

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.11.2018

Delivered on:14.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.631 of 2018

&

C.M.P.No.19407 of 2018

P.Anandan ...Appellant/Appellant/Defendant

Vs

N.Anandan ...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.3 of 2017 dated 13.03.2018 on the file of the Subordinate Judge, Palacode, confirming the Judgement and Decree passed in O.S.No.175 of 2010 on the file of the District Munsif Judge, Palacode dated 08/01/2013.

For Appellant : Mr.T.S.Baskaran

JUDGMENT

The defendant is the appellant before this Court. The Second Appeal is filed challenging the Judgement and Decree of the learned Subordinate Judge, Palacode in A.S.No.3 of 2017 confirming the Judgement and Decree of the District Munsif, Palacode in O.S.No.175 of 2010. The parties are referred to in the same litigative status as in the Trial Court.

2.The plaintiff has instituted the above suit for a declaration of his title to the suit schedule property and for a consequential relief of permanent injunction restraining the defendant, his men or his agents from interfering or disturbing the plaintiff's peaceful possession and enjoyment to the suit schedule property.

3.The case of the plaintiff was that the property belonged to him by virtue of a partition deed dated 24.02.1989 and from the date of the partition he has been in possession and enjoyment of the suit property. He has also got the mutation of

the revenue records done in his name and has been allotted Patta No.1241. The plaintiff would contend that he has been regular in the payment of kist to the government and the defendant who has no semblance of a right or interest to the suit property was attempting to trespass into the suit property.

4.The defendant had entered into an agreement of sale six years prior to the filing to the suit with the plaintiff and thereafter he was not willing to perform his part of the contract and consequently had taken refund of the advance amount and the sale agreement stood terminated. Thereafter there was no relationship between the plaintiff and the defendant however, on 22.07.2010, the defendant had attempted to trespass into suit property which was successfully thwarted by the plaintiff and therefore to protect his possession and title the plaintiff was constrained to file the suit.

5.The defendant had filed a written statement inter alia agreeing that the suit property was the property of the plaintiff and that he had entered into sale agreement with the plaintiff on 15.12.2004 agreeing to purchase the suit schedule property for a consideration of Rs.3,65,000/- per acre. On the date of the agreement a sum of Rs.75,000/- was paid and the terms of the contract was that the sale deed should be executed on or before April 2005 after receiving balance amount. It was also agreed that when the sale was being executed there must be a measurement of the same with the help of Revenue Authorities or else the plaintiff would be liable to pay a sum of Rs.1,50,000/- to the defendant.

6.The defendant would contend that despite his best efforts and demands the plaintiff was not coming forward to execute the sale deed on the pretext that necessary charges for measurement of the suit property has not been paid by him. On 29.05.2005, the plaintiff had received a further advance of Rs.3,25,000/- and an endorsement to that effect was made on the sale agreement and the period of execution was extended by a further period of two months. Thereafter the plaintiff without undertaking the measurement once again received a further advance of Rs.1,00,000/- on 19.11.2005 and made an endorsement in the sale agreement undertaking to execute the sale deed within two months.

7.Since the plaintiff was not coming forward to execute the sale deed, the defendant had met the plaintiff in the month of January 2006 and requested him to execute the sale deed. The plaintiff agreed to measure the property with the assistance of the surveyor and thereafter execute the sale deed. The plaintiff asked the defendant to pay the balance sale consideration of Rs.2,30,000/- in order to discharge his debts and meet out his return expenses. On 02.04.2006, the balance

sale consideration of Rs.2,30,000/- was also received by the plaintiff in the presence of two people and on the very same day the possession of the property was also handed over to the defendant. Though the defendant had requested the plaintiff to acknowledge the receipt of the entire sale consideration, the plaintiff had replied that the scribe was not available and that on the very next day he would make the endorsement.

8.The defendant has been in possession and enjoyment of the property from 02.04.2006 and has cultivated Sugarcane in the suit property and supplied the same to the Palacode Co-operative Sugar mill through his brother. In the month of June 2010, the defendant had called up on the plaintiff to execute the sale deed but the plaintiff did not come forward but on the contrary demanded further sum of Rs.10,00,000/- and since the defendant had not complied with this demand the suit has been filed. He would contend that there is no cause of action for the said suit.

9.Based on the pleadings the learned District Munsif, Palacode had framed four issues and the plaintiff apart from examining himself as P.W.1 had also examined P.W.2 and had marked Ex.A.1 to Ex.A.6 on the side of the plaintiff. The defendant in turn had examined four witnesses on his side and marked Ex.B.1 to Ex.B.4. The Court on its part had marked Ex.X.1 and Ex.X.2.

10.After a detailed enquiry, the learned District Munsif had come to the conclusion that the suit property was in the possession of the plaintiff and to date the defendant had not taken any steps to specifically enforce the sale agreement dated 15.04.2004. D.W.4 who was examined on the side of the defendant would contend that he came to know that the plaintiff had handed over possession to the defendant. The learned Judge held that the evidence of D.W.4 could be relied upon to show possession is with the plaintiff. The learned Judge has held that the evidence of D.W.3 and D.W.4 did not prove the defendant's possession of the suit property and on the contrary the plaintiff had proved the same. Ultimately the suit was decreed in favour of the plaintiff.

11.Challenging the said agreement the appellant herein had filed A.S.No.3 of 2017 on the file of the Subordinate Judge, Palacode. The learned Judge by the Judgement and Decree dated 13.03.2017 was pleased to confirm the Judgement and Decree of the learned District Munsif, Palacode.

12.It is challenging this concurrent Judgement and Decree that the appellant is before this Court. Heard Mr.T.S.Baskaran, learned counsel for the appellant. He would argue that the Courts below have totally failed to appreciate that the entire

sale consideration had been paid by the defendant and further the plaintiff who has stated that he has refunded the advance back to the the defendant has not proved the same. He would further contend that the Courts below have erred in casting the onus upon the defendant to prove the plaintiff's case.

13.Heard the counsel and perused the papers. The Courts below has taken note of the fact that the defendant who contends that he has paid the entire sale consideration as early as on 02.04.2006, which was the date on which last tranche of Rs.2,30,000/- had been paid by him, has not cared to file a suit for specific performance and it is the plaintiff who had come forward with the suit for declaring his title to the property and for an injunction. Even in this suit the defendant has not filed a counter claim. It is the admitted fact that the plaintiff is the owner of the property and therefore his title is to be declared.

14.Considering the fact that the defendant has not moved the Court for having the sale agreement specifically enforced the Courts below have come to the conclusion that the plaintiff is in possession of the suit property on the basis of the revenue records. The defendant who has come forward with the specific case that he is cultivating Sugar Cane in the suit property and his brother in supplying the same to the Palacode Co-operative Sugar mill has not proved the same by filing cogent documents.

15.The defendant has therefore not made out any question of law much less a Substantial Question of law. The Courts below have rightly dismissed the suit. The Second Appeal is therefore dismissed confirming the concurrent Judgement and Decree in A.S.No.3 of 2017 and O.S.No.175 of 2010. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

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Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To,

1.The Subordinate Judge, Palacode.

2.The District Munsif Judge, Palacode.

3. The Section Officer, VR Section,
High Court, Madras

+1cc to Mr.TS.Baskaran, Advocate SR.No.23810

S.A.No.631 of 2018 &
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SKVT (CO)
GMY (03/07/2019)



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