



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.08.2021

Pronounced on : 26 .08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A(MD) No.450 of 2021

and

CMP(MD) No. 6072 of 2021

WEB COPY

Sumathi

... Appellant/Appellant/

Plaintiff

-vs-

Perumal

... Respondent/Respondent/

Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 06.11.2019 passed by the Additional Sub Judge, Pudhukotti in A.S.No. 48 of 2016 confirming the judgment and decree dated 29.09.2016 passed by the learned District Munsif cum Judicial Magistrate, Keeranur in O.S.No.75 of 2009 dismissing the suit and thereby allow the second appeal.

For Appellant : Mr.D.Ramesh Kumar

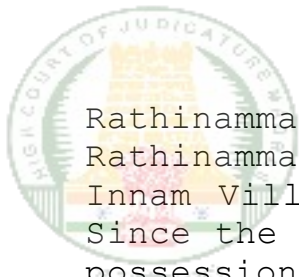
JUDGMENT

The present second appeal has been filed to set aside the judgment and decree dated 06.11.2019 passed by the Additional Sub Judge, Pudhukottai in A.S.No. 48 of 2016 confirming the judgment and decree dated 29.09.2016 passed by the learned District Munsif cum Judicial Magistrate, Keeranur in O.S.No.75 of 2009 dismissing the suit and thereby allow the second appeal

2. The plaintiff in the appeal is the appellant before this Court. For the sake of convenience the parties herein are referred to in the same rank as they were arrayed in the suit.

3. The brief facts of the case is as follows:

The plaintiff had filed a suit for injunction in respect of Nanja lands in S.No.445/1 ad-measuring 0-88-5 ares at Lakshmanapatti Village, Kulathur, pudhukottai (herein after called as the suit property). It is the case of the plaintiff that the suit property belonged to one Karuppan and that he executed a sale deed in favour of his daughter Karupayee on 18.07.1973 and the same was purchased by one Rathinammal from Karupayee on 21.08.1998. The plaintiff was cultivating the land belonging to



Rathinammal from the year 2005 and later she purchased it from Rathinammal on 11.08.2008. The suit property was situated in a Innam Village and thereby the sale deed could not be registered. Since the defendants attempted to trespass and interfere with the possession of the plaintiff the suit was filed. It is the case of the defendants that the suit property originally belonged to one Vaidinatha Sasthri and that the defendant and his ancestors were cultivating tenants under him. During the enforcement of Land Ceiling Act, the suit property was assigned to the father of the defendant namely Karuppan by proceedings in MRI/Vi/K1/37-72(c) dated 12.03.1976 and thereafter the defendant was in continuous possession and cultivating the same.

4. Based on the pleadings the trial Court framed the following issues:

i) Whether the plaintiff is in lawful possession and enjoyment of the suit property?

ii) Whether the alleged cause of action is true?

iii) Whether the plaintiff is entitled to a decree for permanent injunction?

iv) to what other relief?

5. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A.6 were marked. On the side of the respondent, D.W 1 was examined and Ex.B.1 to Ex.B.6 were marked. After full fledged trial, the trial Court had dismissed the suit of the plaintiff. Against the dismissal the plaintiff had filed appeal under Order 41 r/w.Rule 1 and under Section 96 of the Civil Procedure Code. During the pendency of the appeal, the appellant had filed I.A.No.77 of 2019 and I.A.No.109 of 2019 seeking to file additional evidence.

6. The appellate Court formulated the following points for determination.

i) Whether I.A.No.77 of 2019 deserved to be allowed for the reasons thereof ?

ii) Whether the I.A.No.109 of 2019 deserves to be allowed for the reasons thereof ?

iii) Is the finding of the trial Court that the appellant had not proved his possession and that the appellant is not entitled to injunction is correct ?

iv) Whether the appeal deserves to be allowed for the reasons mentioned in the grounds of appeal ?

7. The appellate Court finding that the no records or evidence was filed by the plaintiff to show that the sale deed was executed in her favour or it was presented for registration before the concerned authorities and finding that no document had



been produced to prove the possession and that the documents sought to be marked as additional evidence were pertaining to the period after the filing of the appeal, had dismissed the appeal, against which the present second appeal has been filed.

8. The learned counsel for the appellant would submit that the appellant by producing the certificate issued by the Village Administrative Officer certificate and kist receipt and other documents as additional evidence had proved that she was in possession and paying the land tax, however the appellate Court had failed to take into consideration the additional documents to hold that the appellant was in possession of the property. The finding of the appellate Court in not considering the additional documents is perverse.

9. This Court carefully perused the materials available on record.

10. The suit is only for bare injunction. The case of the appellant is that she had purchased the property from one Rathinammal and that since the property was situated within Inam Village the sale could not be registered. It is the case of the defendants that the suit property originally belonged to one Vaidinatha Sasthri and that the defendant and his ancestors were cultivating tenants under him. During the enforcement of Land Ceiling Act, the suit property was assigned to the father of the defendant namely Karuppan by proceedings in MRI/Vi/K1/37-72(c) dated 12.03.1976(Ex.D.5) and thereafter the defendants were in continuous possession and cultivating the same. The trial Court finding that Ex.A.1 is the certified copy of the settlement in favour of vendor/Rathinammal and that Ex.A4 was only an unregistered sale agreement between the appellant and said Rathinammal had held that no documents were filed by the appellant/plaintiff to establish that her predecessor in title Rathinammal had sold her interest in the suit property to the appellant /plaintiff. During the pendency of the appeal, the appellant/ plaintiff had filed I.A. No.77 of 2019 to produce the Village Administrative Officer certificate and kist receipt as additional documents. Further I.A.No.109 of 2019 was filed by the appellant/plaintiff to produce acknowledgment receipts, adangal extract, death certificate of one Alagan and Village Administrative Officer certificate as additional documents. The appellate Court noting that the documents were dated 20.05.2017, 13.05.2017, 04.04.2019 and 13.05.2017 found that those documents were pertaining to the period after the filing of the appeal during the year 2016 and the suit filed during the year 2009 and found that the documents were obtained only for the purpose filing up lacuna in the case. Both the Courts below have also concurrently held that no documents have been produced by the



plaintiff/appellant to prove her possession.

11. This Court finds no perversity or infirmity in the findings of the Courts below. The appellant has not made any substantial question of law in the appeal.

12. The Hon'ble Apex Court in the case of **Kirpa Ram (Deceased).vs. Surendra Deo Gaur and others** reported in **2020 SCC Online SC 935** has held that if the High Court is satisfied that no substantial question of law is involved in the appeal it shall dismiss the second appeal without even formulating the substantial question of law.

13. As stated above, this Court does not find any infirmity or perversity in the findings of the Courts below and there is no error in the judgment and decree of the Courts below. In the result, the Second Appeal is dismissed without being admitted. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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To:

1. The Additional Sub Judge, Pudhukottai
2. The District Munsif cum Judicial Magistrate, Keeranur

Copy to

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

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26.08.2021**

KS (CO)

SB(08.10.2021) 4P 5C

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