



S.A.No.1979 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.04.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

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Mohamed Sheriff (died) ... Appellant/Appellant/1st Defendant

2.Innayathulla
3.Nyamathullah
4.Hidayathullah
5.Rahmathullah

(Appellants 2 to 5 are brought on record as
Legal Heirs of the deceased sole appellant vide
order dated 23.12.2021 in C.M.P(MD)Nos.6509,
6512 & 6513 of 2021.)

... Appellants

-VS-

1.Chellammal (died) ... 1st Respondent/1st Respondent/Plaintiff
2.Mohamed Ghouse ... 2nd Respondent/2nd Respondent/2nd Defendant
3.Chandira
4.Saravanan
5.Selvi
6.Jeyalakshmi
7.Arumugam

(R3 to R7 are brought on record as Legal Heirs of
the deceased first respondent vide
court order dated 06/01/2020 made in
MP(MD)No.1 of 2015)

..Respondents



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PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 12.07.1999 made in A.S.No.193 of 1998, on the file of the II Additional District Court, Tirunelveli, confirming the Judgment and decree, dated 23.10.1998 in O.S.No.265 of 1992, on the file of the Principal District Munsif Court, Tirunelveli.

For Appellants ... Mr.H.Arumugam

For Respondents ... Mr.R.T.Arivukumar for R3 to R7
No appearance for R2

JUDGMENT

The deceased first respondent herein, as the plaintiff, filed the suit in O.S.No.265 of 1992, on the file of the Principal District Munsif, Tirunelveli for permanent injunction against the deceased appellant herein and the second respondent herein. The said suit was decreed. Challenging the said Judgment and Decree, the deceased appellant/first defendant filed the appeal in A.S.No.193 of 1998, on the file of II Additional District Court, Tirunelveli. The lower appellate Court dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court. Challenging the said dismissal of the appeal and decree, the first defendant in the suit and the appellant in the first appeal has



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filed the present second appeal before this Court, raising the following substantial questions of law:-

“1.Whether the findings of the Courts below are vitiated by its failure to consider the effect of the decision of S.T.A.74 of 1969, S.T.A.30 of 1970 and A.S.No.524 of 1973 and O.S.No.234 of 1974 affirming the Judgment and Decree under Ex.B1?

2.Whether the Courts below is right in granting a decree for injunction in the absence of any positive and acceptable evidence on the side of the respondent having regard to Ex.B4?

3.Whether the Courts below is right in casting the burden of proof on the appellant who is the defendant, especially when the first respondent as plaintiff failed to discharge the burden of proving title and possession on the first respondent and his vendor Gopalaswamy Naidu?”

2. The case of the first respondent/plaintiff is that the suit property originally belonged to one Gopalaswamy Naidu, who purchased the property under a registered sale deed, dated 06.05.1955. From the said date, he was enjoying the property. During the course of enjoyment, the appellant herein trespassed into the suit property and enjoying the suit property in an unlawful manner. Therefore, the said Gopalaswamy



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Naidu filed a suit before the Principal Sub-Judge, Tirunelveli in O.S.No. 93 of 1979 and got a decree for recovery of possession and also filed an Execution Petition in E.P.No.2 of 1989 and got delivery through Court on 25.09.1991. After taking delivery, the said Gopalaswamy Naidu was enjoying the property by paying kist. Subsequently, he sold the property under registered sale deed, dated 20.05.1992 in favour of the first respondent/plaintiff and the first respondent/plaintiff took the possession and she was enjoying the property by paying revenue taxes. From the date of her purchase, i.e., on 20.05.1992, the first respondent/plaintiff was in possession and enjoyment of the property and patta was also transferred in her name and all the patta and chitta stands in the name of the first respondent/plaintiff. Therefore, the first respondent/plaintiff and her predecessor were in title to the suit property. While so, on 02.06.1992, the first respondent/plaintiff went to the land for doing preliminary work for cultivation and also pave the way for cart-track. The appellant/first defendant and the second respondent/second defendant were restraining from her enjoyment. Hence, she filed the suit for permanent injunction.



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3. The case of the appellant/first defendant is that the dale deed, dated 06.05.1955 in favour of the Gopalaswamy Naidu was cancelled in the suit in O.S.No.79 of 1964, on the file of the Sub-Court, Tirunelveli dated 17.04.1969. As against which, the said Gopalaswamy Naidu filed the appeal suit in A.S.No.524 of 1973 before this Court and the same was also dismissed on 19.11.1975. The appellant/first defendant was enjoying the suit property and handed over the suit property to the second respondent/second defendant for cultivation of the land. For the past 15 years, the suit property was in the enjoyment of the second respondent/second defendant. The suit property was not in the enjoyment of the said Gopalaswamy Naidu. The appellant/first defendant or the second respondent/second defendant did not interfere with the enjoyment of the property of the said Gopalaswamy Naidu, because the property was in possession of the second respondent/second defendant. Though the second respondent/second defendant was in possession of the suit property, the said Gopalaswamy Naidu threatened the second respondent/second defendant and tried to interfere with the possession, as if, he got possession in E.P.No.2 of 1989 in O.S.No.93 of 1979. Therefore, the second respondent/second defendant filed a suit in O.S.No.558 of 1991 against the said Gopalaswamy Naidu and got



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injunction. Therefore, suppressing the same, the first respondent/plaintiff filed the present suit. Neither the first respondent/plaintiff nor the said Gopalaswamy Naidu has got any right and enjoyment over the suit property.

4. The case of the second respondent/second defendant is that in the year of 1977, the appellant/first respondent handed over the property to him for cultivation and the second respondent/second defendant, as cultivating tenant, was enjoying the property for the past 15 years and he has also paid the rent. Gopalaswamy Naidu filed the suit in O.S.No.93 of 1979 and also got a decree and filed E.P.No.2 of 1989. At that point of time, the second respondent/second defendant was cultivating the land. Therefore, the second respondent/second defendant filed the suit in O.S.No.558 of 1991 against the said Gopalaswamy Naidu and got an order of injunction in I.A.No.1629 of 1991. The said suit was pending. Therefore, in the year of 1991, when the second respondent/second defendant was cultivating the paddy, during harvesting time, the said Gopalaswamy Naidu and his men tried to interfere with the possession and enjoyment of the second respondent/second defendant and also on 25.10.1991, the second respondent/second defendant got police



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protection and harvested the paddy cultivated by him. Therefore, the property was not in enjoyment of the said Gopalaswamy Naidu and the first respondent/plaintiff is not entitled to get any title and possession over the property. The husband of the first respondent/plaintiff interfered with and also they filed an application to implead the husband of the first respondent/plaintiff. Hence, the sale said to have been made by Gopalaswamy Naidu in favour of the first respondent/plaintiff is not valid and would not bind the possession and enjoyment of the second respondent/second defendant. The trial Court decreed the suit and the first appellate Court had also dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court. Therefore, the present second appeal is filed.

5. While admitting the second appeal, this Court, considering the facts and circumstances of the case, formulated the following substantial questions of law:-

“1. Whether the findings of the Courts below are vitiated by its failure to consider the effect of the decision of S.T.A.74 of 1969, S.T.A.30 of 1970 and A.S.No.524 of 1973 and O.S.No.234 of 1974 affirming the Judgment and Decree under Ex.B1?



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2. Whether the Courts below is right in granting a decree for injunction in the absence of any positive and acceptable evidence on the side of the respondent having regard to Ex.B4?”

6 (i). The learned counsel for the appellant/first defendant would submit that the suit property is a Minor Inam Land and came to be notified under the provisions of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act 30 of 1963 and the proceedings were initiated and concluded. The right and interest of the predecessors in title of the first respondent has already been concluded under Ex.B2 and as such, the first respondent/plaintiff cannot claim any right over the suit property. There is no evidence to show that the first respondent/plaintiff was in possession and enjoyment of the suit property. The second respondent/second defendant obtained an order of injunction against the vendor of the first respondent/plaintiff and it was in force till 05.07.1993 and the same is proved under Ex.B4. The first respondent/plaintiff has failed to establish title and possession and the burden of proof is only upon the first respondent/plaintiff and the first respondent/plaintiff has to prove her case on her own strength and she cannot take advantage of the



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weakness of the appellant/first defendant. The first respondent/plaintiff was not in possession and enjoyment of the property. Mere patta stands in the name of the first respondent/plaintiff is not the sole ground to grant a decree. Patta is not a document of title. It is for the first respondent/plaintiff to establish her right to be in possession. But she has not proved either right to be in possession and she is in possession at the time of filing of the suit. The trial Court had failed to consider the suit filed by the second respondent/second defendant and got an order of injunction and the injunction was in force.

6(ii). The learned counsel for the appellant/first defendant would further submit that the lands are Minor Inam Lands granted in favour of the Hazrath Malung, Kasim Sha, Darresh Thikka and same was notified under the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1967 and patta was granted in favour of Thikka and the same has become final in S.T.A.No.74 of 1969. The vendor of the first respondent/plaintiff, namely, Gopalaswamy Naidu is also a party to the said suit filed by Thikka in O.S.No.79 of 1964, on the file of the Sub Court, Tirunelveli and title of the Thikka represented by the appellant/first defendant was suppressed and the same was also



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confirmed in A.S.No.529 of 1973 and A.S.No.234 of 1974 under Ex.B2

and as such, the first respondent/plaintiff has no title to the suit property.

The predecessor in title of the first respondent/plaintiff was a party to the proceedings in S.T.A.74 of 1969 and S.T.A.30 of 1970 and the appeal in A.S.No.524 of 1973 and A.S.No.234 of 1974 and it was over cited by the both the Courts below. As per the above STAs, the delivery was granted in favour of the appellant/first defendant, pursuant to the Judgment and Decree under Ex.B1 and as such, the claim of possession of the first respondent/plaintiff cannot be sustained. Both the Courts below proceeded on the assumption on the basis of the proceeding in O.S.No.93 of 1979 and the same cannot be sustained by virtue of the ultimate decision under Ex.B1 as confirmed under Ex.B2. Therefore, the possession of the first respondent/plaintiff was not recognised and also the first respondent/plaintiff could not have taken possession of the suit property, in view of the pendency of the suit filed by the second respondent and the order of injunction against the vendor of the first respondent under Ex.B4. The evidence of P.W.2 is contradictory to the pleadings. Therefore, the trial Court and the first appellate Court had failed to consider the material facts and pleadings and evidence and they have not considered the decision in S.T.A.74 of 1969 and S.T.A.30 of



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1970 and A.S.No.524 of 1973 and A.S.No.234 of 1974. Therefore, the Judgment and Decree passed by the trial Court and the first appellate Court are vitiated based on the above said decision in STAs and other proceedings. Hence, the trial Court ought not to have granted an order of injunction as against the appellant/first defendant and the second respondent/second defendant. Therefore, the Judgment of both the Courts below are liable to be interfered with.

7(i). The learned counsel appearing for the respondents 3 to 7 would submit that the suit property originally belonged to his vendor Gopalaswamy Naidu. The said Gopalaswamy Naidu got property under sale deed, dated 06.05.1955, and the said sale deed was not challenged by either of the parties. The second respondent/second defendant, at the instigation of the appellant/first defendant, trespassed into the property. Hence, Gopalaswamy Naidu has filed the suit in O.S.No.93 of 1979 and got a decree. Based on the decree, he filed an execution petition in E.P.No.2 of 1989 and got delivery on 25.09.1991 through Court. In the said delivery warrant, the second respondent/second defendant has also signed as a witness. After taking delivery, the first respondent/plaintiff purchased the property from Gopalaswamy Naidu in the year of 1992



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under a registered sale deed, dated 20.05.1992. Subsequently, she was also enjoying the property by cultivating the land. Once the vendor of the first respondent/plaintiff had taken delivery through Court and the second respondent/second defendant has also signed as a witness for taking delivery, subsequently, they cannot challenge the same and also they have not challenged the delivery also. The proceeding of the delivery under execution proceeding is under due process of law and the vendor of the first respondent/plaintiff had taken delivery in due process of law. The entries made in the proceedings are public documents. The entries made in the public documents are genuine, unless it is contrarily proved. In this case, the appellant and the second respondent have not proved that the delivery was not effected in the manner known to law and still the possession was continued to be with the second respondent. Therefore, in the absence of the same, all the contentions of the appellant/first defendant and the second respondent/second defendant are not acceptable.

7(ii). The learned counsel for the respondents 3 to 7 would further submit that earlier, patta stood in the name of the vendor of the first respondent/plaintiff and after delivery, the first respondent/plaintiff



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purchased the property and the patta was also stand in the name of the first respondent/plaintiff and she was paying kist and revenue tax. Since the first respondent/plaintiff established her right in the suit property and possession in the suit property, both the trial Court as well as the first appellate Court had rightly granted the decree restraining the appellant/first defendant and the second respondent/second defendant from interfering with the first respondent/plaintiff's peaceful possession and enjoyment. Though the second respondent/second defendant filed the suit and got injunction only restraining the Gopalaswamy Naidu from interfering with the suit property, even assuming that the delivery was effected by following the due process of law through Court, that would not bind the first respondent/plaintiff as the first respondent/plaintiff is able to establish her possession and right to be in possession and there is no merit in the appeal and the same is liable to be dismissed.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Admittedly, the first respondent/plaintiff filed the suit for permanent injunction restraining the appellant and the second respondent



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from interfering with her peaceful possession and enjoyment. The first respondent/plaintiff has derived the title from his predecessor Gopalaswamy Naidu, who in-turn had purchased the property under a registered sale deed, dated 06.05.1955. Though the said Gopalaswamy Naidu was in possession, it was stated that the appellant and the second respondent trespassed into the property and illegally enjoying the property. Therefore, the said Gopalaswamy Naidu during his life time, even prior to the purchase of the first respondent/plaintiff, filed the suit in O.S.No.93 of 1979, on the file of the Sub-Court, Tirunelveli and got a decree. Based on the said decree, he also filed the execution petition in E.P.No.2 of 1989 and got delivery through Court on 25.09.1991. Subsequently, the said Gopalaswamy Naidu sold the suit property to the first respondent/plaintiff under a registered sale deed, dated 20.05.1992, for the valuable consideration and the first respondent/plaintiff took possession and the mutation was effected and paid kist. Hence, the present suit came to be filed in the year of 1992 by the first respondent/plaintiff, after purchase of the property.

10. Further, the reason for filing the suit is that on 02.06.1992, when the first respondent/plaintiff went to the land for doing preliminary



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work for cultivation and pave the pathway, the appellant/first defendant and the second respondent/second defendant restrained her for taking steps to do preliminary work for cultivation. Though the appellant/first defendant and the second respondent/second defendant have taken a stand that the sale made by Gopalaswamy Naidu itself was cancelled and the said Gopalaswamy Naidu was not in possession of the suit property and the suit property covered under Inam land and patta was also granted to Thikka, however, the suit was filed only for bare injunction. All the STAs and cancellation of the sale deed proceedings are prior to the filing of the suit by Gopalaswamy Naidu in O.S.No.93 of 1979 and all are prior to the decree in O.S.No.93 of 1979 and also the delivery effected on 20.05.1992. Since Gopalaswamy Naidu had taken delivery of possession by due process of law through Court, subsequently, he sold the property to the first respondent/plaintiff. All the revenue documents clearly show that on the date of filing of the suit, the first respondent/plaintiff was in possession of the property. Therefore, both the Courts below held that the first respondent/plaintiff purchased the property from Gopalaswamy Naidu, after taking the delivery of the property. After handing over the possession, the first respondent/plaintiff was in possession and patta also stands in her name and she also paid taxes. Therefore, both the Courts



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rightly granted permanent injunction against the appellant/first defendant and the second respondent/second defendant.

11. Further, the defendants have not proved that they were in possession of the property. Since the first respondent/plaintiff has established her title and possession, she is entitled to the relief of permanent injunction. Therefore, this Court, while considering the entire materials, found that there is no perversity in appreciating the evidence by both the Courts below and as the plaintiff, the first respondent has established her right to be in possession and the possession of the property. The appellant is also a party to the earlier suit filed by Gopalaswamy Naidu, who is the vendor of the plaintiff.

12. Further, from Exs.A4 to A6 and also Ex.A7, it is seen that the first respondent/plaintiff was enjoying the property as on 12.11.1992. The first respondent/plaintiff has not denied the contend in Ex.A9. Though in the written statement filed by the appellant/first defendant and the second respondent/second defendant, they have stated that the second respondent/second defendant was in possession of the property, they have not established their possession and the second respondent/second



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defendant has not established that he was a cultivating tenant under the appellant/first defendant. Further, at the time of taking delivery by the vendor of the first respondent/plaintiff through Court, the second respondent/second defendant has also signed as a witness in the delivery note. Hence, the second respondent/second defendant has accepted that the delivery was effected to the vendor of the first respondent/plaintiff through Court. Though the second respondent/second defendant alleged to have in cultivating the land, he has not objected for the same and he was a witness to the delivery of possession. Hence, he cannot challenge the same. In Ex.A4, it is clearly stated that the suit property was handed over to the vendor of the first respondent/plaintiff, in which, the second respondent/second defendant has also signed. Subsequently, the first respondent/plaintiff purchased the property from Gopalaswamy Naidu.

13. From the above said oral and documentary evidence, it is clearly proved that the first respondent/plaintiff was not in possession and enjoyment of the suit property on the date of filing of the suit. There is no evidence to show that after taking delivery, the appellant/first defendant and the second respondent/second defendant entered into possession and cultivating the land. Even Ex.A5 shows that the patta



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stands in the name of the first respondent/plaintiff. The tax and kist receipts show that the first respondent/plaintiff was in possession. Therefore, both the Courts below have rightly held that at the time of filing the suit for permanent injunction, the first respondent/plaintiff was in possession of the suit property and granted permanent injunction. The first respondent/plaintiff has established the fact that after taking delivery, Gopalaswamy Naidu sold the property to the first respondent/plaintiff and she purchased the property based on the fact that the said Gopalaswamy Naidu was in possession of the property. The appellant and the second respondent have not challenged the Judgment and Decree obtained by the said Gopalaswamy Naidu in O.S.No.93 of 1979 and E.P.No.2 of 1989 and delivery. They have not challenged the same either by one way or other, in the manner known to law. The order of delivery was also not challenged. The said Gopalaswamy Naidu had taken delivery by due process of law and the delivery warrant was also not challenged. Further, the sale deed is in favour of the first respondent/plaintiff and patta and also all the tax receipts clearly show that the first respondent/plaintiff was in possession and right to be in possession of the property. Therefore, under these circumstances, this Court does not find any perversity in the Judgment and Decree passed by



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both the Courts below. This Court finds no merit in this appeal. Hence, all the substantial questions of law are answered in favour of the first respondent/plaintiff. In view of the above, this second appeal is liable to be dismissed.

14. In the result, this Second Appeal fails and the same is **dismissed**. No costs.

27.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes
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To:

- 1.The II Additional District Judge, Tirunelveli.
- 2.The Principal District Munsif, Tirunelveli.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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