



A.S.No.386 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
08~06~2022	14~07~2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

A.S.No.386 of 2014

S.Kannan

...

Appellant

Versus

R.Kesavan @ Murugesan

...

Respondent

Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 of the Civil Procedure Code against the Judgment and the Decree passed in O.S.No.52 of 2010 dated 07.02.2014 on the file of the learned District Judge, Karaikal.

For Appellant : Mr.S.Sathiyarayanan

For Respondent : No Appearance

JUDGMENT

This Appeal Suit has been preferred by the unsuccessful defendant against the judgment and the decree, dated 07.02.2014, passed in O.S.No.52 of 2010 by the learned District Judge, Karaikal, thereby decreeing the suit as prayed for in favour of the plaintiff.



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2. The defendant in the above suit is the appellant herein and the plaintiff is the respondent. The suit was one for declaration and recovery of possession.

3. For the sake of convenience, the parties will be hereinafter referred to as per their nomenclature before the trial Court.

4. According to the plaintiff, he purchased the suit schedule property from one Dominic Vijay Sagayaraj by way of a sale deed, dated 24.09.2004, and in the suit schedule property there was a thatched house constructed by the plaintiff's vendor and he permitted the defendant to occupy the same. Since the property was purchased by the plaintiff, the licence granted by his vendor in favour of the defendant came to an end and thereby the defendant had no right to continue to be in possession of the said property. However, the defendant was claiming right over the property adjacent to the suit property which was belonging to the mother of the plaintiff. The defendant was issued a legal notice by the plaintiff calling upon him to vacate and hand over the suit property with mesne profits. Thereafter, the defendant approached the plaintiff in person and sought for time to vacate the suit property which was also granted by him. However, the defendant refused to vacate the suit property and even denied the title of the plaintiff. The plaintiff is the bona fide purchaser of



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the suit property by virtue of a registered sale deed, but the defendant refused to vacate the said property with a malafide intention to grab the same.

Therefore, the plaintiff has approached the Court below and filed the suit for declaration, delivery of possession and for costs of the suit.

5. Resisting the suit filed by the plaintiff, the defendant filed a written statement, inter alia, stating that the suit property originally belonged to one Yagapillai @ Perinbanathan and he had adopted one Santhiyagu Joseph as his adopted son and by virtue of a Will, dated 15.03.1978, he allotted the suit property and other items of properties to him. After the death of Yagapillai @ Perinbanathan, his adopted son Santhiyagu Joseph became the owner of the suit property by virtue of the Will, who later executed a gift deed in favour of his son Dominic Vijay Sagayaraj. The suit property was sold away by the said Dominic Vijay Sagayaraj to the plaintiff on the basis of the gift deed, but the adoption is unknown to Christian law and thereby Santhiyagu Joseph cannot become the adopted son of the said Yagapillai @ Perinbanathan and the Will executed by him is not valid. The said Santhiyagu Joseph does not have any right to claim right over the property covered under the Will. Therefore, the said Santhiyagu Joseph had no right to execute sale deed in respect of the suit property in favour of the plaintiff. The defendant occupied



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the suit property after paying a sum of Rs.60,000/- to the said Santhiyagu Joseph on 02.01.1998, who, in turn, handed over the said property to the defendant and also executed an agreement in his favour. Later, the defendant constructed a house in the said property and he has been in possession and enjoyment of the same and he is not a trespasser as claimed by the plaintiff but, he is a permissive occupier of the suit property. The defendant has also sent a reply notice to the plaintiff challenging the very title of the plaintiff and his mother. The plaintiff has no right to deny the execution of the agreement on borrowal of a sum of Rs.60,000/- by Santhiyagu Joseph. The plaintiff has valued only the land but not the building available in the suit property. Hence, the defendant prayed for dismissal of the suit.

6. Based on the above pleadings, the trial Court framed the following issues for consideration :-

1. Whether the defendant is in occupation of the suit property as a licensee?
2. Whether the plaintiff is the absolute owner of the suit property?
3. Whether the plaintiff is entitled for declaration that he is the absolute owner of the suit property?



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4. Whether the plaintiff is entitled for a decree directing the defendant to vacate and hand over possession of the suit property?

5. To what other relief, the plaintiff is entitled ?

7. During the course of trial, on the side of plaintiff, the plaintiff himself was examined as P.W.1 apart from examining P.W.2 and Exs.A1 to A14 were marked. On the side of defendant, the defendant himself was examined as D.W.1 apart from examining D.W.2 and Ex.B1 and Ex.X-1 was marked.

8. On consideration of both oral and documentary evidence, the trial Court, by judgment and decree, dated 07.02.2014, decreed the suit, and held that the plaintiff was entitled for the relief of declaration and recovery of possession of the suit properties and consequentially directed the defendant to vacate the suit property within one month. Aggrieved over the same, the defendant has preferred the present appeal before this Court.

9. Mr.S.Sathiyarayanan, learned counsel appearing for the appellant, would contend that the trial Court has ignored the fact that the appellant has been in possession and enjoyment even prior to the alleged sale to the respondent i.e., from 02.01.1998, on which date, Ex.B-1, Manai



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agreement was executed by respondent's vendor's father; the respondent had full knowledge about the occupation, possession and enjoyment of the suit schedule property at the time of alleged sale; therefore, the respondent, having knowledge about the possession of the appellant over the suit property, ought not to have purchased the same and it is clearly established that the respondent colluded with his vendor and his father and obtained a sale deed in his favour. He would further contend that even before the sale, the respondent's vendor's father already executed the Manai agreement, dated 02.01.1998, in favour of the appellant, having received Rs.60,000/- from him, and put the appellant in possession of the suit property and that the said aspect was not considered by the Court below. The learned counsel would also argue that even at the time of trial, the respondent's vendor's father was very much alive, but the respondent had not taken any steps to disprove the Manai agreement-Ex.B1 and, therefore, when the execution of Ex.B1 was not disproved, the respondent is not entitled for recovery of possession of the suit property. According to the learned counsel for the appellant, the appellant has clearly established his possession and enjoyment over the suit property by way of Ex.B1 by examining D.W.2, which was never denied by the respondent also. In such circumstances, the Court below ought not to have given a finding that Ex.B1 is not a genuine one. He would further contend that the learned trial Judge ought to have seen that



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even though the survey numbers are not mentioned in Ex.B1, the boundaries are categorically mentioned. Further, the extent of the suit schedule property is only 5 kuzhis, whereas, the extent as per Ex.B1 is 12 kuzhies and, as such, the suit schedule property is completely a different one and is in no way connected with the appellant's property. With these contentions, learned counsel for the appellant would submit that judgment and decree passed by the trial Court are liable to be set aside.

10. Though the matter has been listed before this Court on several occasions, none appeared on behalf of the respondent. Since the appeal has been pending for long for eight years, to subserve the ends of justice, this Court deems it appropriate to dispose of the matter on merit, without keeping it pending any further.

11. After hearing the learned counsel appearing for the appellant and on perusal of the entire records, the following points would arise for consideration in this appeal:-

1. Whether the defendant has proved his possession and enjoyment over the suit property by virtue of Ex.B1-Manai Agreement?
2. Whether the plaintiff has proved that he is the absolute owner of the suit property by virtue of sale deed-Ex.A2?
3. Whether the judgment and the decree passed by the trial Court suffer from any infirmities and are liable to be set aside ?



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12. In order to decide the case, first, we have to look at Ex.B-1, Manai Agreement. It is dated 02.01.1998. The specific case of the appellant is that the respondent's vendor's father executed the said Manai Agreement, Ex.B-1, in his favour on receipt of a sum of Rs.60,000/- on 02.01.1998 and from that onwards, the possession of the suit property was handed over to him. In other words, it is the case of the appellant that he is in possession of the suit property ever since the date of execution of the said agreement.

13. Ex.B-1, Manai Agreement, dated 02.01.1998, is written in a plain paper. It is executed by one Santhiyagu Joseph, the father of respondent's vendor. It is an unregistered document. Curiously, the said document contains the writings with three different inks viz., the contents are written with one ink, the signature of the executor is done with another ink and, thirdly, as regards the addition of witnesses, the name of first witness has been written with one ink and the name of the second witness, namely, N.Anbalagan, who deposed in the witness box in favour of the appellant, has been written with a different ink, which appears to have been added subsequently for the purpose. This creates a suspicion as to the execution of the document.



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WEB COPY 14. Further, Re.1/- Revenue Stamp has been affixed on the said document, whereupon, the executor, namely, Santhiyagu Joseph is said to have signed, with a different ink, as stated earlier. As per the legal requirement, revenue stamp of Re.1/- shall be affixed on the document when there is a receipt of money, bill of exchange, cheque, or promissory note, whereas, Non-Judicial Stamp Paper is used in matters which concern transactional agreements between parties that are not judicial in nature, such as, agreements of sale, sale deeds, affidavits, undertakings, declarations, lease agreements, amendment in the articles of association etc.

15. Ex.B-1, as per the appellant, is Manai Agreement, but, the recitals of the same do not show that it is in the form of an agreement. The mutual rights and obligations of both the parties of the said document are missing therein. More importantly, the document has not been engrossed on the required stamp paper. Even assuming that it is an agreement, it is significant that when an agreement is executed, it ought to have been on a Non-Judicial Stamp Paper, but not on a plain sheet with a Revenue Stamp. Non-Judicial Stamp Paper bears a certain amount of evidentiary value, but, it largely depends on the nature of the transaction; for instance, a sale deed, though made and stamped



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on a Non-Judicial Stamp Paper, has to be notarized and registered with the local Sub-Registrar's Office as per law. Thus, Non-Judicial Stamp Papers are an important part of non-judicial functioning of the society.

16. It is also the case of the appellant that the executor of Ex.B-1 was very much alive at the time of trial and, therefore, the respondent ought to have examined the said executor to disprove the contents of the same. In this regard, it is not known to this Court as to why the appellant himself, instead of shifting the burden on the respondent, did not take steps to examine the executor of the document, namely, Santhiyagu Joseph, to authenticate and fortify the document. Nothing prevented him from doing so. Though the appellant examined D.W.2 to support his claim with regard to Ex.B-1, it cannot be given much weight, as it is not valid in the eye of law, in view of the cloud cast thereon as to its genuineness, as stated supra.

17. Next, if we take Ex.A-2, it is a sale deed, executed by one Dominic Vijay Sagayaraj in favour of the respondent on 24.09.2004 in respect of the suit property for a valid consideration. It is a registered document. It is the specific case of the respondent that he purchased the suit property from one Dominic Vijay Sagayaraj for a consideration of Rs.1,05,000/- by way of a



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registered sale deed, as per document No.931/2004, dated 24.09.2004. To substantiate his case, he also examined P.W.2, who is the owner of the property, i.e., Dominic Vijay Sagayaraj. The evidence of P.W.2 is categorical as to his selling away the suit property, as spoken to by the respondent as above. Further, he also deposed that the appellant occupied the suit property only on his permission temporarily. He also spoke to the effect that as the suit property was sold by him to the respondent, the permission granted by him to the appellant had come to an end and got cancelled and any further continuance of the occupation of the suit property by the appellant, without any legal right, was only as that of a trespasser. The evidence of P.W.2 was cogent and convincing with that of the respondent.

18. Added to the above, Exs.A-7,A-8,A-10,A-11 and A-13 are Tax Payment Receipts pertaining to the house existing in the suit property. As per the said documents, the suit property stood in the name of the respondent and the property tax was paid by the respondent to Nedugadu Commune Panchayat. Ex.A-12, Patta, issued by Tahsildar, Thirunallar, shows that the suit property and its larger extent stand on the names of the respondent and his mother Dhanalakshmi.



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19. Therefore, the respondent has proved that he is the absolute owner of the suit property by virtue of Ex.A-2, sale deed, and he has also proved his title and right over the suit property on the strength of title deed, patta and other documents. As such, the judgment and the decree passed by the trial Court do not suffer from any infirmities.

20. It appears, the appellant is more aggrieved over the adoption of the father of respondent's vendor, namely, Santhiyagu Joseph, by the original owner of the suit property, namely, Yagapillai @ Perinbanathan and the execution of the Will, dated 15.03.1978, by virtue of which, the suit property was allotted to Santhiyagu Joseph and thereafter devolving of the said property on the vendor of the respondent by way of a gift deed. According to the appellant, the said adoption is not known to Christian law and hence the title transferred through the adopted descendants does not have legal sanctity. If he is really so aggrieved, he ought to have challenged the said adoption and its subsequent execution of the registered Will, dated 15.03.1978, vide Document No.5/1978 on the file of Sub-Registrar's Office, Thirunallar, bequeathing the suit schedule property in favour of the respondent's vendor's father, namely, Santhiyagu Joseph in the manner known to law. Admittedly, he did not do that. Therefore, the contention of the appellant in this regard does not stand.



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WEB COPY 21. Appeal Suit, accordingly, fails and is dismissed. No costs.

Consequently, the connected M.P.No.1 of 2014 is also dismissed. One month's time is granted to the appellant for vacating the suit property and delivery of possession to the respondent.

14-07-2022

Index : Yes
Internet : Yes
Speaking Order

dixit

To

1.The District Judge,
Karaikal.

2.V.R.Section,
High Court,
Madras.



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S.KANNAMMAL,J.

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