



S.A.(MD)No.353 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.353 of 2013

and

M.P.(MD).No.1 of 2013

Kulandaivelu ... Appellant / 1st respondent/plaintiff

Vs.

Vaithilingam (died)

1. Paripoornam (Died) ...Respondent /appellant / 3rd defendant

(R1 rep.by her power agent
M.S.Palaniappan)

2. Muthulakshmi

3. Kalaiselvi

4. Senthil

5. Kannan

6. Palaniappan (Died)

(6th respondent brought on record as Lrs
of the deceased 1st respondent vide order
dated 17.03.2016)



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7. Prabakaran

8. Parameswari

9. Karthick Kumar

... Respondents

(Respondents 7 to 9 brought on record as LRS of the deceased 6th respondent vide court dated 13.08.2021 made in C.M.P.(MD).Nos.6172 to 6174 of 2021 in S.A.(MD).No.353 of 2013 by GRSJ)

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 29.06.2012 passed in respect of 2nd item of suit properties in AS No.28 of 2011 on the file of the learned Additional District and Sessions Court, Pudukottai partly reversing the judgment and decree dated 07.02.2008 in respect of 2nd item of the suit properties passed in O.S.No.373 of 2003 on the file of the learned Sub-Court, Pudukottai.

For Appellant : Mr.R.P.Ramachandran

For Respondents : Mr.R.M.S.Sedhuraman,
For R3 to R5
Mr.P.Thiyagarajan for R7 to R9.

R2-Given up.



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JUDGMENT

Heard both sides.

2.This Second Appeal arises out of a suit for partition. The plaintiff in O.S No.373 of 2003 on the file of Sub Court, Pudukottai is the appellant herein.

3.The case of the appellant is as follows :

The suit items are two in number and the properties are ancestral properties. The first defendant/Vaithilingam is none other than the brother of the plaintiff. The second defendant/Muthulakshmi is the wife of the plaintiff. The third defendant Tmt.Paripooranam, is in possession of the suit second item of property. He is entitled to half share in the suit properties.

4.The suit was resisted by the defendants in respect of the second item alone. Based on the divergent pleadings, the trial court framed necessary issues. The plaintiff examined himself as PW1 and



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marked Exs.A1 to A3. On behalf of the third defendant, her Power Agent Palaniyappan was examined as DW1. Exs.B1 to B3 were marked on her side. After consideration of the evidence on record, the trial Court, by judgment dated 07.02.2008 granted half share in favour of the plaintiff and the first defendant in respect of the suit properties (both items).

5.Aggrieved by the same, the third defendant filed A.S.No.28 of 2011 before the Additional District and Sessions Court, Pudukottai and the same was allowed on 29.06.2012 by setting aside the decision of the trial Court in respect of the second item. It was decreed that the third defendant who is in possession of the second item of the suit property shall not be disturbed. The trial Court's Judgment in respect of the first item was confirmed. Challenging the same, this Second Appeal came to be filed by the plaintiff.

6.Though the Second Appeal is of the year 2013 and notice was issued and records have been called for, it is yet to be formally admitted. No substantial questions of law has been framed.



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7.The learned counsel for the appellant reiterated all the grounds set out in the memorandum of grounds and called upon this Court to admit the second Appeal and thereafter, post the matter for final hearing.

8.Per contra, the learned counsel appearing for the contesting respondents submitted that the impugned judgment and decree passed by the first appellate court do not call for any interference.

9.I carefully considered the rival submissions and went through the evidence on record. The suit schedule properties comprise of two items. There is no dispute regarding the first item. The Court below declared half share in respect of the first item in favour of the appellant. It is seen that the third defendant is in possession of the second item. The plaintiff as well as his brother, the first defendant jointly executed a sale agreement dated 13.03.1974. The sale consideration was fixed at Rs.1,500/-. The third defendant paid a sum of Rs.300/- as advance to her vendors and as directed, she had discharged the mortgage loan of Rs.1,150/-. She had to pay a further sum of Rs.50/- as the balance sale



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consideration. It was to be paid at the time of registration. Since the vendors did not come forward to execute the sale deed, she filed O.S.No. 775 of 1981 on the file of District Munsif, Pudukottai seeking specific performance. The plaintiff and the first defendant entered appearance and later remained ex-parte. An ex-parte decree came to be passed on 02.03.2005. The ex-parte judgment and decree were marked as Exs.P1 & P31. Though she had also filed E.P.No.544 of 1996, she did not pursue the same or take any steps to execute the sale deed.

10.The first appellate court invoked Section 53A of the Transper of Property Act in favour of the third defendant. The learned counsel appearing for the third defendant submitted that such invocation was in order. The following decisions were relied upon :

1. (2004) 5 SCC 88 (Mahadeva and others v. Tanabai)
2. (2003) 7 SCC 350 (Ramesh Chand Ardawatiya vs. Anit Panjwani)
3. (2002) 3 SCC 676 (Shrimant Shamrao Suryavanshi vs. Pralhad Bhairoba Suryavanshi)



The Hon'ble Supreme Court in the decision reported in **(2002) 3 SCC 676**

(Shrimant Shamrao Suryavanshi vs. Pralhad Bhairoba Suryavanshi)

held as follows :

“16.But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are-

1) there must be a contract to transfer for consideration any immovable property.

2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained:

4) the transferee must in part performance of the contract take possession of the property, or of any part thereof:

5) the transferee must have done some act in furtherance of the contract; and

6) the transferee must have performed or be willing to perform his part of the contract.

17.We are, therefore, of the opinion that if the conditions enumerated above are complied with the law of limitation does not come in the way of a defendant taking



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plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract has barred by limitation.”

The first appellate court has applied the law correctly to the facts of the case. It noted that the third defendant had already obtained decree in her favour. Since she did not pursue the execution petition, she will not be entitled to obtain sale deed in her favour. But she is entitled to protect her possession. That is why, an appropriate decree was passed in her favour and the judgment of the trial court in respect of the second item was set aside. No ground has been made out for interfering with the well considered decision of the first appellate court. No substantial question of law arises for consideration.

11.This second appeal is dismissed. Ncosts. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
kmm/skm



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To:

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1.The Sub Judge, Pudukottai.

2.The Additional District and Sessions Judge, Pudukottai.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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