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SA No. 380 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-11-2025

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 380 of 2015

Kaathamuthu (Died)

1. K. Balu
S/o Kaathamuthu
Sellappampatti Village Namakkal Tk
Kathamuthu (died)
2. JOTHI
W/o P. Subramani
Vettukadu Namakkal Tk
3. K. Viruthambal
W/o Kaathamuthu Sellappampatti Village
Namakkal Tk.

..Plaintiff/respondents/
Appellant(s)

Vs

Southern Region Bulk Lpg Trans
Port Owners Association Rep By Its President Hav
Off D.No.87 Salem Rd Namakkal Town,Tk&dt.

..defendant/appellant/
Respondent(s)

Prayer: Second appeal filed under Section 100 of the Code of Civil Procedure seeking a direction to set aside the judgment and decree dated 27.08.2014 in A.S.No.32 of 2013 on the file of the learned Sub Judge, Namakkal reversing the judgment and decree dated 12.07.2012 in O.S.No.352 of 2006 on the file of Additional District Munsif, Namakkal.



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For Appellant(s): Mr.S.Kalyanaraman

For Respondent(s): Mr.V.Perumal for
Mr.T.Dhanya Kumar

JUDGMENT

This second appeal is preferred as against the decree and judgment passed by the first appellate Court in A.S.No.32 of 2013 dated 27.08.2014 on the file of the learned Subordinate Judge, Namakkal.

2. Before the trial Court, the appellants/respondents/plaintiffs have filed a suit in O.S.No.352 of 2006 on the file of the Additional District Munsif, Namakkal for the relief of recovery of possession and mandatory injunction. The said suit was decreed in favour of the plaintiffs. Aggrieved by the said decree and judgment passed by the trial Court, the defendant / appellant / respondent have preferred an appeal before the first appellate Court and the said appeal was allowed. Aggrieved by the said decree and judgement, the present second appeal has been preferred by the plaintiffs.

3. The brief averments of the plaint are as follows:

(i) The suit property is situated in Sellamppampatti Village in S.No.57/2 to an extent of 0.81.0 hectares that is 2.00 acres. The said property originally belonged to one Ramasamy Udaiyar and thereafter, the plaintiffs purchased the said property from the said Ramasamy Udaiyar through sale deed dated



21.09.1981 for Rs.12,000/- and thereafter, patta was also granted in favour of the plaintiffs and they have been in possession and enjoyment of the property.

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(ii) In the rough sketch filed along with the plaint, land belonging to the plaintiffs is mentioned as 'P' and the land purchased by the plaintiffs is mentioned as 'T' and the property belonging to the defendant is marked as 'D'. The suit property has been mentioned as 'P' and 'T'. The said 'P' and 'T' portion of the properties were sold by the plaintiffs to one Gunasekaran through sale deed dated 01.03.2006 to an extent of 1.90 ½ acres.

(iii) The defendant purchased the property from one Marudhayee Ammal through sale deed dated 09.02.2004, which is adjacent to the southern side of the suit property. The defendant also constructed a petrol bunk. While constructing the building, the defendant encroached the 'P' portion along with 'D' portion and constructed a compound wall. In November 2005, the plaintiffs were not residing in the locality and taking advantage of the same, defendant constructed the property by encroaching the plaintiffs' property. The defendant has no right to encroach the said property and in spite of repeated requests and demands made by the plaintiffs, the defendant has failed to return the said property.



(iv) The plaintiffs sent a legal notice dated 23.03.2006 and the same was received by the defendant but failed to give a reply or handed over vacant portion of the property. Therefore, the plaintiffs have filed the suit.

4. The brief averments of the written statement of the defendant are as follows:

(i) The suit is false, frivolous and not maintainable in law. The plaintiffs have to prove the averments in the plaint except those that are admitted by the defendant. It is true that the plaintiffs purchased the property from one Ramasamy Udaiyar in S.No.57/2 but not to an extent of two acres. The extent mentioned in the patta and the property enjoyed by the plaintiffs are two different extents. The rough sketch filed by the plaintiffs is not correct.

(ii) At the time of purchase of the property, there was a ridge between the properties of the plaintiffs and the defendant and there was a septic tank in existence. Thereafter, both the plaintiffs and the defendant adjusted the said ridge for their convenience and enjoyment and the said compound wall was constructed in the year 2005 in the presence of the plaintiffs and they also consented and the defendant had handed over the possession of ½ cent to the plaintiffs and both parties are enjoying the property as stated above.

(iii) At the time of purchase of the property, after removing the super structure of the house, empty land was alone sold to the defendant. Even now,



the said septic tank is also situated and the same is under possession of the defendant. By suppressing the material facts, the plaintiffs filed the suit. After receipt of the notice from the plaintiffs, there was a panchayat between the parties through elders, thereby, the defendant has not issued a reply. The plaintiffs also participated in the panchayat, aggrieved by the panchayat, they have now filed this suit. The defendant and his predecessors have been in possession of the property for more than 50 years, therefore the plaintiffs are not entitled to any relief over the property.

5. Based on the above said pleadings, the trial Court framed the following issues for trial:

- (1) Whether the defendant and his predecessor have been in enjoyment of the suit properties for over 12 years?
- (2) Whether the plaintiffs is entitled for the relief of possession as prayed for?
- (3) To what other relief?

Before the trial Court, on the side of the plaintiffs, they examined PW1 and PW2 and marked Ex.A1 to Ex.A8. On the side of the defendant, he examined DW1 and DW2. The Commissioner's report has been marked as Ex.C1 and Ex.C2. After hearing both sides, the trial Court decreed the suit. Aggrieved by the decree and judgment, the defendant preferred an appeal before the learned Subordinate Judge, Namakkal in A.S.No. 32 of 2013. The first appellate Court



after hearing both sides and perusing the records framed the points for determination that,

- (1) Whether the decree and judgment of the trial Court has to be set aside?
- (2) Whether the appeal is maintainable?

The first appellate Court allowed the appeal suit and set aside the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the present second appeal has been filed.

6. At the time of admitting the appeal this Court formulated the following substantial questions of law:-

1. Whether the lower appellate Court below committed an error in holding that the suit is not maintainable for want of relief of declaration and mandatory injunction especially when the defendant had not disputed the title of the plaintiff to the suit property and when there is no cloud over the title of the plaintiff over the suit property?

2. Is not the lower appellate court wrong in dismissing the suit when it had found that the defendant would not be entitled to claim adverse possession with regard to the suit property?

7. Learned counsel appearing for the plaintiffs would submit that the plaintiffs are the owner of the property and they purchased the property through sale deed dated 21.09.1981 to an extent of 2 acres in S.No.57/2 situated at Sellappampatti Village. Thereafter, they sold the property through sale deed dated 01.03.2006 to one Gunasekaran to an extent of 1.90 ½ acres by leaving



the southern portion of the property to an extent of 20 feet south-north and 210 feet east-west to an extent of 9 ½ cents.

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7.1. Therefore, taking advantage of the absence of the plaintiffs in the locality, the defendant encroached the property in the month of November 2005 and constructed a compound. Therefore, filed this suit before the trial Court and they examined witnesses PW1 and PW2 and marked Ex.A1 to Ex.A8. On the side of the defendants, witnesses DW1 and DW2 were examined and no documents have been marked. The Commissioner's report and plan have been marked as Ex.C1 and Ex.C2. The plaintiffs side have deposed about the alleged encroachment made by the defendant.

7.2. The trial Court after careful consideration and examination of material witnesses on both sides correctly decreed the suit. The defendant also admits the purchase of the property by the plaintiffs. The only defence pleaded by the defendant is that they purchased the property in the year 2005. Their predecessors were also in possession for more than 50 years. Therefore, they are entitled by adverse possession. However, the first appellate Court erroneously allowed the appeal and dismissed the suit holding that the plaintiffs have not sought for declaration in respect of the property. Therefore, the lower appellate Court committed error in holding that without seeking relief of declaration, the relief of mandatory injunction is not maintainable. When there



is no cloud over the title of the property, the relief of declaration is not necessary.

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8. Learned counsel for the respondent would submit that the plaintiffs filed a suit for relief of possession and mandatory injunction without seeking the relief of declaration. The plaintiffs already sold the property to one Gunasekaran. At that time itself, there is a dispute in respect of the extent of the property. The defendant's predecessor constructed the septic tank and thereafter, the defendant also raised a construction of the compound wall in the property in the month of November 2005. The plaintiffs also aware about the construction and the defendants are in possession and enjoyment of the property prior to the possession and enjoyment of the predecessor of the plaintiffs.

9. The plaintiffs, without seeking declaration, filed the suit for relief of mandatory injunction and for recovery of possession and the same is not maintainable. However, the trial Court without considering the same erroneously decreed the suit. The first appellate Court correctly dismissed the suit for want of relief of declaration. The plaintiffs have not mentioned specifically the extent of the property in the plaint. He mentioned north-south 20 feet and east-west 15 feet but in the description of the property failed to mention about the same. Therefore, without properly identifying the property, the suit for recovery of possession and mandatory injunction is not maintainable



and the first appellate Court correctly dismissed the suit. Therefore, he prayed for dismissal of this second appeal.

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10. This Court heard both sides and perused the material records of the case.

11. For sake of convenience and brevity the parties in this appeal will be referred as per their rank in the trial Court.

12. In this case, there is no dispute that the plaintiffs have purchased the property through sale deed dated 21.09.1981 in S.No.57/2 to an extent of 2 acres and thereafter, he sold the property to one Gunasekaran to an extent of 1.90 ½ acres. According to the plaintiffs, the remaining 9 ½ cents is the suit property and the same was encroached by the defendant and therefore, filed this suit.

13. According to the defendant, the property belongs to his predecessors and his predecessors have been in possession and enjoyment of the property. There was a ridge between the properties of the plaintiffs and the defendant and the ridge is a boundary to the property. The defendant side constructed a toilet and other constructions and the same is still existing in the property in a dilapidated condition. Thereafter, the defendants constructed the compound wall in the property. It is also admitted fact that, the defendant constructed the compound wall in the year 2005. The plaintiffs, at the time of sale of the



property to one Gunasekaran has not mentioned about the retention of the property at the southern side in the recital and also the extent of the property.

There is no evidence whether actual extent of the property was 2.00 acres and whether the 1.90 ½ acre alone was sold to the said Gunasekaran after measurement. According to the plaintiffs, he sold the property on 01.03.2006, whereas the compound wall raised in the month of November 2005. Therefore, they knew very well about the existence of the compound wall at the time of sale of property to Gunasekaran. Once the plaintiff sold the property, then it is his duty to establish the availability of the remaining property. Plaintiff failed to measure the property through qualified surveyor to prove the exact extent of the property. The recitals found in the boundaries of the sale deed is not sufficient to prove the available extent.

14. When the defendant categorically denied the title of the plaintiffs by claiming long possession and the plaintiffs also sold the property on 01.03.2006, without retaining the property, it is the duty of the plaintiffs to prove the exact extent of the property and the plaintiffs also filed the suit seeking relief of mandatory injunction and recovery of possession without seeking relief of declaration of the property. Once the defendant denied the title of the plaintiffs and the defendant is in possession of the property, the plaintiffs ought to have sought for relief of declaration of title, since there is a cloud over the title of the



property. It is a well settled law that the suit for mere recovery of possession is maintainable if there is no cloud over title of the property.

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15. Once the defendant pleaded for adverse possession and the plaintiffs also sold the property, the plaintiffs ought to have sought for relief of declaration with proper identification and exact particulars of the property. In this case, after sale of the property to the Gunasekaran, it is the duty of the plaintiffs to establish that the alleged extent of 9 ½ cents is available. But the plaintiffs failed to prove the same. Therefore, the first appellate Court allowed the appeal by setting aside the judgment of the trial Court by holding that the relief of recovery of possession and mandatory injunction is not maintainable without a declaration relief.

16. Though, an Advocate Commissioner was appointed and filed a report and plan and the said documents were marked as Ex.C1 and Ex.C2, the plaintiffs failed to prove the exact extent of the property, which was allegedly encroached. When the plaintiffs filed an application for appointment of Commissioner, failed to take steps to measure the property through concerned revenue authorities. Therefore, the plaintiffs failed to prove their case and without any proper identification of the property, the plaintiffs are not entitled to any relief. Therefore, first appellate Court has correctly set aside the decree and judgment.



17. As far as the first substantial question of law that whether the lower appellate Court committed an error in holding that the suit is not maintainable for want of relief of declaration and mandatory injunction, especially, when the defendant had not disputed the title of the plaintiffs to the suit property and when there is no cloud over the title of the plaintiffs over the suit property, is concerned, the defendant is in continuous possession of the property and defendant's predecessor himself constructed the toilet and thereafter, the defendant constructed a building including a compound wall. Thereby, the defendant's predecessors and the defendant have been in possession and enjoyment of the property and thereby claimed adverse possession. The plaintiffs failed to identify the correct extent of the property and also the specific particulars of the encroached portion. Without proving the existence of specific extent and proper identification of the property mandatory injunction cannot be granted. When the defendant claimed adverse possession of the property and the defendant also in possession of the property and the plaintiffs also sold the major part of the property without referring any property, the plaintiff ought to have sought for the relief of declaration of the property. Therefore, the first appellate Court is right in holding that the suit is not maintainable for want of relief of declaration and mandatory injunction. Thus, the first substantial question of law is answered.



18. The second substantial question of law that, is it not the lower appellate Court wrong in dismissing the suit when it had found that the defendant would not be entitled to claim adverse possession, with regard to the suit property, is concerned, though the defendant had pleaded the adverse possession, he has not filed the suit and the plaintiffs have only filed the suit for recovery of possession and mandatory injunction. Therefore, the plaintiffs have to prove their case with proper identification and records. The defendant can set up plea of adverse possession, but, the suit is filed for recovery of possession and mandatory injunction and the plaintiffs has to identify the property and prove the exact extent of the encroached property, but the plaintiffs failed to prove the identification as well as the exact extent of the property. Therefore, the plaintiffs are not entitled to the relief of recovery of possession and the mandatory injunction. Thus, the second substantial question of law is answered.

19. In view of the above said discussions and the answers to the substantial questions of law, this second appeal fails and the same is liable to be dismissed.

20. Accordingly, this second appeal is dismissed. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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P.DHANABAL J.

mpl

To

1. The Sub Judge, Namakkal.
2. The Additional District Munsif, Namakkal.
3. The Section Officer,
VR Section, High Court of Madras

SA No. 380 of 2015

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