



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.277 of 2010

WEB COPY

1.Sivasamy
2.Anbuselvi

... Appellants / Respondents 1 & 4 /
Defendants 1 & 4

-Vs-

1.N.Indira
2.Mookkaiyan
3.Muthusamy

... Respondent / Appellant / Plaintiff

... Respondents / Respondents 2 & 3 /
Defendants 2 & 3

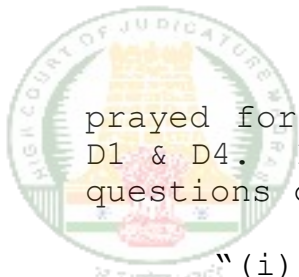
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.28 of 2009 on the file of the Principal Subordinate Judge, Thanjavur dated 11.11.2009 reversing the decree and judgment passed in O.S.No.274 of 2005 on the file of the District Munsif Court, Thanjavur, dated 28.04.2009.

For Appellants	: Mr.M.R.S.Prabhu for Mr.V.K.Vijayaraghavan
For R1	: Mr.M.Saravanan
For R2	: Mr.H.Rahamadullah
For R3	: no appearance

JUDGMENT

The contesting defendants in O.S.No.274 of 2005 on the file of the District Munsif Court, Thanjavur are the appellants in this second appeal.

2. The suit was filed by the first respondent herein namely Indira seeking permanent injunction in respect of the suit property. The suit property is a piece of agricultural land. Written statement was filed by the second defendant and adopted by the second appellant herein. The plaint averments were controverted. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined herself as P.W.1. Her husband Nehru was examined as P.W.2. Ex.A1 to Ex.A15 were marked. The second appellant herein examined herself as D.W.1. Two other witnesses were examined on their side. Ex.B1 to Ex.B11 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 28.04.2009 dismissed the suit. Questioning the same, the plaintiff filed A.S.No.28 of 2009 before the Principal Sub Court, Thanjavur. By the impugned judgment and decree dated 11.11.2009, the decision of the trial court was reversed and the appeal was allowed and the suit was decreed as



prayed for. Challenging the same, this second appeal was filed by D1 & D4. It was admitted on 09.02.2022 on the following substantial questions of law:-

"(i) When under Ex.A5-sale deed dated 06.02.2008 it has been specifically mentioned that the possession of the suit property was handed over to the plaintiff on the same date and when there was no mention of previous possession of suit property on the date of suit ie., on 30.09.2005, was it correct for the lower appellate court to grant injunction to the plaintiff as prayed for?

(ii) When the due execution of Ex.A4 power deed and Ex.A5 sale deed were not proved and established by examining witness relating to the said documents, was the lower appellate Court correct in granting decree as prayed for?"

3. The learned counsel appearing for the appellants reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree passed by the first appellate court and restore the decision of the trial court.

4. Per contra, the learned counsel appearing for the plaintiff / R1 submitted that the impugned judgment and decree do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. There is no dispute that the suit property originally belonged to one Ramalingam. The case of the defendants is that the second defendant Mookaiyan had purchased the said property by way of oral sale from the said Ramalingam in the year 1967. Mookaiyan had executed a othi deed dated 22.05.2005 in favour of the second appellant herein / D4. As on date, the land is very much in possession and enjoyment of the 4th defendant. The suit is one for injunction and therefore, it is the plaintiff who should prove that she was in possession of the suit property on the date when the suit was filed.

7. The learned counsel appearing for the appellants would point out that the sale deed was taken from some of the legal heirs of the said Ramalingam only on 06.02.2008. It was based on the power of attorney granted in favour of the plaintiff's husband Nehru under Ex.A4 dated 22.01.2008. Ex.A5 reads that only under the said sale deed, possession was handed over to the purchaser. This by itself indicated that the plaintiff was not in possession of the suit property on the date when she filed the suit. The learned counsel appearing for the appellants also would contend that due execution of Ex.A4 & Ex.A5 was not proved by examining the witnesses to the



8. I am not persuaded by the contentions advanced by the learned counsel appearing for the appellants. The title in respect of the suit property clearly stands only in the name of the plaintiff Indira. Indira had also marked the original title deed dated 10.07.1972 whereunder Ramalingam purchased the suit property from Chinnaiah. The original sale deed dated 10.07.1972 is marked as Ex.A1. It is true that the plaintiff did not examine the attestor of Ex.A4 or Ex.A5. Ex.A5-sale deed is not a document that is required by law to be attested. Only if the document is required by law to be attested, Section 68 of the Indian Evidence Act will come into play. In as much as a sale deed is not a document falling within the scope of Section 68 of the Indian Evidence Act, the first appellate court cannot be faulted for having held that the plaintiff has proved due execution of Ex.A4 & Ex.A5. It is true that in Ex.A5, there is a recital that possession of the property was handed over to the purchaser only thereunder. It appears to be more a case of cut and paste drafting. In the plaint itself, the plaintiff had clearly averred that she is in possession of the suit property for more than 18 years and that she is taking steps to obtain sale deed from the legal heirs of the original owner. Therefore, the evidence adduced by the plaintiff is in consonance with the plaint averments. The plaintiff had also marked Ex.A13-certificate issued by VAO. Of-course, the very same VAO who was examined as D.W.3 had issued a parallel certificate for the second appellant also. The first appellate court chose to accord preference to Ex.A13 because Ex.A13 had been counter signed by the Headquarters Deputy Thasildar, Thanjavur whereas the certificate marked by the 4th defendant was signed only by the VAO. D.W.3 admitted in the cross-examination that he was not the VAO of the concerned village, when he issued Ex.B11. The plaintiff by marking Ex.A7 to Ex.A11 had convincingly demonstrated that she was very much in possession of the suit property on the date of filing of the suit. Her case had become further strengthened by obtaining the title deed also. In any event, possession is more a question of fact. The first appellate court is the final Court of fact. Therefore, I answer the substantial questions of law against the appellants. I confirm the decision of the first appellate court decreeing the suit as prayed for. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1.The Principal Subordinate Judge, Thanjavur.

2.The District Munsif , Thanjavur.

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The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.R. SUBRAMANIAN, Advocate (SR-17676[F] dated
11/04/2022)

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