

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.467 of 2014
and M.P.No. 2 of 2014

1. N.Selvaraj
2. R.Mallika .. Appellants/Respondents 1 & 2/Plaintiffs 1 & 2

Versus

1. Nandagopal (died)
2. Kamalam
3. Punitha
4. Geetha
5. Navaneethan
6. Kamalakannan .. Respondents/Appellants/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree of the III Additional subordinate Judge, Coimbatore made in A.S.No.79 of 2013 dated 27.02.2014 reversing the judgment and decree dated 20.03.2013 made in O.S.No.1651 of 2005 on the file of II Additional District Munsif, Coimbatore.

For Appellants : Mr.S.Silambanan, Senior Counsel
for M/s.PROFEXS ASSOCIATES

For Respondents : Mr.A.Shridhar Murthy,
for Mr.C.Veeraraghavan

JUDGMENT

The plaintiffs in OS.No.1651 of 2005 are the appellants herein. The prayer in the suit was to grant permanent injunction restraining the defendants, their men and agents from interfering with the peaceful possession and enjoyment of the suit property.

2. The case of the plaintiffs is that the first defendant is the absolute owner of the suit property. He entered into a written sale agreement with the plaintiffs on 08.05.2005 and in pursuance of the agreement, the plaintiffs were put in possession of the same. It is further stated that when the plaintiffs approached the authorities for approval of a lay out, they found some discrepancies between the partition deed and the sale agreement. Though the first defendant agreed

to rectify the mistake in description of the property, but he failed to do so and on the other hand on 31.08.2005, the first defendant threatened to dispossess the plaintiffs by force. Hence, the suit.

3. The first defendant filed written statement denying and disputing the averments made in the plaint. The first defendant died during the pendency of the suit, hence, his legal heirs were brought on record. The second defendant, who is the wife of the first defendant, filed a written statement stating that the plaintiffs were not the promoters of the lay out, but they are land brokers and the first defendant never asked the plaintiffs to develop the land and promote the same. It is further stated that the suit for bare injunction without the prayer for specific performance is not maintainable.

4. Based on the pleadings, the Trial Court framed necessary issues. On behalf of the plaintiffs, PWs 1 and 2 were examined and Exs.A1 to A6 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B5 were marked. The Trial Court decreed the suit as prayed for. On appeal, the finding of the Trial Court was set aside. Hence, the present appeal.

5. The Second Appeal was admitted on the following questions of law:

- i) Whether the lower Appellate Court was right in holding that the plaintiffs cannot be said to be in possession of the suit property when the recital in the document (agreement) is otherwise i.e. confirming the possession being handed over to the plaintiffs?
- ii) Whether the Court below erred in rejecting the relief of permanent injunction on the ground that the plaintiffs had not taken action against the defendants for rectification of the error in the partition deed or enforcing the contract?
- iii) Whether the evidence of attesting witness with relation to the amounts spent on the development of the land would have any bearing on the prayer for permanent injunction when the said detail has no relevance to the claim for possession?
- iv) Whether the lower Appellate Court was right in deciding the ownership of the property among the defendants when the dispute related to the possession of the property with the plaintiff in a suit for permanent injunction?

6. Mr.S.Silambanan, learned Senior Counsel appearing on behalf of the appellants would submit that the first defendant, who is the absolute owner of the suit property had entered into an agreement with the plaintiffs on 08.05.2005 agreeing to sell the property for Rs.20,00,000/-. On the date of agreement, Rs.1,25,000/- was paid to the first defendant to

develop the property. When the plaintiffs approached the authorities for the purpose of approval of lay out, they found discrepancy between the partition deed and the agreement, hence, they insisted rectification of the mistake. But, the first defendant had delayed the process deliberately.

7. It is further contended that the first defendant filed a written statement stating that he is the absolute owner of the property, however, after his demise, his legal heirs had taken a stand that the suit property is a joint family property. He further added that in the plaint it has been categorically stated that both the plaintiffs are in possession of the property, but the Appellate Court on wrong presumption dismissed the suit as the second plaintiff was not examined. Even though the second defendant is the witness to the Ex.A1 Agreement, he did not choose to enter into witness box to prove that the sale agreement is not genuine.

8. Per contra, Mr.A.Shridhar Murthy, learned counsel appearing on behalf of the respondents would urge that the suit schedule property was devolved on the defendants in pursuance of the partition deed dated 21.10.1963 and thereafter, the first defendant and her son sold some of the properties to the third parties. It is the submission of the learned counsel for the respondents that there are vital contradictions in the evidence of PWs1 and 2. PW1 deposed that he paid Rs.1,10,000/- as advance to the first defendant at the time of agreement, whereas PW2, who is the mother of the second plaintiff has stated that she invested a sum of Rs.1,50,000/- in the suit property. It is further submitted that these amounts are not found place in the alleged sale agreement.

9. According to the learned counsel, though the sale agreement is said to have been executed on 08.05.2005, admittedly, the sale was not completed as per the agreement on or before 08.08.2005. Further till date, no single paisa has been paid to the defendants. Since it is an agricultural land, the defendants have been cultivating the same as on date. The learned counsel would further submit that the factual findings recorded by the Appellate Court on proper appreciation of evidence, do not require interference in the Second Appeal.

10. Heard learned counsels on either sides and perused the materials available on record.

11. In the case on hand, the suit is filed based on the sale agreement dated 08.05.2005. According to the sale agreement, sale consideration was Rs.20,00,000/- and the sale shall be completed within a period of three months. Though the plaintiffs have stated that on the date of agreement, they were put in possession of the property and their attempt to get approval was not fructified, since the defendants have not come forward to rectify the mistake in the sale agreement. In

the Written statement, the execution of the sale agreement is totally denied.

12. PW2 is one of the attesting witnesses to the sale agreement. In the plaint at paragraph 11, it has been stated that since 20.08.2005 the first defendant is threatening the second plaintiff, who is in possession of the suit property, to vacate and hand over the possession. According to the learned Senior Counsel appearing on behalf of the appellants, in para 12 of the plaint, it has been specifically stated that both the plaintiffs are in possession of the property. It is pertinent to note that in the sale agreement, Ex.A1, there is no recital with regard to payment of the advance amount, but in the evidence, PW1 deposed that he paid Rs.1,10,000/- to the first defendant on the date of agreement. PW2 has stated that she paid Rs.1,50,000/-. A reading of the plaint would show that nothing has been mentioned about the payment of advance amount. On the other hand, it is stated that Rs.1,25,000/- was spent for development of the property. In the course of the evidence, the plaintiffs have admitted that the amount was paid to the first defendant to level the land, which proves that no sale consideration was paid in pursuance of the agreement of sale Ex.A1. It is not disputed that till date no suit has been filed for specific performance of the agreement dated 08.05.2005 and no document was produced to prove their possession of the suit property. The recitals made in the sale agreement Ex.A1 is relied upon to prove their possession.

13. The Trial Court granted a decree for permanent injunction in favour of the plaintiffs only on the basis of the recitals made in Ex.A1 sale agreement dated 08.05.2005 and the same was rightly reversed by the Appellate Court. For the foregoing reasons, I do not find any illegality or perversity in the findings of the Appellate Court. In such view, the questions of law are answered against the appellants. In fine, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected application is closed.

Sd/-

Assistant Registrar(CS-III-MDU)

//True copy//

Sub Assistant Registrar

pvs

To

1. The III Additional subordinate Judge,
Coimbatore

2. The II Additional District Munsif,
Coimbatore

Copy To
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to M/s.PROFEXS ASSOCIATES, Advocate SR.No.1874

S.A.No.467 of 2014

KK (CO)
GMY (25/08/2020)



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