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S.A.Nos.1050 and 1055 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

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

S.A.Nos.1050 and 1055 of 2022
and C.M.P.No.22511 of 2022

N.Selvamani .. Appellant **in both S.As**
Vs.
N.Rajendran .. Respondent **in both S.As**

Prayer in S.A.No.1050 of 2022:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree in A.S.No.54 of 2020 dated 20.12.2021 on the file of the learned Additional District Judge, Namakkal, confirming the judgment and decree in O.S.No.65 of 2015 dated 13.01.2020 on the file of the Subordinate Judge, Rasipuram and thereby allow the second appeal.

Prayer in S.A.No.1055 of 2022:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree in A.S.No.55 of 2020 dated 20.12.2021 on the file of the learned Additional District Judge, Namakkal, confirming the judgment and decree in O.S.No.53 of 2016 dated 13.01.2020 on the file of the Subordinate Judge, Rasipuram and thereby allow the second appeal.



S.A.Nos.1050 and 1055 of 2022

In both S.As

For Appellant : Mr.N.Suresh

For Respondent : Mr.R.Subramanian

COMMON JUDGMENT

The S.A.No.1050 of 2022 has been filed as against the Judgment and Decree in A.S.No.54 of 2020 dated 20.12.2021 on the file of the learned Additional District Judge, Namakkal, confirming the judgment and decree in O.S.No.65 of 2015 dated 13.01.2020 on the file of the Subordinate Judge, Rasipuram, thereby decreed the suit.

2. The S.A.No.1055 of 2022 has been filed as against the Judgment and Decree passed in A.S.No.55 of 2020 dated 20.12.2021 on the file of the learned Additional District Judge, Namakkal, confirming the judgment and decree made in O.S.No.53 of 2016 dated 13.01.2020 on the file of the Subordinate Judge, Rasipuram, thereby dismissing the suit.

3. The appellant is the defendant in the suit filed by the respondent in O.S.No.65 of 2015 for declaration and recovery of possession. The appellant is the plaintiff in the suit filed by him in O.S.No.53 of 2016 seeking permanent injunction restraining the respondent from evicting him from the suit property in any illegal manner.



4. The case of the respondent herein, who is the plaintiff in O.S.No.65 of 2015 is that he is the younger brother of the appellant herein. The suit property originally belong to their father. In the family partition made under a registered partition deed dated 19.04.1973 vide Document No.682 of 1973, the suit property was allotted in favour of the respondent herein. Likewise, the appellant was also allotted other properties as described in the partition deed. The suit property is a non residential building. The plaintiff was running a jewellery shop in the building which was allotted to the defendant and thereafter vacated the said building and handed over the possession to the defendant. However, the defendant had requested the plaintiff to permit him to run his jewellery shop under the name and style of A.N.Jewellery in the suit property which was allotted in favour of the plaintiff. The plaintiff, being a brother of the defendant, admitted the defendant to be in possession of the suit property for some time till the arrangement of alternative place. Thereafter, the plaintiff had cancelled the permission and requested the defendant to vacate the suit property and surrender vacant possession. In respect of the very same property, the defendant also filed a suit in O.S.No.53 of 2016 for permanent injunction restraining the plaintiff from evicting him without due process of law.



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5. The appellant resisted the same by way of filing written statement stating that the suit property was allotted in favour of the respondent in a family partition dated 19.04.1973. Even before partition, the appellant was running the jewellery shop and the same was allotted in favour of the respondent herein. It was agreed by each other to continue their respective business in the premises, which was already occupied by them. While being so, on 08.08.2012, the respondent received the jewels and he agreed to return back the same on demand. However, the respondent failed to return back the jewels or pay any money for the same. The respondent instructed the appellant to continue his possession in respect of the suit property and whenever he returns the jewels and money, he can vacate the premises. Without returning the said jewels and money, the respondent attempted to dispossess the appellant on 15.04.2015. Therefore, the respondent filed a suit.

6. Both the suits were tried together. On the side of the respondent, he had examined P.Ws.1 to 4 and marked Exs.A1 to 8. On the side of the appellant, he was examined as D.W.1 and marked Exs.B1 to 5. On a perusal of oral and documentary evidences, the Trial Court decreed the suit filed by the respondent in O.S.No.65 of 2015 and the suit filed by the appellant in



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O.S.No.53 of 2016 was dismissed. Aggrieved by the same, the appellant preferred appeals in A.S.Nos.54 and 55 of 2020 and both the appeal suits were dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, these second appeals.

7. The appellant raised the following substantial questions of law in S.A.No.1050 of 2022:-

“A) Whether the Courts below have erred in decreeing the suit in favour of the plaintiff in spite of the fact the plaintiff had failed to prove the specific plea taken by him that he had granted permission to the defendant to be in possession and enjoyment of the property?

B) Whether the Courts below have erred in decreeing the suit when in fact it is apparent that the allotment of the property in favour of the plaintiff on the basis of the partition in the year 1973 was not given affect to and not acted upon at all?

C) Whether the Courts below have erred in decreeing the suit on the basis of the plea that the permission allegedly granted in favour of the defendant was cancelled, when in fact the alleged original permission itself is not proved by the plaintiff?

D) Whether the Judgments and decree of the Courts below are perverse as the substantial issue between the parties as to the alleged permission pleaded by the plaintiff had not been decided at all and no findings rendered therein ?”

In S.A.No.1055 of 2022, the appellant raised the following substantial



questions of law:-

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“A) Whether the Courts below have erred in dismissing the suit for injunction when admittedly the plaintiff was in possession and enjoyment of the property?

B) Whether the Courts below have erred in dismissing the suit when in fact it is apparent the recitals as to the allotment of the property in favour of the defendant was not given affect to and not acted upon?

C) Whether the Courts below have erred in dismissing the suit when the defendant had not even proved permission pleaded?

D) Whether the Judgments and decrees of the Courts below are perverse as the substantial issue between the parties as to the alleged permission pleaded by the defendant had not been decided at all and no findings rendered therein?”

8. The learned counsel for the appellant would submit that even before the family partition, the appellant is in possession and enjoyment of the suit property and as such it is unbelievable that he is continuing in possession of the suit property only by way of permission. The respondent failed to prove that the appellant was permitted to possess the suit property by oral or documentary evidence. The receipt which was marked as Ex.B4 clearly prove that the respondent received jewels and cash for which the appellant is in possession and enjoyment of the suit property.

9. A perusal of records revealed that admittedly there was a family partition on 19.04.1973 including the suit property. The suit property was



allotted to the respondent herein. The appellant and the respondents are brothers. Both are running jewellery shop. After partition, the respondent vacated the premises which was allotted in favour of the appellant and handed over vacant possession. However, the appellant was permitted to possess the suit property which was allotted in favour of the respondent for some period of time. In fact, in the written statement, the appellant categorically admitted that the property which was allotted to him was already handed over by the respondent to the appellant. The appellant also admitted that the suit property is allotted in favour of the respondent herein.

10. Further, the case of the appellant is that the respondent received jewels and cash, for which, the appellant was permitted to possess the suit property till the return of the jewels and cash. In order to substantiate the same, the appellant had marked the receipt as Ex.B4. However, it was denied by the respondent by questioning the very signature itself. In fact, the said receipt did not contain any witnesses. In order to prove Ex.B4, the appellant failed to examine any other witness. At the same time, he also failed to take appropriate steps to prove the signature found in Ex.B4. The appellant also failed to prove that the respondent attempted to dispossess the appellant from the suit property on 15.04.2015. The appellant did not even lodge any complaint to substantiate



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the said allegations. Therefore, the Courts below rightly allowed the suit filed by the respondent and dismissed the suit filed by the appellant herein and this Court finds no substantial questions of law involved in both the appeals and are liable to be dismissed. The appellant is at liberty to seek time before the execution Court to vacate and handover vacant possession.

11. Accordingly, these Second Appeals are dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

03.01.2023

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
mn

G.K.ILANTHIRAIYAN,J.

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To

1. The Additional District Judge, Namakkal.
2. The Subordinate Judge, Rasipuram.

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