



S.A.No.777 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.777 of 2022
and
C.M.P.No.15960 of 2022

1.Sivakami

2.Mariyappan

...Defendants/Appellants/ Appellants

Vs.

Ramasamy

... Plaintiff/Respondent/Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 25.11.2021 in A.S.No.1 of 2017 on the file of the learned Subordinate Judge, Perambalur, confirming the Judgment and Decree dated 04.01.2017 in O.S.No.165 of 2022 on the file of the learned District Munsif, Perambalur.

For Appellants : Mr.C.Vediappan
for M/s.C.S. Associates



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JUDGMENT

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The defendants are the appellants before this Court challenging the concurrent decree for injunction granted against them. The parties are referred to in the same rank and array as before the trial Court.

2.The facts in brief are as follows:

The plaintiff had filed the suit O.S.No.165 of 2022 on the file of the learned District Munsif, Perambalur, for a bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. It is the case of the plaintiff that the suit properties had been purchased by him on 09.01.2001 from the defendants herein, Pappammal, Sivakami, Malathi, Selvi and Valarmathi, legal representatives of one Ponnusamy Gounder. It is the case of plaintiff that from the date of purchase, he has been in possession and enjoyment of the same and the revenue records have been mutated in his name. In addition to that, the plaintiff would submit that he has purchased the 1/6th share in the suit well and the



agricultural lands from one of the legal representatives of Duraisami, who is the none else than the co sharer of PW1. Therefore, it is the contention of the plaintiff that he is in possession of the property and the suit well under the two Sale Deeds. It is also the case of the plaintiff that the person from whom he had purchased the first item of the suit property is also the person who had sold the properties to the defendants has a right of way in the South - North cart track measuring 12 x 375 foot and the plaintiff have no objection for the usage of cart track by the vendors. It is also the case of the plaintiff that since the plaintiff and his vendor had a right of cart track in the 1st item of the suit property a joint patta has been granted in the name of the plaintiff and the defendants. Taking advantage of the joint patta, the defendants are attempting to interfere with the peaceful possession and enjoyment of the suit property.

3.The defendants had denied the said allegations contained in the plaint and would submit that they had borrowed a sum of Rs.1,60,000/- by executing a Mortgage Deed in respect of the suit property which is



the customary practice of the community to which the plaintiff and the defendants belong to. It is the case of the defendants that they had never intended to execute a Sale Deed dated 09.01.2001 and that they had only borrowed money and agreed to pay a sum of Rs. 80,000/-. It is also their contention that the interest payable was Rs.10,000/- in the month of February of every year. The defendants would further submit that when they had approached the plaintiff with the interest amount of Rs.10,000/-, the plaintiff refused to receive the same and insisted upon the defendants surrendering possession of the suit property.

4.Since the plaintiff had refused to receive the interest they had approached certain panchayatars but the plaintiff refused to listen their advise. The defendants would submit that the plaintiff is threatening to take possession of the suit properties. The defendants would submit that the Sale Deed dated 09.01.2001 is not a true and valid document and the possession has not been handed over under the said Deed. Therefore, the suit for bare injunction necessarily be dismissed.



5. On the basis of the pleadings, the trial Court had framed the following issues:

“(1) Whether the Sale Deed dated 09.01.2001 is true and valid?

(2) Whether the suit is bad for non joinder of necessary parties?

(3) To what other relief the plaintiff is entitled to?”

6. Thereafter, just before the pronouncing of the Judgment, the learned Judge had framed issues which were recast as follows:

“(1) Whether the Sale Deed dated 09.01.2001 has been executed by the defendants as security for the loan amount obtained by the defendants from the plaintiff?

(2) Whether the suit filed by the plaintiff for bare injunction without prayer for declaration is maintainable?

(3) Whether the suit is bad for non joinder of necessary parties?



(4)Whether the plaintiff is in possession and enjoyment of the suit property at the time of filing of the suit?

(5)Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(6)To what other relief the plaintiff is entitled to?”

7.On the side of the plaintiff, he had examined himself as PW1 and one Muthusamy who was the attestor of Ex.A.1- Sale Deed as PW2 and Ex.A1 to Ex.A.8 were marked. On the side of the defendants, six witnesses have been examined and Ex.A1 to Ex.A.12 were marked and through the witnesses Ex.X1 to Ex.X7 were marked.

8.After considering the evidence on record and after hearing the arguments, the trial Court decreed the suit as prayed for. Challenging the same, the defendants had filed A.S.No.1 of 2017 on the file of the learned Subordinate Judge, Perambalur. The learned Judge also confirmed the Judgment and Decree of the trial court. Challenging this



concurrent Judgment and Decree, the plaintiff has filed the above appeal.

9.Heard the learned counsel appearing for the appellants/defendants and perused the papers.

10.The defendants would submit that they had no intention to execute the Sale Deed dated 09.01.2001 and they had intended only to execute a Mortgage Deed. However, the document Ex.A.1 - Sale Deed dated 09.01.2001 has been executed not only by the defendants but there are others who have also joined in the sale. The plaintiff had never questioned the said documents and it only goes to show that they were very much aware about the document to which they had affixed their signature. Even if the case of the defendants is accepted no document is filed to show that the Sale was never given effect to and that the defendants continued to be in possession. However, the plaintiff has marked Ex.A.2 to Ex.A.8 which would go to show that the plaintiff are in possession and enjoyment of the suit schedule property.



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The defendants had not chosen to examine the other executants of Ex.A.1 - Sale Deed to substantiate their case that the parties never intended to execute the Sale Deed and it was only meant to be a Mortgage Deed. The Suit is being for a bare injunction both the Courts below have held that the plaintiff has proved the possession of the suit property.

In the light of the above, I see no reason to set aside the concurrent Judgment and Decree of the Courts below. That apart, there is no substantial question of law made out in the above suit. The Second Appeal is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

20.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

8/10



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1.The Subordinate Judge,
Perambalur.

2.The District Munsif,
Perambalur.

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P.T. ASHA, J,

mps

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