



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.720 of 2006

and

M.P.(MD)No.1 of 2006

WEB COPY

Ponraj

... Appellant/Appellant/
Defendant

Vs.

Arulmigu Chidambara Vinayagar Swamy Thirukoil,
Rep. by its Managing Trustee,
Ponraj @ Thirumal

... Respondent/Respondent/
Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.11.2005 made in A.S.No.19 of 2004, on the file of the Sub Court, Srivilliputhur, confirming the judgment and decree dated 10.12.2003 made in O.S.No.51 of 2001 on the file of Principal District Munsif Court, Srivilliputhur.

For Appellant : Mr.G.Maruthaiah
For Respondent : Mr.V.Chandrasekar

JUDGMENT

The unsuccessful defendant is the appellant in this second appeal. The respondent filed O.S.No.51 of 2001 on the file of the Principal District Munsif Court, Srivilliputhur seeking the relief of declaration and permanent injunction. The appellant filed written statement claiming that he had entered into a sale agreement with the respondent on 21.12.1989 and had also paid a sum of Rs.50,000/- towards advance. He would also claim that he is in possession of the suit property. The respondent examined himself as P.W.1 and marked Exs.A.1 to A5. The appellant examined himself as D.W.1 and two others were examined as D.W.2 and D.W.3 and marked Exs.B1 to B9.

2.The Trial Court after considering the evidence on record decreed the suit as prayed for vide judgment and decree dated 10.12.2003. Questioning the same, the appellant filed A.S.No.19 of 2004 before the Sub Court, Srivilliputhur. By judgment and decree dated 24.11.2005, the appeal was dismissed. Aggrieved by the same, this second appeal has been filed.

3.The second appeal was admitted on the following substantial questions of law:-

"(i) Whether the Courts below are correct in



decreeing the suit for declaration when the title over the suit properties is not proved by the plaintiff?

(ii) Whether the Courts below are correct in decreeing the suit when the defendant claimed right of adverse possession by way of sale agreement dated 21.12.1989 entered into between the plaintiff and the defendant and when possession was handed over to the defendant subsequent to the agreement?

(iii) Whether the Courts below are right in decreeing the suit when a necessary party i.e., the defendant's wife was not impleaded as party to the suit?"

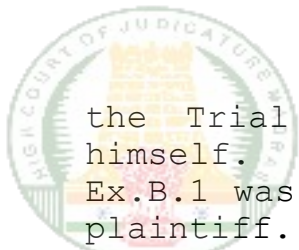
4. Heard the learned counsel on either side.

5. The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant. He strongly contended that in view of the execution of the sale agreement by the plaintiff in his favour and payment a sum of Rs.50,000/-, possession was handed over to the appellant and therefore, the Courts below erred in granting the relief of permanent injunction.

6. Per contra, the learned counsel for the respondent submitted that no substantial question of law arises for consideration and he pressed for dismissal of the second appeal.

7. I carefully considered the rival contentions and perused the evidence on record. The suit properties are agricultural lands. The first question that arises for determination is whether the respondent had established his claim of title over the suit property. As rightly pointed out by the learned counsel for the respondent, Ex.B.1 filed by the appellant himself establishes the title of the respondent. According to the appellant on 21.12.1989, he entered into a sale agreement with the respondent for purchase of the suit property. The appellant would further claim that he paid a sum of Rs.50,000/- as advance. That clearly shows that the appellant himself recognized and acknowledged the title of the respondent. Therefore, the relief of declaration granted by the Courts below does not call for interference. Hence, I have no difficulty in answering the first substantial question of law against the appellant and in favour of the respondent.

8. The next question that arises for consideration is whether the Courts below were justified in granting the relief of injunction. Only if the plaintiff had established that the suit property is in their possession, relief of injunction can be granted and not otherwise. To render a finding in favour of the respondent,



the Trial Court had relied on the testimony of the appellant himself. The appellant in his testimony had admitted that when Ex.B.1 was executed, the suit property was in the possession of the plaintiff. It is further admitted by him during the period of sale agreement, the plaintiff was in possession and enjoyment of the suit property. However, he would make a claim in the same breath that it is only under Ex.B.1, he is enjoying the suit property. There is nothing on record to indicate that by virtue of Ex.B.1 possession was entrusted to the appellant. There is no other document to show that the appellant is in possession of the property. The documents filed by the appellant have been negatived by the Courts below by giving convincing reasons. For instance, when the appellant wanted to rely on the certificate issued by Village Administrative Officer, the Trial Court rightly held that since the certificates were not obtained from the competent authority, they were of no avail. The question of possession is purely a question of fact. When the Courts below have concurrently found the issue against the appellant, while exercising my jurisdiction under Section 100 of Civil Procedure Code, I will not be justified in interfering with the same. The second substantial question of law is also answered in favour of the respondent and against the appellant.

9.I do not find any substance in the third substantial question of law. If the wife of the appellant was true stakeholder, nothing stopped her from filing an application for impleading herself. According to the plaintiff, title as well the possession remained only with them. If according to the appellant, his wife had been in possession, the appellant's wife would have got herself impleaded in the suit proceedings. She had not chosen to do so. Therefore, the Courts below rightly held that she was not a necessary party. The third substantial question of law is also answered against the appellant and in favour of the respondent. I do not find any merit in the second appeal and it stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Subordinate Judge,
Srivilliputhur

2.The Principal District Munsif,
Srivilliputhur.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-16669[F] dated 20/04/2021
)

**S.A. (MD) No.720 of 2006
19.04.2021**

KK(19.05.2021) 4P 6C