



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 25.10.2021.

CORAM

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.(MD) No.649 of 2021

and

C.M.P.(MD) No.8674 of 2021

M.Nagarathinam

Appellant/Appellant/Defendant

vs.

Ganapathy(Late)

1. Nagalingam

2. Logambal

3. Meenatchisundaramam

4. Thilagar

5. Meenal

6. Ramu

7. Devi

8. Rajaletchumi

1st Respondent/2nd Respondent/2nd Plaintiff

2 to 8 Respondents/3 to 9 Respondent
Third Parties

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 19.4.2021 passed in A.S.No.58 of 2017 on the file of the Sub Court, Paramakudi, Ramanathapuram District confirming the Judgment and decree dated 8.8.2017 passed in O.S.No.90 of 2015 on the file of the District Munsif Court, Paramakudi.

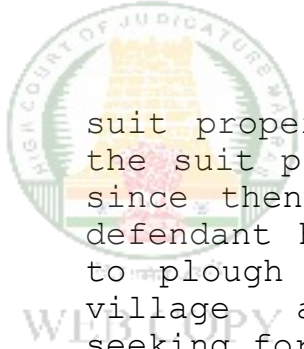
For Appellant : Mr.R.Shankar Ganesh

JUDGMENT

Challenging the concurrent findings of the courts below in granting the relief of permanent injunction, the defendant has approached this court by way of the present Second Appeal.

2. The case of the plaintiffs is as under:-

The suit property originally belonged to one Letchumana Achari, father of the plaintiffs and patta stood in his name. After the death of the said Letchumana Achari, the first plaintiff being the elder son, the patta was transferred in his name. Subsequently, the first plaintiff had settled the share of the second plaintiff in his favour by way of a registered gift deed dated 13.4.2010 and thereby the plaintiffs had been in possession and enjoyment of the suit property. The defendant has never got any right or title over the



suit property. Claiming that the first plaintiff had handed over the suit property to the mother of the defendant Sigappi Ammal and since then, he had been in possession of the suit property, the defendant had started threatening the plaintiffs that he was going to plough the suit property and spreading such a rumour in the village and thereby, the plaintiffs had come up with the suit seeking for permanent injunction.

3. The case of the defendant is as under:-

(i) The plaintiffs had left the village about 40 years prior to filing of the suit with regard to their avocation. The first plaintiff had settled at Rameshwaram and the second plaintiff had settled at Kanniyakumari. The suit land was being ploughed by one Ganesan on behalf of the plaintiffs from 25 years prior to the suit.

(ii) Whiles, an approach was made to the mother of the defendant Sigappi Ammal by the first defendant that he met with a loss in his fishing business and thereby he wants to sell the suit property which belongs to him as his share and thereupon, he agreed to sell the suit property for a sum of Rs.5700/- on 23.5.1988 and received a sum of Rs.4000/- towards advance and further agreeing to execute the sale deed by receiving the balance payment and since then, the defendant and his mother had been ploughing the suit property.

(iii) Subsequently, the first defendant had not turned up and his whereabouts could not be found out. Even the notice sent to him had returned unserved. After about five years, when he was accidentally met at Rameshwaram, he assured to execute the sale deed later as his position was not conducive by then.

(iv) In the year 2003, the mother of the defendant Sigappi Ammal died. Even during her life time, the defendant had been in enjoyment of the suit property. Since the defendant had been in enjoyment of the suit property by ploughing the land, when the first plaintiff had claimed drought relief in respect of the suit property, the defendant had objected the same by writing a letter to the Joint Director, Agriculture Department, Ramanathapuram.

(v) Even though the first plaintiff knows about the enjoyment of the suit property by the defendant, after the death of his mother Sigappi Ammal, the first plaintiff had created the gift deed settling half of the suit property in favour of the second plaintiff only to defeat the rights of the defendant over the suit property which deed will not bind the defendant.

(vi) From the date of agreement of sale viz., 23.5.1988, the defendant had been in enjoyment of the suit property by ploughing the land. The defendant has always been ready and willing to perform his part of the contract in respect of the said agreement of sale. However, with mala fide intention to defraud the defendant, the plaintiffs had lodged a complaint with the Superintendent of Police, Ramanathapuram on 13.4.2010. On appreciation of the factual background with regard to the sale agreement and the payment made

thereon, the police had advised for recourse * before the civil court.

(vii) On 25.6.2012, the defendant had addressed the Tahsildar, Ramanathapuram in this regard. With regard to the agreement of sale, panchayats were held in the village five years prior to the suit, wherein the plaintiffs were advised to execute the sale deed. However, suppressing all these things, the plaintiffs have filed the present suit and hence, it may be dismissed.

4. On the above pleadings, the Trial Court had framed the following issues for consideration:-

(i) Whether the plaintiffs are in possession and enjoyment of the suit property?

(ii) Whether the plaintiffs are entitled to the relief of permanent injunction sought for?

(iii) To what other reliefs the plaintiff is entitled?

5. During the trial, the second plaintiff was examined as PW1 and five documents were marked as Exs.A1 to A5 on the side of the plaintiffs. The defendant examined himself as DW1 while examining two more witnesses as D.Ws.2 and 3 and marked ten documents as Ex.B1 to B10.

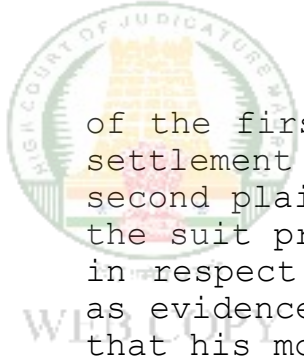
6. On analysis of the oral and documentary evidence, the Trial Court decreed the suit for permanent injunction.

7. Aggrieved against the judgment and decree of the Trial, the defendant had preferred the first appeal contending that the Trial Court, without considering the documents filed by the defendant with regard to his possession and payment of kist in respect of the suit property and the oral evidence of DW2 Ganesan, who was doing agriculture in the suit property on behalf of the plaintiffs, to the effect that the defendant had been enjoying the suit property for about 30 years, had come to the conclusion that the plaintiffs are in enjoyment of the suit property.

8. The appellate court, after considering the oral and documentary evidence of the parties afresh, had concurred with the finding of the Trial Court, which is under challenge in the present Second Appeal.

9. Learned counsel for the appellant would submit that the courts below have erred in granting the permanent injunction when the defendant had proved the genuineness of the sale agreement dated 23.5.1988 and his possession for a long period.

10. The claim of the plaintiffs is that the suit property originally belonged to their father Letchumana Achari as evidenced by patta Ex.A1 and after his death, it devolved upon both the plaintiffs, but, since the patta ex.A2 was granted only in the name

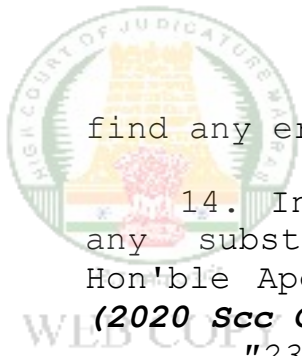


of the first plaintiff, being elder son, he had to execute the gift settlement deed Ex.A3 dated 13.4.2010 in favour of his brother, the second plaintiff and thereby they are in possession and enjoyment of the suit property. They have also filed receipts for payment of tax in respect of the suit property in the name of the first plaintiff as evidenced by Exs.A4 and A5 whereas, the case of the defendant is that his mother had entered into an agreement of sale with the first plaintiff on 23.5.1988 in respect of the suit property for a sum of Rs.5700/- by paying a sum of Rs.4000/- as advance and even during her lifetime, the defendant had been in enjoyment of the suit property and based on the strength of such agreement of sale and a few kist receipts paid a few years prior to the filing of the suit, the defendant claims right over the suit property.

11. Therefore, the claim of the plaintiffs are based on valid and registered documents viz., Exs.A1 to A3 whereas the claim of the defendant is based on a very old agreement of sale entered by his mother with the first plaintiff to which, either his mother or himself had given life by initiating any proceedings for the relief of specific performance. They are left with the only option of proving their possession for a long time. The appellate court had also observed that the document on which the defendant claims right over the suit property, viz., the agreement of sale dated 23.5.1988 itself had not been marked by the defendant and only the signature portion of the first attestor had been marked as Ex.B10, however, on perusal of the said document, the appellate court had found that there is no recital in the said document with regard to handing over of possession of the suit property and thereby the appellate court had rightly disbelieved the claim of the defendant with regard to enjoyment of the suit property.

12. The above aspect makes it clear that the mother of the defendant herself was not given possession of the suit property and it was merely an agreement of sale which is alleged to have been executed on 23.5.1988. The admission of the defendant as DW1 when he was cross examined that he had merely sent a notice seeking for execution of sale deed, but, not initiated any proceedings for specific performance in respect of the suit property clearly proves that the defendant, having gone into a deep slumber for about more than two decades, has suddenly woke up to make some issues with a blunt weapon, and the same is sought to be thwarted by the plaintiffs by filing the present suit which they had succeeded, but, the defendant is still harping on the issue with a very old document which had lost its validity after the period of limitation.

13. The courts below have properly analysed the above aspects in the light of oral and documentary evidence available on record and had arrived at a conclusion that the plaintiffs have proved their possession and enjoyment of the suit property and thereby granted the relief of injunction sought for. This court does not



find any error or infirmity in the finding of the courts below.

14. In the opinion of this court, the Appellant has not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 SCC OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

15. In view of the above, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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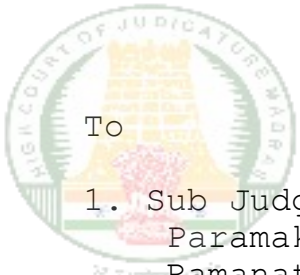
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Sub Assistant Registrar (CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. Sub Judge,
Paramakudi,
Ramanathapuram District.

2. District Munsif Court,
Paramakudi.

Copy to

The Section Officer, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.R. SHANKARGANESH, Advocate (SR-32935[F] dated
27/10/2021)

S.A. (MD) No.649 of 2021 and
C.M.P. (MD) No.8674 of 2021
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KS (CO)
KB (16.11.2021) 6P 6C