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S.A.No. 1467 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.04.2023**

CORAM

THE HONOURABLE **MR. JUSTICE V. LAKSHMINARAYANAN**

S.A.No. 1467 of 2011

And

M.P.No. 1 of 2011

1. Ramalingam

2. Jothimani ... Defendants/Appellants/Appellants

Vs.

Kalimuthu ... Plaintiff/Respondent/Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment dated 29.08.11 made in A.S.No. 6 of 2011 on the file of the learned Subordinate Judge, Udumalpet confirming the Judgment and decree dated 16.03.11 made in O.S.No. 233 of 2007 on the file of the learned District Munsif, Udumalpet.

For Appellants : Mr.A.Gowtham
for Mr. B.Nambiselvan

For Respondent : Mr. R.Gokula Krishnan



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JUDGMENT

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The defendant is the appellant. The plaintiff and the defendant are brothers. The plaintiff Kalimuthu is the owner of the property. The suit property fell to the share of the plaintiff, by virtue, of a partition between the first defendant and the plaintiff. It was evidenced by the partition deed dated 08.11.1994. The said document was filed as Ex.A-1. The plaintiff claimed that the defendant sought to interfere with the suit property and that the defendant wanted to purchase the property and since the plaintiff refused to alienate the same, he was attempting to trespass into the property. Hence, he sought aid by the Court by filing a suit for permanent injunction not to interfere with his possession.

2. In response to the said plaint, the defendant brought to the notice of the Court Ex.B-1, an unregistered sale deed dated 20.07.1998 under which the plaintiff had sold the property to the defendant for a sum of Rs.20,000/-. According to him, when both the parties went to register the property, it came to their notice that one Velusamy Gounder had filed a suit in O.S.No. 272 of 1996 for recovery of money and had attached the



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said property. Since the property was under attachment of orders of Court, according to the defendant, he could not have the property registered. However, since possession was handed over under the document, he continued to be in possession of the property. The plaintiff, due to inimical motive, wanted to get the aid of the Court to take forcible possession and hence, filed the suit.

3. In other words, the clear case of the defendant is that he is in possession pursuant to a duly stamped but unregistered deed dated 20.07.1998. The learned District Munsif Court, Udumalpet, who tried the suit in O.S.No. 233 of 2007 decreed the suit on 16.03.2011. The First Appeal in A.S.No. 6 of 2011 on the file of the Subordinate Judge at Udumalpet, confirmed the same in and by way of Judgment dated 29.08.2011. Against this concurrent findings, the appellant has approached this Court.

4. At the time of admission, the following substantial questions of law were framed for consideration:-



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“1. Whether the finding rendered by the Courts below that an unregistered document could not used to establish possession is correct in law in view of the Judgment of the Hon'ble Supreme Court reported in 2003(4) SCC 161 and 1969(1) SCW 341?;

2. Whether the Courts below are correct in law in having placed reliance on the decision reported in 2010 (6) CTC 290 contrary to the law laid down by the Hon'ble Supreme Court of India?;

3. Whether the Judgment and decree of the Courts below legally sustainable in view of the mandate contained in Article 141 of the Constitution of India?;

4. Whether the Courts below are correct in law in having entertained a suit for a bare injunction when there existed a dispute regarding title?;

5. Whether the Court below are correct in law having shifted the burden of proof on the appellant/defendant to establish the genuineness



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of Ex.B-1 and not call upon the plaintiff/respondent to prove his case. ”

5. Out of these questions of law, I heard the learned counsel on either side.

6. The suit property admittedly belongs to the plaintiff. He had obtained the property by way of a partition between himself and the first defendant evidenced through registered agreement of partition dated 08.11.1994. It is clear from Ex.B-1, the plaintiff had alienated the property to his brother but for want of registration, due to attachment, it could not be completed.

7. I have gone through Ex.B-1. It states that the possession has been handed over to the first defendant. The second defendant is none else the wife of the first defendant. The plaintiff, apart from Ex.A-1, has produced Exs. A-2 to A-6. I am not accepting A-6 because it is an after suit document and I am not in a position to accept Exs.A-3 to A-5 because, all of them have come into force just prior to the filing of the suit. There



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are not documents evidencing the possession of the plaintiff between the period 08.11.1994 to 20.07.1998 and from 20.07.1998 to 30.03.2007, ie., just prior to the presentation of the plaint. The date 20.07.1998 is a crucial date because that is a date for which the Ex.B-1 was executed.

8. Mr. R.Gokula Krishnan, learned counsel appearing for the respondent would vehemently argue that I should not look into Ex.B-1 as it is stamped but yet unregistered document. He would urge that though the sale deed had been executed, since it has not been registered, it comes within a teeth under Section 17 and 49 of the Registration Act. It is necessary to point out that this Court in ***R.Munusamy Vs. G.Krishttapillai [MANU/TN/1716/2014]*** dated 08.10.2014 has held in a suit for permanent injunction, it is always open to the Court to look into an unregistered document for the purpose of possession.

9. Mr.A.Gowtham, learned counsel for the appellants would bring to my notice a Judgment of the Supreme Court in ***Bondar Singh and Ors. Vs. Nihal Singh and Ors*** reported in ***(2003) 4 SCC 161*** where under the Court has held even an unregistered sale deed can be looked into for the purpose of establishing possession of the property.



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10. In the light of the clear and categorical views taken by this Court and that of the Hon'ble Supreme Court, I am constrained to hold that both the Courts below have failed to appreciate the nature and content of Ex.B-1. I am not reading Ex.B-1 as transferring title. It is only for the purpose of seeing as to who is in possession and enjoyment of the property. Ex.B-1 is an inter party document between the plaintiff and the first defendant. The document reads possession has been handed over. Consequently, a mere suit for injunction is not maintainable. It is always open to the plaintiff to resort the appropriate remedies as it is open to him in accordance with law. However, he cannot succeed in this suit since the first defendant is in possession of the property by virtue of Ex.B-1. The Courts below have rejected Ex.B-1 only on the ground that it is an unregistered document. I am not willing to confirm the same as I have held that Ex.B-1 can be looked into for a collateral purpose ie., to see as to who is in possession of the property. To reiterate, I am not looking into it as a document evidencing transfer of title. I am constrained to interfere with the judgments of the Courts below. I answer the substantial questions of law framed in favour of the appellants and against the respondent.



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11. In fine, the Judgment and Decree of the learned District Munsif, Udumalpet, in O.S.No. 233 of 2007 dated 16.03.2011 as confirmed by Judgment and Decree of the learned Subordinate Judge, Udumalpet, in A.S.No. 6 of 2011 dated 29.08.2011 is hereby set aside. This Second Appeal is allowed with costs throughout. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No

Internet:Yes/No

vsg

To

1. District Munsif, Udumalpet.

2. Subordinate Judge, Udumalpet.



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V. LAKSHMINARAYANAN , J.

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