



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2021	PRONOUNCED ON : 31.08.2021
-----------------------------	-------------------------------

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.NO.1304 OF 2009

Sundari

.. Appellant/Appellant/Plaintiff

Vs.

Vijaya

.. Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the decree and Judgement and Decree dated 31.07.2009 made in A.S.No.20/2009 on the file of Principal Subordinate Judge, Gobichettipalayam confirming the Judgement and Decree dated 19.01.2009 made in O.S.No.113/2008 on the file of the District Munsif Court, Sathyamangalam.

For Appellant : Mr.R.T.Doraisamy

For Respondent : Mr.N.Manokaran

J U D G M E N T

(Heard through video conferencing)

This Second Appeal has been preferred against the judgement and decree dated 31.07.2009 passed in A.S.No.20/2009 on the file of the learned Principal Subordinate Judge, Gobichettipalayam.

2. The Plaintiff is the appellant herein and the suit was filed for the relief of Permanent Injunction on the allegation that the plaintiff is in possession and enjoyment of the suit property.



3. The avernments of the parties in brief:

As per the allegations made by the appellant /plaintiff, the suit property was a self-acquired property of Sivanappa Gouder who is the father of the plaintiff. The said Sivanappa Gouder has sold the said property in favour of Kothandapani on 16.06.1986. Kothandapani has entered into a sale agreement with this Appellant/plaintiff on 02.04.1994. On the same day itself he handed over the possession of the property. From then onwards the appellant/plaintiff is in the possession of the suit property. On 18.04.2008, the defendant came to the suit property and caused hindrance to his enjoyment over the suit property. So he filed this suit for permanent injunction.

4. The written statement of the defendant in brief is as under:

The defendant has admitted that the property was originally belonged to Sivanappa Gouder and he has sold the property to Kothandapani on 16.06.1986. But the allegation about the execution of the sale Deed dated 02.04.1994 is denied. The defendant's husband was alone in the continuous possession and enjoyment of the suit property. He has not executed any sale Deed as alleged by the plaintiff and the suit has been filed by the plaintiff with an intention to harass the defendant.

5. Before the trial Court, on the side of the plaintiff two witnesses have been examined as P.W.1 and P.W.2 and five documents have been marked as Ex.A.1 to A.5. On the side of the defendant also three witnesses have been examined as D.W.1 to D.W.3 and Ex.D1 to D3 have been marked.

6. After the conclusion of trial, the learned trial Judge dismissed the suit. The first Appeal filed by the appellant was also dismissed. The plaintiff having got aggrieved over the said judgment of dismissal, has preferred to file this Second Appeal. The Second Appeal has been admitted on the following two substantial questions of law:

"1.Whether the Courts below are right in dismissing the suit when the plaintiff is entitled to protect her possession as per the provisions under Section 53-A of the Transfer of Property Act?



WEB COPY

2. Whether the Judgment of the Courts below are vitiated by non-application of the correct principles of law and failure to advert to the materials on record?"

7. The appellant has filed the suit on the basis of the sale agreement said to have been executed by Kothandapani on 02.04.1994 for a sale consideration of Rs.10,000/- [Rupees Ten Thousand only]. The original owner Sivanappa Gouder is the father of the appellant/plaintiff and he is no more. During his life time, he executed the sale Deed in favour of Kothandapani. Though the appellant claims that the respondent is no way connected to the said Kothandapani, the respondent claims to be the wife of Kothandapani. It is the contention of the appellant that she was put into possession of the suit property on 02.04.1994 itself by paying the entire sale consideration of Rs.10,000/-.

8. It is not known why the sale Deed was not registered immediately. The reason for not executing the sale Deed immediately after paying the sale consideration was not stated by the appellant. However the appellant claims that she alone continued to be in enjoyment of the suit property. The suit property is a very small extent of 2 ½ cents in Natham Survey No. 610/1 3D situated at Rajan Nagar Village Kaspa, Sathiyamangalam Taluk.

9. Both the trial Court as well as the First Appellate Court have rendered concurrent findings and denied the relief claimed by the plaintiff on the ground that the respondent/defendant is not a stranger, but the wife of Kothandapani and the appellant had failed to prove that she is in enjoyment of the suit property. It is unbelievable that the plaintiff, who alleged to have paid the full sale consideration on 02.04.1994, had not demanded to execute the sale Deed.

10. Despite the suit for Permanent Injunction on the basis of the alleged possession has been filed in the year 2008, the appellant has not filed at any time any suit for specific performance on the basis of the sale agreement. In fact her right to claim specific performance itself seems to have got barred by limitation. The witnesses who have been examined on the side of the defendant also have stated that it was the



defendant who continued to be in possession and not the appellant.

WEB COPY

11. A clear cut contention of the respondent is that Kothandapani had been in enjoyment of the suit property right from his purchase of the same on 16.06.1986 from Sivanappa Gouder (father of the plaintiff). It is further stated by the respondent/defendant that after the demise of her husband Kothandapani, she continues to be in enjoyment of the suit property as his legal heir. The best person who could speak about the alleged enjoyment of the appellant in the suit property as claimed by is Kothandapani. There is no averment in the plaint as to the present status of Kothandapani. But the appellant has only reserved his right to file a suit for specific performance against Kothandapani. So according to the appellant, the executant of the alleged sale agreement Kothandapani was alive on the date of filing the suit.

12. When the respondent has proved herself to be the wife of Kothandapani on the basis of defendant side documents Ex.D2 and D3 who is no more, the appellant had denied the same. The plaintiff's father has got a house adjacent to the suit property and the appellant is in possession of the same. However, she did not establish any title or possession over the suit property. In fact Kothandapani did not execute any conveyance in respect of the suit property during his life time.

13. Despite the appellant has examined P.W.2, the alleged scribe of the Ex.A1 to prove the execution of the document, his evidence did not prove the genuineness of the signature of Kothandapani and that the alleged sale agreement was valid at the time of filing the suit. The alleged signatures of Kothandapani in Ex.A1 has not been proved by comparing it with any of his admitted signatures. The stamp paper on which the Ex.A1 sale agreement is written had been purchased in the name of Balakrishnan, who is no way connected to the parties to the sale agreement. So, the appellant /plaintiff had neither proved the execution of the sale agreement nor her possession. Even if the sale agreement is admitted to be true, its validity is lost after the expiry of



the period of limitation within which the suit for specific performance ought to have been filed.

WEB COPY

14. The said Kothandapani left his native and went elsewhere and did not return for several years. Even if it is presumed that the respondent is not the wife of the said Kothandapani and she is not his legal heir, that will not fortify the claim of the appellant. In a Civil Suit the burden is on the plaintiff who asserts certain right over the suit property. Only if the plaintiff discharges the said burden, the burden to disprove would shift on the defendant.

15. As per Section 17 of the Registration Act, an agreement for sale over which a part performance is claimed as per Section 53 A of the T.P. Act, has to be mandatorily registered. It is submitted by the learned counsel for the appellant that the said amendment to Section 17, which makes the registration mandatory, was brought only in the year 2001 and hence it will not bind the sale agreement of the year 1994. Admittedly the suit was filed in the year 2008. During that time the mandatory requirement to register the partly performed sale agreements was very much in force. But the appellant did not take any efforts to either to renew the sale agreement or get it registered or to file a suit for specific performance. The above conduct of the appellant would only show that in order to escape from the mandatory requirement of registration, the year of the sale agreement has been claimed to be 1994.

16. The Courts below have rightly appreciated the evidence produced before them and refused to grant the relief as prayed by the appellant. The appellant who had failed to establish the genuineness of the sale agreement and the alleged possession over the suit property, cannot claim the relief for permanent injunction. Since the Courts below have rightly appreciated the evidence and chosen to dismiss the suit, I find no reason for interference. Thus the above two substantial questions of law are answered against the appellant/plaintiff.

In the result the second appeal is dismissed and the judgment and decree of the First Appellate Court, which



WEB COPY

confirmed the judgment of the trial Court is upheld. No costs.
The connected miscellaneous Petitions if any are also closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

jrs

To

1. The Principal Sub Judge,
Gobichettipalayam.
2. The District Munsif Court,
Sathyamangalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.43822

S.A.No.1304 of 2009

SSD(CO)
RLP(09/11/2021)