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S.A.No.531 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.531 of 2017

Tamilarasi

... Appellant

vs.

Kaliyamoorthy

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.27 of 2012 dated 06.08.2014 on the file of learned Sub Court, Mannargudi, confirming the judgment and decree passed in O.S.No.77 of 2011 dated 22.12.2011 on the file of learned District Munsif cum Judicial Magistrate, Needamangalam.

For Appellant : Mr.P.Dineshkumar
for M/s.P.T.Rama Devi

For Respondent : S.Chandrasekharan

J U D G E M E N T

The plaintiff in a suit for permanent injunction is the appellant. The suit was dismissed by the Trial Court and the findings of the Trial Court was affirmed by the First Appellate Court. Challenging the concurrent findings of the Courts below, the appellant/plaintiff has come up by way of this second appeal.



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2. According to the appellant/plaintiff, the suit property with an extent of 0.09.0 ares of land in Old Survey No.63A/10 and New Survey No.165/10 situated at Water Tank Street, Pullavarayankudikadu, originally belonged to one Nallammal. After the death of Nallammal and her son Rathinavel Pullavarayar, her grandson Appavu got the suit property. He executed a Power of Attorney in respect of the suit property in favour of Balakrishnan, brother of respondent. The said Balakrishnan representing his principal executed a registered Sale Deed in favour of the appellant on 18.10.2010 in respect of the suit property. After purchase, the appellant also got mutation of revenue records in her favour. Thus, she has been in possession and enjoyment of the same. The respondent without having any manner of right attempted to interfere with appellant's peaceful possession and enjoyment of the suit property. Hence, the appellant was constrained to file a suit for permanent injunction against the respondent.

3. The respondent/defendant filed a written statement and contended that the suit property was purchased by him under the agreement dated 27.06.1992 and the possession was also delivered in his favour. It was further contended that though the respondent paid the entire sale



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consideration in favour of said Appavu, no regular registered sale deed was executed in favour of the respondent. Therefore, the respondent got a registered General Power of Attorney in favour of his younger brother namely Balakrishnan. Subsequently, the Balakrishnan acted against the interest of the respondent and claimed half share in the suit property. He also filed a suit for partition in O.S.No.92 of 2010 on the file of the Sub Court, Mannargudi claiming half share in the suit property therein including the present suit property. The brother of the respondent namely Balakrishnan with ulterior motive executed the Sale Deed in favour of the appellant. Hence, the respondent sought for dismissal of the suit on the ground that he has been in possession and enjoyment of the suit property right from the date of agreement.

4. Before the Trial Court, the appellant's husband was examined as PW.1. The vendor of the appellant was examined as PW.2. Two other witnesses were examined on behalf of the appellant as PW.3 and PW.4. On behalf of the appellant, 6 documents were marked as Exs.A1 to A6. The respondent was examined as DW.1 and two other witnesses were examined on his behalf as DW.2 and DW.3 and the respondent marked 5 documents



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as Exs.B1 to B5 on his behalf.

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5. The Trial Court based on the appreciation of oral evidence of PW.1 to PW.4, came to the conclusion that the appellant failed to prove her possession and enjoyment of the suit property and consequently, dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.27 of 2012 on the file of Sub Court, Mannargudi. The First Appellate Court also on re-appreciation of oral evidence of PW.1 to PW.4, concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.

6. The learned counsel appearing for the appellant submitted that the appellant proved her title over the suit property by producing registered Sale Deed dated 18.10.2010 in her favour as Ex.A1 and the General Power of Attorney Deed executed by admitted owner Appavu in favour of Balakrishnan. The learned counsel further submitted that the suit property being a vacant site, once the appellant is succeeded in proving the title over the same, possession is presumed. Therefore, both the Courts below committed error in coming to the conclusion that the appellant failed to



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prove her possession over the suit property. The learned counsel by relying on patta transfer order and kist receipt in his name submitted that the possession of the appellant over the suit property has been proved by leading acceptable evidence.

7. The Trial Court as well as First Appellate Court extracted the evidence of PW.1 to PW.4. A perusal of the same would suggest that PW.1 during his cross examination clearly admitted that there was a thatched shed in the suit property, which was constructed by him for residential purpose. It was also deposed by him that there is a fencing surrounding the suit property. In such circumstances, the legal submission made by the learned counsel appearing for the appellant that the possession of the appellant shall be presumed in case of vacant site cannot be accepted. There is a clear admission by appellant's husband as PW.1 that there was a thatched shed in the suit property. In such circumstances, the suit property cannot be termed as a vacant site. Therefore, the appellant cannot be allowed to say that the suit property is a vacant site and therefore, her possession shall be presumed.



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8. One Mathivanan, who was examined on behalf of the appellant as

PW.3, in his evidence deposed as follows:-

“வழக்கு சொத்து பிரதிவாதி வீட்டை ஒட்டி சேர்ந்தாற்போல் கிழக்கு பக்கம் உள்ளது என்றால் சரிதான். பிரதிவாதி தாவா சொத்தை தன் வீட்டிற்கும் தாவா சொத்திற்கும் இடையில் வேலி எதுவும் இல்லாமல் ஒரே சேர்ந்தாற்போல் வைத்து வைக்கோல் போர், கொட்டகை வைத்து அனுபவித்து வருகிறார் என்றால் சரிதான்.”

9. Therefore, the appellant's own witness PW.3 clearly admitted that the respondent has been enjoying the suit property along with his house as one block. The witness not only admitted the possession of the respondent but also admitted the manner of enjoyment of the same. In such circumstances, the admission of PW.3 is very well pronounced and the same has non-suited the appellant.

10. The respondent claims possession over the suit property under the agreement dated 27.06.1992, the agreement vendor, who sold the property subsequently to the appellant was examined as PW.2. He also clearly admitted that subsequent to Ex.B1-Agreement, he was not in possession of the suit property. In such circumstances, there is no explanation how he



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could deliver the possession to the appellant on the date of execution of the Sale Deed on 18.10.2010. Both the Courts below on appreciation of oral evidence of PW.1 to PW.4, came to the factual conclusion that the appellant failed to establish her possession over the suit property. The finding of fact rendered by the Courts below is binding on this Court while exercising jurisdiction under Section 100 of Civil Procedure Court in the absence of any perversity in approach. Therefore, I do not find any substantial question of law arising for consideration in this second appeal and consequently, the second is dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) In the facts and circumstances of the case, there will be no order as to costs.

17.10.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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S.SOUNTHAR, J.

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To

1.The Sub Court,
Mannargudi.

2.The District Munsif cum Judicial Magistrate,
Needamangalam.

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