



S.A.No.420 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

S.A.No.420 of 2016 &

C.M.P.No.7380 of 2016

K.Ekambaram

...Appellant

Vs.

G.Gandhimathi

...Respondent

Prayer: Petition filed under Section 100 of C.P.C to set aside the judgment and decree of XIX Additional Judge, City Civil Court at Chennai in A.S.No.178 of 2015 dated 9th day of March 2016, which confirmed the judgment and decree of XVII Assistant Judge, the City Civil Court, at Chennai in O.S.No.6620 of 2012 dated 17th April 2015.

For Petitioner : Mr.G.Thangavel

For Respondent : Mrs.R.K.Sekina Reshma

JUDGMENT

This second appeal arises out of the judgment and decree in A.S.No.178 of 2015 dated 09.03.2016. In and by way of the judgment dated 09.03.2016, the first appeal preferred by the appellant herein was dismissed.



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2. A.S.No.178 of 2015 arose out of O.S.No.6620 of 2012 on the file of the XVII Assistant Civil Judge at Chennai. By Judgment and Decree dated 17.04.2015, the suit came to be dismissed. Against the concurrent findings, the present second appeal has been filed before me.

3. The case of the plaintiff is that he has been in possession and enjoyment of the property for over 60 years. He admits that he has been in use and occupation of 100 sq.ft of adjacent property as a tenant under the defendant's father. After the death of the father, the defendant presented OS.No.1208 of 1996 for recovery of possession of the schedule mentioned property therein, which is as follows:

“Portion the property bearing door No.16, Dharmaraja Koil Street, Chintadripet, Madras-2 being a dilapidated cattle shed with tin sheet roofing measuring about 100 sq ft or thereabout a bounded on the south by Dharmaraja Koil Street and on the east, west and north by the rest of the property belonging to the plaintiff.”

4. This suit ended in an exparte decree. Attempts were made to set aside the exparte decree which failed. Thereafter, the Execution Petition was



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presented and delivery was taken. According to the plaintiff/appellant, defendant had evicted the plaintiff from the property by misleading the authorities as the decree is only for 100 sq. ft and not for the entire extent. Therefore, he claimed for a decree for permanent injunction

5. The case of the defendant is that her father is the original owner of the property who had purchased an extent of 1988 sq. ft in the year 1973. Apart from that, the revenue authority had given patta for additional space and she was in occupation and enjoyment of total extent of 2064 sq. ft. In the larger extent purchased by her, there was a cattle shed of 100 sq. ft., in one corner of the property. During the life time of the father of the defendant, the plaintiff used to tether the cattle over the premises and had put a cattle shed. After her father had done away with the necessity of having cattle at home, he requested the plaintiff to vacate and hand over possession. The plaintiff refused to hand over the same and started claiming right of tenancy. He Filed RCOP 267 of 1996 seeking to deposit rents in the court. The said RCOP was dismissed as he was found not to be a tenant of the property. Thereafter, he presented O.S.No.4449 of 1995 seeking the relief not to be evicted except otherwise in accordance with law. The said suit was decreed and the appeal



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was also dismissed. Thereafter, the defendant filed O.S.No.1208 of 1996 for recovery of possession. In the said suit, an exparte decree was passed by the Trial Court. To set aside the same, an application was filed and that was dismissed, against which an appeal was preferred and that too, ended in dismissal. Finally a Civil Revision Petition has been filed before this Court and the Civil Revision Petition was also dismissed.

6. The parties went to trial and the plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A29. The defendant examined herself as DW1 and marked Ex.B1 to B18.

7. The issue that the trial court framed for answering is whether the plaintiff is entitled to the relief of permanent injunction as prayed for. The trial court after detailed consideration of the evidence as well as the previous decrees, came to a conclusion that the plaintiff is not entitled for the relief of permanent injunction. This was confirmed in the first appeal.

8. Mr.G.Thangavel, learned counsel for the Appellant would argue that as the plaintiff is in possession and enjoyment of the property from the year



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1987, he is entitled for the permanent injunction.
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9. He would suggest the following substantial questions of law:

1. Whether a person in a settled possession of property can be dis-possessed by the alleged owner except under the due process of law?

2. Whether the valid possession of property could be claimed by the alleged owner without establishing the ownership right by valid title?

3. When the subject matter of the property right is required to be ascertained by the de-marcation of property by virtue of pending writ petition No.17208 of 2013 filed on 24.06.2013, between the parties, in the High Court of Madras, can the lower court conclude the property right of the parties?

4. When the subject matter is regarding the determination of location of 100 sq.ft., pending as the subject matter of the CRP before the High Court under



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C.R.P.No.1581 of 2013 can the courts below conclude the determination of location of 100 sq. ft.?

5. Whether the alleged ownership right without production of the original document claimed under Door No.14 of Dharmaraja Koil Street, Chennai can be maintained as the ownership right of another property under Door No.16, Dharmaraja Koil Street, Chennai?

6. Whether a prior possession is a good title of ownership who cannot show a better?

10. The appeal is resisted by Mrs.Sekina Reshma. She would plead none of these questions arise for consideration that in the light of the previous proceedings, this appeal is an abuse of process of law.

11. It is settled position, there cannot be an injunction against a true owner. The plaintiff has been taking vacillating stands at various points of time. Originally he claimed to be a tenant of the property and filed RCOP No.267 of 1996 for deposit of rents. The said RCOP was dismissed and it has attained finality. Thereafter, he filed O.S.No.4449 of 1995 on the file of the



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City Civil Court, Chennai, claiming that he must not be evicted except
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otherwise in accordance with law. The said suit was decreed and appeal was also confirmed.

12. The original owner, in order to take possession of the property, had filed OS.No.1208 of 1996. The said suit was decreed, despite the written statement having been filed. To set aside the same, the plaintiff filed I.A.No.11557 of 2000. That was dismissed on 05.12.2000 under Ex.A3. Civil Revision Petition preferred therefrom in CRP(NPD).No.2587 of 2004 also ended in dismissal on 09.08.2011. Thereafter, an execution petition was filed in E.P.No.4411 of 2011. Delivery was ordered under Ex.B11 on 28.02.2013. On the strength of the order of decree, possession was also taken by the defendant in the said execution proceedings. To set aside the orders, EA.No.853 & 940 of 2013 were filed. The said petitions were dismissed on 28.02.2013 under Ex.B13 and Ex.B14. In otherwords, the possession of the property has only been taken through the process of court and also been duly recorded.



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13. Under Section 114 of the Indian Evidence Act, record of the court through bailiff that delivery has been taken is binding on the plaintiff, unless and until the plea of fraud or wrongful delivery is proved [see, C.Ramaswami vs. Kuruva Boyan & others, (1991) 1 LW 244 & Govindaswamy Pillai vs. Marudan, (2002) 1 LW 113. In this case, I am constrained to draw the said inference that the delivery had been effected in favour of Gandhimathi through process of court as the second appellant has miserably failed to prove that the possession was not taken from him. On the contrary, Ex.B13 and Ex.B14 filed by the defendant pointed out that the plaintiff had tried to argue that delivery was wrongfully taken and it had ended in dismissal on 28.02.2013. In fine, the plaintiff wants to re-agitate the matter that he had tried in E.P.No.4411 of 2011.

14. Principles of *res judicata* squarely applies to the facts of the case. Having agitated the matter before the Executing Court and having lost it, it is not open to the plaintiff to present a fresh suit before the Court stating that the delivery that had been taken through the court is improper. One court cannot disbelieve the record of evidence of the other court. In this case, the trial court in O.S.No.620 of 2012 had rightly appreciated Ex.B10, B13 & B14 and came



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to the conclusion that the plaintiff is not entitled to claim to be in possession of the suit schedule property. In any event, there cannot be an injunction against the true owner. The trial court had already decreed O.S.No.1208 of 1996 declaring that Gandhimathi to be the true owner of the property. To substantiate her ownership, she had also filed Ex.B1 and B2 which are the sale deed and SLR copy to prove the extent of property, she has been in possession.

15. In the light of the above, the plaintiff is not entitled to injunction as claimed. The substantial questions of law raised by the Appellant do not arise for consideration. I am not inclined to admit the appeal. The appeal is dismissed with cost throughout. The decrees of the Courts below stand confirmed. Consequently, connected miscellaneous petition is closed.

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Index	: Yes/No
Speaking Order	: Yes/No
Neutral Citation Case	: Yes/No



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To

1. The XIX Additional Judge, City Civil Court at Chennai
2. The XVII Assistant Judge, the City Civil Court, at Chennai



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V. LAKSHMINARAYANAN, J,

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