



S.A.No.1034 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1034 of 2022
and C.M.P.No.22274 of 2022

O.J.M.Bhojan

.. Appellant

Vs.

1. S.Sekar (now deceased)

2. Madhi Ammal

3. Shanthi

4. Jayashree

5. Harshavardhini

6. Bupesh Bellan

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to call for the records pertaining to the issue of the decree and judgment passed in A.S.No.48 of 2018 on the file of Sub Judge at Coonoor dated 07.12.2019 in confirming the decree and judgment passed in O.S.No.17 of 2017 on the file of District Munsif, Kotagiri, The Nilgiris dated 02.11.2018 and set aside the same and thus allow the Second Appeal.

For Appellant : Mr.D.Ashok Kumar

JUDGMENT

This second appeal has been filed as against decree and judgment passed in A.S.No.48 of 2018 on the file of Sub Judge at Coonoor dated 07.12.2019,



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thereby confirming the decree and judgment passed in O.S.No.17 of 2017 on the file of District Munsif, Kotagiri, The Nilgiris dated 02.11.2018, thereby decreed the suit.

2. The appellant is the defendant in the suit filed by the deceased respondent for permanent injunction. The case of the respondents is that the appellant is the owner of three properties described in the schedule. While being so, on 26.09.2000, the appellant entered into an agreement for sale with the respondent since deceased, on receipt of the entire sale consideration for a total sum of Rs.94,000/- On the date of agreement itself, the respondents were put in possession of the suit property in part performance of the suit agreement. Therefore, the respondents have been in possession and enjoyment of the suit property by permissive possession from the date of the agreement. However, the appellant shifted his residence to Coimbatore, 12 years ago. While being so, the appellant with an ulterior motive to grab the suit property, is disturbing the possession and enjoyment of the suit property by the respondent. Therefore, the respondents lodged a complaint and filed a suit.

3. The appellant resisted the same by way of filing written statement



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stating that the appellant borrowed a sum of Rs.94,000/- from the respondent herein and he had never executed any agreement for sale in respect of the suit property. In the Nilgiris district, it is quite normal that they used to execute an agreement for sale while borrowing loan. The respondent was never put in possession as per the agreement. In fact, the respondent since deceased, filed a suit in O.S.No.330 of 2002 on the file of the Sub Court, Nilgiris at Udthagamandalam District for specific performance, on the strength of the agreement. It was decreed exparte and even after completion of 12 years, the respondent failed to execute the same. Therefore, the decree itself is barred by limitation. On the other hand, now, only with an intention to grab the property, the respondent filed a suit for permanent injunction.

4. On the side of the respondent, he was examined as P.W.1 and marked Exs.A1 to 8. On the side of the appellant D.W.1 was examined and no document was marked. On a perusal of oral and documentary evidences, the Trial Court decreed the suit as prayed for. Aggrieved by the same, the respondent preferred an appeal in A.S.No.48 of 2018, on the file of Sub Judge at Coonoor and the same was also dismissed, confirming the Judgment and Decree passed by the Trial Court. Hence, this appeal.



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5. The appellants raised the following substantial questions of law,

“A. That the Courts are right in holding that the respondent is entitled to decree and judgment for the relief of permanent injunction, in the absence of possession, though the pleadings the counsel appearing for the appellant have let him down by twisting the facts contradictory to the original position resulting great hardship and can the respondent take advantage of the same and claim decree and judgment while the burden of proof vests with him.

B. That admittedly the burden of proof vests with the respondent in his capacity as plaintiff to establish his possession and hence he cannot pluck holes in the pleadings at the instance of the appellant and can take advantage of the same to his credit and can claim the decree and judgment for permanent injunction than establishing his case with documents as the Apex Court had repeatedly held that the plaintiff has to establish possession in respect of the suit properties especially in the suit for the relief of bare injunction as possession is imminent for such relief.”

6. The learned counsel for the appellant would submit that the suit filed by the respondent for specific performance in O.S.No.330 of 2002, obtained an exparte decree. Even after 12 years, the respondent failed to file any execution petition to execute the Judgment and Decree passed in O.S.No.330 of 2002. Therefore, it was barred by limitation. Hence, the respondent filed the present suit for permanent injunction in respect of the suit property, where the appellant is in possession and enjoyment. Though, the agreement for sale was executed, it



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was not with an intention to sell the property. While borrowing the loan, it was executed in favour of the respondent. The appellant is in possession and enjoyment of the suit property.

7. A perusal of records revealed that admittedly the appellant executed an agreement for sale in respect of the suit property on 26.09.2000, on receipt of a sum of Rs.94,000/-. On the strength of the agreement for sale, the respondent also filed a suit for specific performance in O.S.No.330 of 2002. It was decreed and it was not executed subsequently. However, as per the agreement for sale dated 26.09.2000, the respondents were put in possession of the suit property in part performance of the agreement. While being so, the appellant disturbed their possession and enjoyment of the suit property and as such the respondents filed a complaint on 24.02.2017, which was marked as Ex.A5. It is also seen that the appellants received the entire sale consideration on the date of execution of sale agreement. Though, the appellant had taken a specific stand that he only borrowed the loan and he had no intention to execute any agreement for sale, the appellant failed to prove the same.

8. The possession and enjoyment of the suit property was handed over to



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the respondents on 26.09.2000 as per the agreement for sale. As per Section 53A of Transfer of Property Act, the respondents are entitled to protect their possession as part performance. Hence, the Courts below rightly allowed the suit and this Court finds no substantial questions of law involved in this case and is liable to be dismissed.

9. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs. As observed by the Courts below, the appellant is at liberty to file a suit in accordance with law.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The Sub Judge at Coonoor.
2. The District Munsif, Kotagiri, The Nilgiris.

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