



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.(MD) No.363 of 2010

and

M.P.(MD) Nos.1 of 2010 & 1 of 2012

K.Sundaramoorthy

... Appellant/Respondent/
Defendant

-vs-

K.Arumugam

... Respondent/Appellant/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 05.03.2010 made in A.S.No.93 of 2008 on the file of Principal Subordinate Court, Kumbakonam reversing the judgment and decree dated 01.04.2008 made in O.S.No.169 of 2001 on the file of Principal District Munsif Court, Kumbakonam.

For Appellant : Mr.Madhavan

For Respondent : Mr.B.Jameel Arasu

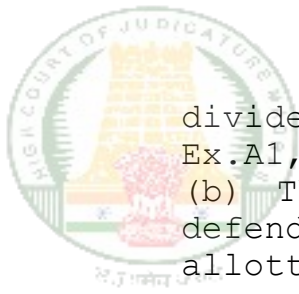
JUDGMENT

The defendant in O.S.No.169 of 2001 on the file of the Principal District Munsif Court, Kumbakonam, is the appellant herein. The suit is laid for bare injunction that the plaintiff, who is in possession of the suit property, should not be disturbed. The trial court dismissed the suit whereas the first appellate court had allowed the suit in an appeal preferred in A.S.No.93 of 2008. Hence, this second appeal.

2. This appeal has not yet been admitted and notice was ordered to the respondent. In deed, the respondent/plaintiff had entered appearance, but during the pendency of this appeal, the respondent had passed away and his legal representatives were brought on record. They, however, have chosen not to contest this appeal.

3. A brief statement of facts may now be provided:

(a) According to the plaintiff, a block of agricultural land, measuring an extent of 1.23 acres in Survey No.12/4, came to be



divided between a certain Kalimuthu and his five sons, vide Ex.A1, partition deed dated 06.01.1980;

(b) The plaintiff is one of the sons of Kalimuthu and the defendant is another son. In the partition, the plaintiff was allotted two plots, one measuring 17.3 cents and another measuring 18 cents. According to the plaintiff, the defendant was keen to purchase the plots allotted to the plaintiff in the partition, but since the plaintiff showed reluctance for parting with his plots, the defendant was attempting to force his way over the suit property. Hence, the suit for bare injunction.

4. The defendant has filed his written statement, whose entire narration may not be relevant. According to him, the property measuring 1.23 acres in S.No.12/4 is the self acquired property of late Kalimuthu, father of the parties herein. He adds that the defendant has not joined Ex.A1 partition. He further asserts that on 10.01.1981, Kalimuthu had executed a registered will in his favour and pleads that on 13.08.1987, he entered into a sale agreement with the plaintiff for purchasing the plots of the plaintiff and indeed, he had even paid the sale consideration to the plaintiff entirely. On the basis of the said sale agreement, the defendant was put in possession of the property and that the plaintiff is not in lawful possession to sustain the cause of action.

5. The dispute went to trial, and before the trial court the plaintiff examined himself as P.W.1 and also examined a certain Durai as P.W.2. He had produced five documents of which, Ex.A1 is the partition deed referred to in the pleadings. Ex.A4 is a copy of the Adangal, which however is signed only by the Village Administrative Officer. Though it is not a document that can be admitted in evidence as it was not authenticated by the Tahsildar, still it is a document which the plaintiff himself relies on. For the defendant, he had examined himself as D.W.1 and examined the officials of Revenue and Survey Department as D.W.2 to D.W.5. The defendant had produced as many as 18 documents, and most of which are kist receipts etc. Through the officials witnesses, Ex.X-1 to Ex.X-10 have come to be marked of which, Ex.X-3 is village 'A' extract. After placing the evidence before it, the trial court has chosen to rely on Ex.B1, sale agreement and has entered a finding that the plaintiff is not in possession, as he has parted with the possession pursuant to Ex.B-1.

6. Aggrieved by the same, the plaintiff preferred a first appeal in A.S.No.93 of 2008 before the Principal Sub Court, Kumbakonam. The first appellate court has found that possession has not passed over to the defendant and that Ex.B-1, and the various other documents which the defendant has produced do not relate to the suit property, and chose to decree the suit.



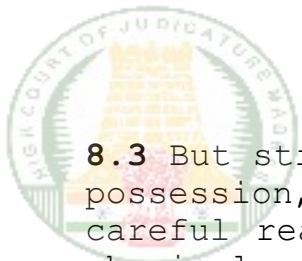
7. Heard Mr.Madhavan, learned counsel for the appellant. The learned counsel essentially concentrated in establishing a case of no partition under Ex.A-1, since the defendant was not a party to the said partition. He also laid emphasis on Ex.X-3, an extract of village 'A' register. The learned counsel argued that as per Ex.X-3, the property over which the plaintiff claims title is now comprised in S.Nos.12/4D and 12/4F and that which is in possession and enjoyment of the defendant is in S.No.12/4E. He also referred to Ex.B-1 sale agreement, and argued that the first appellate court has erred in ignoring the consequences of various tax receipts, which can be associated with Ex.B1.

8.1 After evaluating the submissions of the learned counsel in the context of the pleadings in the suit and the documents produced on either side, this Court finds:

(a) Notwithstanding the fact that the defendant might not have signed Ex.A1, partition deed, the partition has to be accepted as a fact since some seven years after Ex.A1 partition, the defendant himself has entered into a sale agreement with the plaintiff under Ex.B1, dated 13.08.1987;

(b) Ext.B1 deals with two specific plots of 20 cents and an 18 cents. This implies that the total extent dealt with under the sale agreement is about 38 cents whereas, according to the plaintiff in terms of the partition deed, he is entitled to 35.3 cents. After all, the property is an agricultural property and some concession might have to be given in stating the extent. The fact of the matter is that the partition indeed had happened, and the defendant knew that it had happened, and that he had acted on it which now stands fortified by Ex.B1.

8.2. But the larger issue is, whether the plaintiff is in possession of the property. Here, the plaintiff has not helped himself in describing the suit property, as he had merely stated the survey number as S.No.12/4 without any subsequent revenue sub divisions. Having said that, there is a convergence in consensus as between either side, and that both the plaintiff and the defendant rely on certain documents that were produced on their respective sides during the trial that the property allotted to the plaintiff has a definite survey sub-division. So far as the plaintiff is concerned, he has produced Ex.A4, which shows that the property allotted to him is comprised in S.Nos.12/4D and 12/4F. This exactly is a statement which the Sub Inspector of Survey, who was examined as D.W.5, has said through Ex.X-3 document. Even though there is a possibility to construe that the description of the property in the plaint may not satisfy the requirements of Order VII Rule 3 CPC, given the scenario where both the plaintiff and the defendant appear to concede that the plots covered under S.Nos.12/4D and 12/4F belong to the plaintiff, this Court chooses to ignore the insufficiency of particulars in the description of property in the plaint.



8.3 But still, who is in possession of the property? For supporting possession, the defendant relies entirely on Ex.B-1. But on a careful reading of Ex.B1, this Court does not find any transfer of physical possession of property by the plaintiff to the defendant. This implies that the defendant could not interfere with the plaintiff's possession.

9. In conclusion, this Court does not find any merit in the appeal, but only seeks to add some clarity to the decree passed by the first appellate court and that it would be confined to the plots covered under S.Nos.12/4D and 12/4F. As to the rest, the judgment of the first appellate court stands confirmed. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge,
Kumbakonam.

2.The Principal District Munsif,
Kumbakonam.

Copy to:

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

+1 CC to M/s.S.MADHAVAN, Advocate (SR-24447[F] dated 07/06/2022)

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