



S.A.No.346 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.01.2023**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.346 of 2006

Maniammal

... Appellant/Appellant/Plaintiff

Vs.

1.Thoppalan (died)

2.T.Sivasami

3.T.Rajendran

4.Selvarani

5.Dhanalakshmi

6.T.Karunanidhi

...Respondents/Respondent/Defendant

(R1 died. Respondents 2 to 6 were brought on record as the legal representatives of the deceased 1st respondent vide order of this Court dated 16.09.2022 made in C.M.P.Nos.1866, 1867 and 1868 of 2010 in S.A.No.346 of 2006 by KRJ)



PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 01.04.2003 in A.S.No.200 of 2002 on the file of the learned District Judge, Perambalur, confirming the Judgment and Decree dated 29.01.1993 in O.S.No.432 of 1992 on the file of the learned Additional District Munsif, Ariyalur, Perambalur District.

For Appellant : Mr.B.Balavijayan
for Mr.S.Mani

For Respondents : Mr.B.Sivagamasundari
for R2 to R6

R1 – died

JUDGMENT

The plaintiff is the appellant before this Court. 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 originally filed a suit O.S.No.619 of 1988 on the file of the learned District Munsif, Perambalur, which was



subsequently transferred to the file of the learned Additional District Munsif, Ariyalur, Perambalur District and re-numbered as O.S.No.432 of 1992. The suit was filed for a bare injunction restraining the defendant, his men, agents, servants and heirs from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The property in question was an extent of 2 acres out of a total extent of 7.08 acres in S.No.414/2 situate at Kalpadi Village, Permbalur Taluk, Trichy District. It is the case of the plaintiff that a larger extent of land previously belonged to Alagappa Kounder @ Alaga Kounder as his ancestral properties. It is his further case that after the demise of the said Alagappa Kounder, his only son Ramasamy became entitled to the entire property in S.No.414/2. The plaintiff's husband and the defendants herein had attempted to interfere with the peaceful possession and enjoyment of the suit survey number and therefore, the said Ramasamy had filed O.S.No.239 of 1986 on the file of the learned District Munsif, Perambalur, for permanent injunction. The suit was decreed on 10.12.1987. During the pendency of the suit, the plaintiff purchased the suit property from



the said Ramasamy under a registered Sale Deed dated 30.07.1986.

Eversince the purchase, she has been in exclusive possession and enjoyment of the same. As the plaintiff's husband had a property abutting the suit property on the West and in order to have a combined possession and enjoyment, the plaintiff had purchased the property.

3.The defendant was aggrieved that while the suit O.S.No.239 of 1986 filed by Ramasamy against the plaintiff's husband and him was pending, Ramasamy had sold the property to the plaintiff. Therefore, he started interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The defendant had attempted to trespass into the property and the plaintiff had thwarted the same. The defendant is a highly influential person enjoying political clout and the plaintiff apprehends that he may be succeed in entering the suit property. Therefore, the plaintiff has come forward with the suit in question.



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4.This suit was resisted by the defendant *inter alia* denying the contentions contained in the Plaint. The defendant would submit that the decree in O.S.No.239 of 1986 is an *ex parte* decree and the defendant had already taken steps to set aside the *ex parte* decree in O.S.No.239 of 1986. It is the further contention of the defendant that the said Ramasamy did not own a single cent of land in S.No.414/2, as the said Ramasamy's father had already sold the entire extent. The defendant would contend that the suit property and a further extent of 36 cents belonged to one Perumal Kounder who purchased it under an oral sale from Alaga Kounder. The defendant has purchased the suit property from the said Lakshmana Kounder under a Sale Deed dated 25.08.1952. From the date of his purchase, he is in possession. Therefore, the suit should be dismissed.

5.The trial Court had framed the following issues:

"(1)வழக்கிடை சொத்து வாதியின்
அனுபோகத்தில் உள்ளதா?



(2)வழக்குக்கு வழக்குமீலம் உண்டா?

(3)வாதிக்கு கிடைக்கும் நிவாரணம் என்ன?"

6.The above suit was tried along with another suit O.S.No.151 of 1992. Recording of the evidence was made in O.S.No.151 of 1992. The plaintiff in O.S.No.151 of 1992 had examined himself as PW1 and had marked Ex.A.1 to Ex.A.6. The plaintiff in O.S.No.432 of 1992 had examined herself as PW2. On the side of the defendant, the 2nd defendant in O.S.No.151 of 1992 was examined as DW1 and the 4th defendant in the said suit was examined as DW2. Ex.B.1 to Ex.B22 were marked and that apart, the Commissioner's Report and the Plan were marked as Ex.C.1 and Ex.C2. The defendant in O.S.No.432 of 1992 had not entered the box to adduce evidence.

7.The trial Court on considering the evidence on record came to the conclusion that the appellant had not proved the possession of the property whereas the defendants had produced documents to show their continuous possession and enjoyment of the suit schedule

property. Challenging the said Judgment and Decree, the plaintiff had filed A.S.No.200 of 2002 on the file of the learned District Judge, Perambalur. The learned Judge also held that the plaintiff has not proved the possession and proceeded to confirm the Judgment and Decree of the Courts below. Challenging the same, the appellant is before this Court.

8.The Second Appeal was admitted on the following Substantial Questions of Law:

"(1)Whether the Courts below are correct in holding that the plaintiff has not proved his possession ignoring Chitta and Adangal, i.e., plaintiff 's docuemnts, ex.P.1 to Ex.P.6?

(2)Whether the Courts below are justified in ignoring the Chitta and Adangal of the appellant, particularly, when the respondent has not proved title to the property as against Sale Deed, Ex.P.5?"



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9.Mr.B.Balavijayan, learned counsel appearing for the appellant would submit that both the Courts below have totally overlooked the documents filed by the plaintiff to prove the possession. He would contend that Ex.A.1 – Patta, Ex.A.2 to Ex.A.4 – Adangal standing in the name of the plaintiff/vendor would show that the property is in her possession. He would further contend that the plaintiff had filed Ex.A.5 which is the document under which she has purchased the suit property. The suit being one for bare injunction, the Courts below ought to have decreed the suit considering the above documents.

10.Per contra, Mrs.B.Sivagamasundari, learned counsel appearing for the respondents would submit that the plaintiff has not produced any document to show possession as on the date of the filing of the suit. The documents that have been filed relate to the periods 1982, 1983 and 1984 and no documents have been filed subsequent to her purchase by the plaintiff. However, on the contrary, the defendants have filed Kist receipts starting from the year 1965 to show their continuous possession of the suit property. She would therefore



submit that both the Courts below have considered the evidence properly before dismissing the suit and this Court sitting in Second Appeal cannot re-appreciate the evidence.

11. Heard the learned counsels appearing on either side and perused the papers.

12. As rightly pointed out by the learned counsel appearing for the defendant, the plaintiff claims to be in possession and enjoyment of the property pursuant to the Sale of the year 1986 and produced Ex.A.5 - Sale Deed dated 30.07.1986. The plaintiff has not produced any document whatsoever to show possession of the property from the date of purchase till the filing of the suit thereafter. The revenue records that have been filed as Ex.A.2 to Ex.A.4 stand in the name of Alagappa Kounder and there is no explanation as to why the records have not been mutated in the name of the plaintiff. On the contrary, the defendants have filed documents to show their possession and enjoyment of the suit property by filing Ex.B.1 to Ex.B.18 which are



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the revenue records, all of which stand in the name of the defendants.

The suit in question is one for bare injunction, the plaintiff in order to obtain a decree for injunction has to necessarily prove possession of the property. Proof of possession is a *sine quo non* for obtaining a decree for injunction. The plaintiff in the instant case has miserably failed to prove the same. Therefore, the Substantial Questions of Law 1 and 2 are answered against the appellant.

The Second Appeal is dismissed. There shall be no order as to costs.

03.01.2023

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

To

1.The District Judge,
Perambalur.

2.The Additional District Munsif,
Ariyalur,
Perambalur District.

10/14



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C.M.P.No.2221 of 2020

in

S.A.No.346 of 2006

P.T. ASHA, J,

The above Civil Miscellaneous Petition has been filed for receiving additional documents.

2.A perusal of the documents would clearly indicate that all of them have come into existence after the filing of the suit. The suit was filed in the year 1992 and the documents that sought to be filed are Kist receipts from the year 1997, 1998, 2002 and 2003, totally numbering 5. Since these documents opposed the filing of the suit the same cannot be received in evidence and accordingly, this Civil Miscellaneous Petition is dismissed.

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(1/2)



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