



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD)No.190 of 2015
and
MP(MD) No.1 of 2015

Gopal @ Rajagopal :Appellant
Vs.
1.Ponnusamy
2.Kannaiyan
3.Karpagam :Respondents

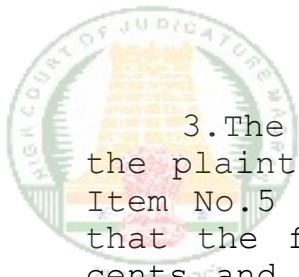
PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 21.12.2005, made in A.S.No.150/2004, on the file of Principal Sub Court, Kumbakonam, confirming the judgment and Decree dated 24.06.2003 O.S.No.47 of 2001, on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam.

For Appellant : Mr.G.Gomathi Sankar
For Respondents : Mr.M.R.S.Prabhu for
Mr.V.K.Vijayaragavan

JUDGMENT

The plaintiff in O.S.No.47 of 2001, whose suit for bare injunction was dismissed in respect of Item No.5 of the suit properties, has come up with the Second Appeal.

2.The suit was laid by the plaintiff seeking an injunction, contending that the suit properties belonged to Iyyaru, who died leaving the plaintiff and the defendants 1 & 2 as his legal heirs. The plaintiff would further plead that there was a family arrangement between the parties, namely, the plaintiff and the defendants 1 & 2, as evidenced by Ex.A6. According to the plaintiff, the suit properties were allotted to him under the said family arrangement and he had been in possession and enjoyment of the same. On the strength of the above pleadings, the plaintiff sought for permanent injunction.



3.The defendants, in fact, conceded the title and possession of the plaintiff, in respect of Item Nos.1 to 4 and 6. As regards the Item No.5 of the suit properties, it was claimed by the defendants that the first defendant was a tenant of the entire extent of 42 cents and the second respondent had purchased an extent of 21cents from the original owners of the property. It was further contended that the first defendant had released tenancy rights in favour of the third defendant. Therefore, according to the defendants, the plaintiff would have never been in possession of Item No.5 and therefore he is not entitled for decree for injunction in respect of Item No.5 of the suit properties.

4.At trial, the plaintiff was examined as PW.1 and PW 2 to PW 6 were examined on his side. Exs.A1 to A6 were marked. The second defendant was examined as DW.1. Mahalingam was examined as DW.2. Exs.B1 to B 9 were marked.

5.The trial Court, upon consideration of the evidence on record, had concluded that the plaintiff has not proved that he is in possession of the Item No.5 of the suit properties. The trial Court came to such conclusion based on the evidence of record, particularly, Karavolai Ex.A.6, which did not even refer to the Item 5 of the suit properties. The Court below took note of the fact that the Record of Tenancy Register maintained under Section 10 of the Tamil Nadu Agricultural lands Record of Tenancy Rights Act, 1969, stood in the name of the first defendant and therefore, the plaintiff cannot contend that he is in possession of the said property. On such conclusion, the trial Court dismissed the suit, in respect of the Item No.5 of the suit properties.

6.Aggrieved by the dismissal of the suit in respect of Item No.5, the plaintiff preferred an appeal in A.S.No.150 of 2004. The learned Subordinate Judge, upon reconsideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Aggrieved, the plaintiff has come up with the Second Appeal.

7.The following questions of law were framed at the time of admission of the Second Appeal.

- i. Whether the Courts below are correct in rejecting Ex.A6 for want of stamp duty and registration duty even for collateral purpose?
- ii. Whether the rejection of Ex.A.6 even for collateral purpose for want of stamp duty by the Courts below are correct?
- iii. Whether the respondents are estopped from denying the plaintiff's possession of suit item 5, when they admit execution of Ex.A6?



iv. Whether mere filing of sale deeds sufficient to prove possession admittedly when the possession was not given under the sale deed?

8. I have heard Mr. G. Gomathi Sankar, the learned counsel for the appellant and Mr. M. R. S. Prabhu for Mr. V. K. Vijayaragavan, the learned counsel for the respondents.

9. Elaborating the questions of law, Mr. G. Gomathi Sankar, would contend that the Courts below were not right in rejecting Ex. A6 for want of registration and stamp duty. He would submit that the document being unregistered, can be used for collateral purpose, as it does not effect a partition by itself and it only records the earlier partition that had taken place between the parties. Therefore, according to him, questions of law 1 & 2 must be answered in favour of the appellant.

10. I am unable to agree with the contention of the learned counsel for the appellant. Even assuming that Ex. A.6 (Karavolai) does not require registration, and it can be admitted as evidence to prove the possession, which is accepted for collateral purpose, the suit cannot be decreed in favour of the plaintiff.

11. A perusal of Ex. A6 shows that it does not include Item 5 of the suit properties. While all other suit items are shown to be allotted to the plaintiff under Ex. A.6, Karavolai, Item No. 5 of the suit properties is not even referred to in the said document. Therefore, whether Ex. A6 is accepted or not, the result would be that the plaintiff has not proved his possession and enjoyment of the said Item No. 5. It is also seen from the evidence on record that the Record of tenancy Register maintained under Section 10 of the Tamil Nadu Agricultural lands Record of Tenancy Rights Act, 1969, stood in the name of the first defendant in respect of the suit Item No. 5 and the third defendant has purchased a portion of the property from the land owners. The first defendant had relinquished the tenancy rights in favour of the third defendant.

12. In the light of the above documentary evidence that is available, the plaintiff cannot seek a decree for injunction. Answers to the questions of law 1 to 3 would not in any way affect the rights of the defendants inasmuch as the plaintiff has not established that he has being allotted the said Item No. 5 of the suit properties, under Karavolai document, dated 20.01.1992, marked as Ex. A.6. Since the plaintiff's claim is on the basis of the said document, it is for him to prove that the property is covered under the said document. A perusal of Ex. A6 shows that the suit item No. 5 is not dealt with in the said document.

13. In view of the above, I do not find any illegality or perversity in the findings of the Courts below and the questions of



law framed are answered against the appellant. The Second Appeal fails and it is accordingly dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Principal Sub Court,Kumbakonam.
- 2.The Principal District Munsif Court,
Valangaiman at Kumbakonam.
- 3.The Section Officer,VR Section,(2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.GOMATHI SHANKAR, Advocate (SR-2973[F] dated 02/02/2021)

+1 CC to Mr.V.K.VIJAYARAGAVAN, Advocate (SR-3008[F] dated 03/02/2021)

Judgment made in
S.A.(MD)No.190 of 2015 and
MP(MD) No.1 of 2015
Dated 01.02.2021

VB (26.02.2021) 4P 7C