



S.A.No.369 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.369 of 2023

S.Kothandaraman

...Appellant

Vs

K.Muthu

... Respondent

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed in A.S.No.97 of 2011 dated 20.02.2017 on the file of the Sub-Ordinate Judge, Tambaram in confirming the Judgement and Decree passed in O.S.No.198 of 2008 dated 29.11.2010 on the file of the District Munsif, Tambaram.



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For Appellant : Mr. T.Thiyagarajan

For Respondent : Dr. R.Sampath Kumar

JUDGEMENT

Challenging the concurrent Judgement and Decree passed against him, the plaintiff is the appellant before this Court. The parties are referred to in the same array as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.198 of 2008 on the file of the District Munsif, Tambaram seeking a decree for permanent injunction restraining the defendant, his men, agents from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff.



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3. The plaintiff's case is that he is the absolute owner and in enjoyment of the suit schedule property. It is the case of the plaintiff that the suit schedule property is natham land and was settled in his name by his father under a settlement deed dated 19.06.2008. The plaintiff's father had purchased the said property from one Chinnamunian son of Ellan, under a sale letter dated 29.10.1951 for a sum of Rs.31/- Since the sale consideration was less than Rs.100/-, the deed was not registered. Chinnamunian in turn had purchased the property under a sale deed dated 01.07.1943 from one Ponnan son of Kodian for a sum of Rs.25/-. Once again the sale was not registered. The property has been in continuous possession and enjoyment of the plaintiff and his predecessors in title.

4. The plaintiff would submit that the defendant who is utter stranger to the suit property attempted to dispossess the plaintiff from



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the property on 08.06.2008 and on 28.06.2008. These attempts were successfully thwarted by the plaintiff and the plaintiff has also lodged a Police complaint. Further, his attempts to mediate in the village has also failed. Therefore, the plaintiff has come forward with the suit in question.

5. The defendant had filed a written statement inter alia contenting that the two sale deeds which have been projected as the document of title all are created and concocted documents. The alleged vendor under the two deeds have no right, title or interest in the suit schedule property. The notice for issue of patta has been obtained by the plaintiff by influencing the Government officials.

6. The defendant would submit that the address for service of the plaintiff would clearly show that they are not in possession of the property. The settlement deed has been executed just a few days prior



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to filing of the suit, which itself would prove that the document is concocted one. Therefore, the plaintiff cannot claim any right under these deeds.

7. The defendant would contend that it is they who are in continuous possession and enjoyment of the suit schedule property and the surrounding properties, as these are ancestral properties of the defendant. There are three huts and pucca R.C.C roof building put up in these properties including the suit schedule property and the defendant is paying house tax for the house constructed therein and has also obtained electricity connection in his name. This would clearly show that it is the defendant who is in possession and enjoyment of the suit schedule property. There was no attempt to dispossess the plaintiff as alleged in the plaint, as there is no such necessity as the defendant is in possession of the property. Therefore, they sought for the dismissal of the suit.

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8. The learned District Munsif, Tambaram had framed the following issues:

(a) Whether the plaintiff is entitled for permanent injunction as prayed for?

(b) What are the other reliefs the parties are entitled to?

9. The plaintiff has examined himself as P.W.1 and one Selvamani and Narayanan as P.W.2 and P.W.3, respectively and marked Ex.A.1 and Ex.A.2. On the side of the defendant, the defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.12.

10. The Trial Court dismissed the suit on the ground that the plaintiff is not in possession of the suit property and has not made out any cause of action for instituting the said suit. The Trial Court had



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also taken note of the fact that the settlement deed has been executed a few days prior to the institution of the suit. All of which creates suspicious circumstances. Therefore, the suit was dismissed.

11. Challenging the same, the plaintiff has filed A.S.No.97 of 2011 on the file of the Sub Court, Tambaram. The learned Sub Judge, Tambaram has also confirmed the Judgement and Decree passed by the learned District Munsif, Tambaram and dismissed the appeal. Challenging the same, the plaintiff is before this Court.

12. Heard the learned counsels and perused the records.

13. Admittedly, the plaintiff would make his claim on the base of the settlement deed executed in his favour and the two earlier sale deeds. However, it is clearly seen that the settlement deed has been executed only a few days prior to the institution of the suit and it



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appears to be an attempt to create registered document in respect of the suit property. The sale deeds which the plaintiff put forward as the documents of title are unregistered documents. Further, the suit is one for permanent injunction the Courts below have clearly found that the plaintiff has not been able to prove his possession and enjoyment of the suit property. On the contrary, the defendant has produced Ex.B.6, B.7, B.8 to B.12 to prove his possession. The Courts below have rightly non-suited the plaintiff.

14. The plaintiff has not made out any question of law much less a substantial question of law to interfere with the Judgement and Decree of the Courts below. Consequently, the Second Appeal stands dismissed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To,

1.The Sub-Ordinate Judge,
Tambaram.

2.The District Munsif,
Tambaram.



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P.T.ASHA, J.,

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