondent herein filed his written statement denying the title as well as the possession of the appellant over the suit property. It was the specific case of the respondent that the property purchased by the appellant was totally a different property and the same is located in S.No.



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411, which is a Highway. The respondent raised an averment in the written statement that the suit property located in S.No.413/1 is nothing to do with the property purchased by the appellant under Ex.A1. The respondent also raised a plea that he purchased the suit property located in S.No.413/1, by a registered a sale deed dated 20.09.2011 and he has been in possession and enjoyment of the same. On these pleadings, the respondent sought for dismissal of the suit.

4. Before the trial Court, the appellant's power agent was examined as P.W.1 and one Ashok was examined as P.W.2. On behalf of the appellant/plaintiff, 15 documents were marked as Ex.A1 to Ex.A15. The respondent was examined as D.W.1 and one Kottairaj was examined as D.W.2. On behalf of the respondent, 13 documents were marked as Ex.B1 to Ex.B.13.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to a conclusion that the appellant failed to prove her title as well as possession and dismissed the suit. Aggrieved by the same, the appellant preferred an appeal. The first appellate Court also affirmed the findings of the trial Court. Hence,



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challenging the concurrence findings against her, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law, as per the order dated 02.07.2015:

“(i) Whether the Courts below are right in holding that the suit for permanent injunction without a prayer for declaration of title is not maintainable?

(ii) Whether the Courts below committed an error in not rendering a finding as to the claim of the plaintiff to be in possession of the suit property through the tenants?”

7. The learned counsel appearing for the appellant, elaborating the substantial questions of law framed at the time of admission, submitted that the appellant purchased the suit property under Ex.A1 with specified four boundaries and the boundary description mentioned in the plaint tallies with the boundaries description found in Ex.A1. In such circumstances, the Courts below ought not to have non-suited the appellant by pointing out discrepancy in the survey number. The learned counsel further submitted that when the appellant proved the title over the suit property, by producing EX.A1, with four boundaries which tallies with the description found in the plaint, the Courts below ought not to have observed that the suit for bare injunction without a prayer for



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declaration was not maintainable.

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8. In support of the said contention, the learned counsel for the appellant relied on the judgment of the Apex Court in *Ananthula Sudhakar Vs. P.Buchi Reddy* reported in (2008) 4 SCC 594. The learned counsel further submitted that by producing revenue documents, like patta and natham adangal extract, the appellant proved the possession over the suit property. The Courts below failed to take into consideration the revenue documents filed by the appellant in proper perspective and hence, the findings of the Courts below are liable to be set aside.

9. The learned counsel appearing for the respondent submitted that when there is a discrepancy in the survey number mentioned in the title document of the appellant, the suit for bare injunction filed by her is not maintainable and hence, the Courts below were justified in non suiting the appellant on the ground that there was no prayer for declaration of title. The learned counsel for the respondent, by taking this Court to the findings rendered by the trial Court as well as the first appellate Court, submitted that the findings of the Courts below that the appellant failed



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to establish her right and possession over the suit property is based on proper appreciation of evidence available on record and therefore, the same requires no interference by this Court,

Answer to the substantial questions of law (i) and (ii).

10. The appellant claims that she purchased the suit property as a vacant site under Ex.1 and had put up superstructure thereon. A perusal of Ex.A1 would suggest that the appellant purchased 1050 sq. ft., of vacant house site with East-West measurement of 50 feet and North-South measurement of 21 feet in S.No.411. Now the suit has been laid by the appellant mentioning the new survey number of the suit property as 413/1. As rightly pointed out by the Courts below, the appellant failed to lead any evidence to corollate the old S.No.411 with the new S.No. 413/1. In fact, Ex.A3 patta and Ex.A4 Natham Adangal extract produced by the appellant would go against her own case. Ex.A3 is a patta issued in the name of plaintiff for new S.No.413/1. In the second column of the document, old survey number for 413/1 is mentioned as “413 part”. Therefore, the contention of the appellant that old S.No.411 was



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subsequently changed as 413/1 gets falsified by her own document viz.,

Ex.A3.

11. Even in Ex.A4, Natham Adangal extract produced by the appellant, the old survey number for S.No.413/1 is mentioned as 413 part. Therefore, the contention of the appellant that old S.No.411 is changed as new S.No.413/1 is not acceptable to this Court. Under Ex.A1, the appellant purchased the property in old S.No.411. However, new S.No.413/1 is not relating to old S.No.411. In such circumstances, the Courts below rightly came to the conclusion that when there is a serious discrepancy with regard to survey number found in Ex.A1, suit for bare injunction without a prayer for declaration is not maintainable.

12. The learned counsel appearing for the appellant submitted that the four boundaries mentioned in the title document tallies with the boundary description in the plaint schedule and when there is a dispute between the boundaries and survey numbers, the boundaries will prevail over the survey numbers. The said submission made by the learned counsel for the appellant cannot be pressed into service in a suit for bare injunction. If at all, it is for the appellant to file a suit for declaration of



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her title and establish the property purchased by her under Ex.A1, lies in new Survey number 413/1. When there is a discrepancy in the survey number of the property in the title document of the appellant, it creates a cloud over the title and hence, suit for bare injunction is not at all maintainable. In view of the same, reliance placed by the learned counsel for the appellant in *Ananthula Sudhakar's case* will not advance his case in view of the fact that a cloud is created over the title of the appellant. The question of law “(i)” is answered accordingly against the appellant and in favour of the respondent.

13. The appellant in the plaint mentioned that the superstructure put up by her in the suit property were orally let out to tenants and they have been in enjoyment and possession of the property under oral arrangements. However, in order to prove the alleged tenancy arrangements, the appellant/plaintiff produced written tenancy agreements entered into with the alleged tenants as Ex.A7 to Ex.A12. All these written tenancy arrangements filed by the appellant came into existence subsequent to the suit. Therefore, the written tenancy documents filed by the appellant will not advance the case of the appellant. In order to prove the possession, the appellant produced patta



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and natham adangal extract as Ex.A3 and Ex.A4. As mentioned earlier, in Ex.A3 and Ex.A4, the old survey number was mentioned as “413 part” not as “411”. In such circumstances, it is not safe to rely on Ex.A3 and Ex.A4 and come to the conclusion that the appellant proved her possession over the suit property based on the said document. Ex.B10 is “A” register extract filed by the respondent. A perusal of the same would indicate that S.No.411 is described as a Sarkar Porambokku in Villalge “A” Register. If S.No.411 is described as Sarkar Porambokku, how the appellant could claim title over the suit property under Ex.A1 is also not clear. In such circumstances, the question of law “(ii)” is also answered against the appellant.

14. In view of the answer to substantial questions of law “(i) and (ii)”, this second appeal fails and the same is dismissed with liberty to the appellant to establish her title by filing a suit for declaration and appropriate consequential relief. There shall be no order as to costs.

05.04.2024

NCC : Yes / No



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Index : Yes / No

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To

- 1.The Additional Sub Judge, Dindigul.
- 2.The District Munsif, Nilakottai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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