



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.876 of 2010

WEB COPY

Krishnadhas ... Appellant / Appellant / Defendant

-Vs-

Jabaraj ... Respondent / Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.10.2009 in A.S.No.72 of 2005 on the file of the Subordinate Judge, Kuzhithurai (camp) modifying the judgment and decree dated 25.02.2005 in O.S.No.198 of 1999 on the file of the II Additional District Munsif, Kuzhithurai.

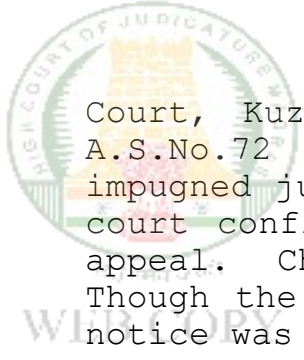
For Appellant : Mr.J.Anand Kumar

For Respondent : Mr.T.Selvakumaran

JUDGMENT

The defendant in O.S.No.198 of 1999 on the file of the II Additional District Munsif Court, Kuzhithurai is the appellant in this second appeal.

2. The respondent herein namely Jabaraj filed the said suit seeking the relief of permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit property. The suit property is comprised in R.S.No.171/5 in Arumanai Village, Vilavancode Taluk and measures an extent of five cents. The plaintiff purchased the said property under Ex.A2-sale deed dated 26.04.1999 from one Anandavalli. The defendant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed as many as three issues. One issue was whether the sale deed executed by Anandavalli in favour of the plaintiff on 24.06.1999 is valid. The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A7. The defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B43. An advocate commissioner was appointed and his report and plan were marked as court exhibits 1 & 2. After consideration of the evidence on record, by judgment and decree dated 25.02.2005, the trial court granted permanent injunction restraining the defendant and his men from entering the suit property or causing any kind of disturbance to the possession of the plaintiff subject to the disposal of O.S.No.468 of 1992 on the file of the II Additional District Munsif



Court, Kuzhithurai. Aggrieved by the same, the defendant filed A.S.No.72 of 2005 before the Sub Court, Kuzhithurai. By the impugned judgment and decree dated 07.10.2009, the first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. Though the second appeal was filed way back in the year 2010, only notice was ordered and it is yet to be admitted.

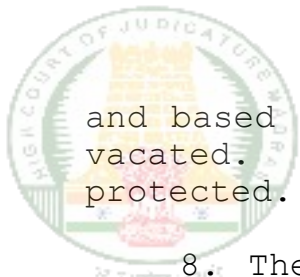
3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to admit the second appeal and formulate the substantial question of law and take it up 'for disposal' later.

4. The learned counsel appearing for the appellant brought to my notice that the suit in O.S.No.468 of 1992 mentioned in the impugned decree has since been compromised. He pointed out that the plaintiff's vendor Anandavalli was one of the defendants in the previous suit (Defendant No.3). The matter was compromised in December 2010 and I.A.No.459 of 2010 was also filed for recording the same. The suit along with the another suit came to be decreed on 07.09.2019. The learned counsel for the appellant fairly brought to my notice that the appellant filed O.S.No.266 of 2011 on the file of the District Munsif Court, Kuzhithurai for recovering of possession of the suit property from the present plaintiff on the strength of the compromise memo. Since subsequent development have taken place, he wanted this Court to admit this second appeal by formulating the proper substantial question of law.

5. Per contra, the learned counsel appearing for the respondent submitted that no substantial question of law arises for determination.

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

7. The suit on hand was one for injunction. Therefore, the issue of possession alone needed to be gone into. The courts below have concurrently given a finding that the plaintiff is in possession of the suit property. Therefore, even if the plaintiff has no title, he still cannot be evicted or dispossessed except by due process of law. In fact, this position appears to have been conceded by the appellant herein. That is why, the appellant had filed O.S.No.266 of 2011 on the file of the District Munsif Court, Kuzhithurai for recovery of possession. Of-course, the impugned decree states that injunction granted in favour of the present plaintiff / respondent herein will have to abide by the outcome of O.S.No.468 of 1992. Such conditional decree was passed against the plaintiff's vendor namely Anandavalli who was the defendant in O.S.No.468 of 1992 and Ex.A2 was executed during the pendency of the suit and that is why, the issue was framed if the sale is valid or not on account of the conclusion of O.S.No.468 of 1992



and based on compromise, the present decree cannot be automatically vacated. It is because settled possession will have to be protected.

8. The plaintiff herein had obtained possession over the suit property way back in the year 1999 under Ex.A2. The validity of the said document was made contingent on the disposal of O.S.No.468 of 1992. For more than 24 years, the plaintiff herein is in possession. He cannot be summarily thrown out. At this stage, the learned counsel for the respondent points out that in the compromise memo relied on by the appellant, the plaintiff's vendor did not put her signature. These are the issues which are beyond the scope of the present decree. Whether the compromise decree made in O.S.No.468 of 1992 is valid or not is an issue that is left open. It is for the appellant to pursue his remedy against the respondent in O.S.No.266 of 2011 on the file of the District Munsif Court, Kuzhithurai.

9. The learned counsel appearing for the appellant expressed his misgivings regarding language, in which, the first appellate court's decree is couched.

10. I am of the view that there is no need for such misgivings. It is true that the first appellate court had modified the judgment and decree passed by the trial court. But then, modification became necessary because the plaintiff has been found to be in possession of the suit property. When the plaintiff is in possession of the suit property, he can be dispossessed only in the manner known to law. In other words, if the appellant herein succeeds in getting eviction decree in O.S.No.266 of 2011 on the file of the District Munsif Court, Kuzhithurai, then, obviously, the impugned judgment and decree passed by the first Appellate Court will not come in the way.

11. In these circumstances, I hold that no substantial question of law arises for consideration. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Subordinate Judge, Kuzhithurai(camp).
- 2.The II Additional District Munsif, Kuzhithurai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-12256[F] dated 15/03/2022)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-12623[F] dated 17/03/2022)

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