



S.A.No.99 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.99 of 2024

and

C.M.P.No.2929 of 2024

Munusamy

... Appellant

Vs.

Karthivel (died)

1.Ayyamal

2.Selvi

3.Muniammal

4.Devi

5.Sivasakthivel

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to allow the present appeal, thereby setting aside the concurrent judgment and decree passed in AS No.43/2016 dated 28.04.2023 on the file of Principal Sub Court at Tindivanam, confirming the judgment and



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decree passed in OS No.226/2011 dated 14.12.2015 on the file of the Principal District Munsif at Tindivanam CA No.1502/2023.

For Appellant : M/s.Chithra Devi

JUDGEMENT

The defendant who has concurrently lost before the Courts below has filed the above Second Appeal challenging the said judgement and decree. The facts are set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.226 of 2011 on the file of the Principal District Munsif, Tindivanam for a declaration of his title to the suit schedule property and for a permanent injunction restraining the defendants, their men or agents from interfering with his peaceful possession and enjoyment of the suit property. The suit property is comprised in S.F.No.76/5, 6 and 7 bearing plot no.12 of Sithani Village, Tindivanam measuring east-west 45 links and north-south 12 links.



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3. It is the case of the plaintiff that the suit properties were assigned by the government in his favour in the year 1979. To build a house, the plaintiff had borrowed a loan from the Tindivanam Cooperative House Building Society on 11.03.1981 and 17.02.1982 and had constructed a house. The suit property was also mortgaged to the Cooperative Bank for the aforesaid loan.

4. The plaintiff would submit that he has been in absolute enjoyment of the suit property without any interference. While so, the defendant who has nothing to do with the suit property has been causing hindrances to his enjoyment. The plaintiff had borrowed a sum of Rs.6,000/- from the defendant as a hand loan 5 years ago. When giving the above loan the defendant had obtained the signatures of the plaintiff in a blank paper. The plaintiff would submit that this amount had been repaid by him. However, the defendant did not return the blank sheets in which he had obtained the signatures of the plaintiff.



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5. The plaintiff had issued a legal notice on 19.04.2011, to which a reply was received from the defendant containing absolutely false statement. In the said reply, the defendant had contended that the plaintiff had entered into an agreement of sale with him and had handed over possession of the suit property to him. The plaintiff would submit that these contentions are absolutely false. Therefore, the plaintiff had come forward with the suit in question.

6. The defendant had filed a written statement denying the allegations contained in the plaint and contending that the plaintiff was a permanent resident of Chennai and therefore not in a position to take care of the suit properties. Since the defendant had properties close to the plaintiff's property, the plaintiff had agreed to sell the property to the defendant.

7. It is the further contention of the defendant that he had paid the entire sale consideration of Rs.6,000/- and had taken possession of the



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suit property. The plaintiff had also assured that since the entire sale consideration had been paid, he would be ready to come at any time when called for executing the sale deed. The defendant would further submit that the parties had agreed that there would be no enhancement of the sale consideration. The defendant would further submit that the plaintiff had been avoiding to execute the agreement of sale in his favour and has come forward with the present suit which is nothing but a vexatious litigation.

8. The Trial Court had framed the following issues:-

- 1, வழக்குச் சொத்து வாதிக்கு பாத்தியமானது என்று விளம்புகை பெற வாதி உரிமையுடையவர?
- 2, வழக்கு சொத்தை வாதி அனுபோகம் செய்துவருவதை பிரதிவாதியோ அவருடைய ஆட்களோ தடையும் இடையூறும் செய்யக்கூடாது என்று நிரந்தரத் தடையறுத்துக் கட்டளை பெறுவதற்கு வாதி உரிமையுடையவரா?
- 3, இதர பரிகாரமென்ன?

9. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.4. On the side of the defendant, the defendant had



examined himself as D.W.1 and one Annamalai and Govindan as D.W.2 and D.W.3 and marked Ex.B.1 to Ex.B.8.

10. The learned Trial Judge on considering the material available on record had held that the agreement of sale which has been marked as Ex.B.1 cannot be considered since the same is an unregistered one. That apart, the learned Judge has also held that the documents which have been filed on the side of the defendant relate to his property which is situate adjacent to the suit property and does not relate to the suit property. Ultimately, the learned Trial Judge had decreed the suit.

11. Challenging the same, the defendant had filed A.S.No.43 of 2016 on the file of the Sub Judge Tindivanam. The learned Appellate Judge had also proceeded to dismiss the appeal and confirmed the judgement and decree of the Trial Court. Against this concurrent judgment and decree, the defendant is before this Court.

12. Heard the learned counsel for the defendant/appellant.



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13. That the plaintiff is the owner of the property has been admitted by the defendant himself. His defence is that the defendant had entered into an agreement of sale in respect of the suit property with the plaintiff, therefore, the title of the suit property is not in question. Therefore, the declaration of the plaintiff's title to the suit property by the Courts below appears to be in order.

14. Further, the defendant would seek to have the suit dismissed on the ground that he had entered into an agreement of sale with the plaintiff and had paid the entire sale consideration of Rs.6,000/- and on the payment of the entire amount of Rs.6,000/- the plaintiff ought to have executed a sale deed in his favour. The defendant would submit that it is he who is in possession of the suit property and to prove the same the defendant has marked Ex.B.2. The Courts below had found that the defendant has a house property adjacent to the suit property and these documents relate to his house property and not to the plaintiff's property (suit property). Therefore, the defendant had not



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proved his possession of the suit property and further, if really, the defendant had entered into an agreement of sale and was in possession of the same, he would have taken steps to have the agreement specifically enforced. However, no steps have been taken to seek a specific performance of the agreement of sale.

15. The Courts below have extensively considered the evidence on record and decreed the suit and dismissed the appeal. I see no reason to reverse this well-considered judgement and decree, more particularly when the defendant has not made out any Substantial Question of Law warranting interference of this Court. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Sub Court at Tindivanam.
2. The Principal District Munsif at Tindivanam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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