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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

Rev.Appl.No.28 of 2021
and C.M.P.No.2492 of 2021
and S.A.No.125 of 2020

1.Sivasankaran
2.Thavamani @ Mani

...Appellants

Vs.

1.Anjanakshi @ Anjalakshmi
2.The Tahsildar,
Taluk Office,
Arakkonam

...Respondents

Prayer: Second Appeal filed under Order 47 Rule 1 r/w Section 114 of C.P.C., against the judgment and decree dated 25.02.2020 made in S.A.No.125 of 2020 passed by Hon'ble Mr.Justice K.Kalyanasundaram.J on the file of this Court.

For Applicants : Mr.Jeremiah Gregory John

For Respondents : Mr.V.Raghavachari
Senior Counsel
for Ms.V.Srimathi for R1
Mr.J.C.Duraiaraj
Additional Government Pleader
for R2



JUDGMENT

This review application is filed seeking review of the judgment and decree passed by this Court in S.A.No.125 of 2020.

2. The first respondent herein filed a suit for declaration of the title and recovery of possession. She also prayed for a declaration that settlement deed dated 19.07.2010 executed by the first applicant in favour of his wife/second applicant was null and void. She also sought for a decree to set aside the earlier ex-parte decree passed in O.S.No.221 of 1999 on the file of District Munsif Court, Arakkonam in a suit filed by first applicant was null and void. The first respondent also sought for a permanent injunction restraining the applicants from interfering with her possession over the suit property.

3. The trial Court decreed the suit granting declaration of title and recovery of possession in favour of first respondent. The trial Court also granted a declaration that settlement deed executed by first



applicant in favour of second applicant was null and void and not binding upon the first respondent. The declaration sought for by the first respondent in respect of the ex-parte decree passed against her was refused by the trial Court. The prayer for injunction was also negatived. Aggrieved by the said judgment, the applicants herein preferred an appeal in A.S.No.32 of 2016, on the file of the II Additional District Judge, Vellore @ Ranipet and the same was also dismissed. Challenging the concurrent findings against him, the applicants preferred second appeal before this Court and the same was also dismissed. Now seeking review of the said judgment and decree passed in the second appeal, the applicants are before this Court.

4. The first respondent claimed title over the suit property by virtue of registered sale deed dated 07.10.1990. It was the case of the first respondent that the first applicant herein illegally trespassed into the property and illegally created a settlement deed in favour of second applicant. The suit was mainly resisted by the applicants on the ground that originally the first applicant entered the property as a cultivating tenant under first respondent. Thereafter, he entered into a sale agreement for purchase of the suit property for sale consideration of Rs.2,58,000/- and it



was also claimed by the first applicant that he paid an advance amount of Rs.50,000/- on the date of agreement namely 21.10.1999. Subsequently, there was misunderstanding and exchange of notices between the parties and new agreement was entered into on 19.05.2000.

5. The applicants also pleaded entire sale consideration was subsequently paid to the first respondent and first applicant orally purchased the property from first respondent. Thus they claimed that 1st applicant had been in possession and enjoyment of the suit property as absolute owner to the knowledge of the first respondent. Thereafter, on 19.07.2010, in his capacity as owner of the property, he executed the settlement in favour of second applicant. On these pleadings, the applicants sought for dismissal of the suit.

6. This Court on consideration of materials available on record, came to the conclusion that oral sale pleaded by the first applicant was not valid in the eye of law and the same would not convey any title to first applicant. Therefore, being satisfied with the title of the first respondent, this Court affirmed the concurrent findings of the Courts below



as applicants failed to prove their title or adverse possession over the suit property.

7. The learned counsel appearing for the review applicants submitted that earlier first applicant obtained an ex-parte decree of injunction against the first respondent in O.S.No.221 of 1999. In the present suit, the first respondent sought for a declaration that ex-parte decree obtained by first applicant was not valid and binding upon her. The trial Court found that first respondent was not entitled to the said relief and dismissed the suit in respect of the said prayer. The dismissal of the suit in respect of the prayer to declare the settlement deed as null and void was affirmed by the First Appellate Court as well as this Court in second appeal. The learned counsel further submitted that when ex-parte decree obtained by the first applicant is operating against the first respondent, the prayer for recovery of possession made by first respondent is not at all maintainable. The learned counsel further submitted that the apparent conflict between the ex-parte decree in O.S.No.221 of 1999 and the decree for recovery of possession granted in the present suit has not been considered by this Court, while disposing of the second appeal and consequently, the same is



deserved to be reviewed.

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8. The earlier suit for injunction was filed by the first applicant claiming himself as a cultivating tenant under first respondent. However, the plea of cultivating tenancy was given up by the applicants in the present suit. In the present suit, the applicants claimed title over the suit property under the oral sale. It was their specific case that subsequent to the ex-parte decree passed in the earlier suit, there was a sale agreement between the first applicant and first respondent whereunder first applicant agreed to purchase the suit property. Once applicants in their pleading admitted that 1st applicant was in possession of the property under the agreement and he orally purchased the suit property and had become absolute owner of the same, it is not open to applicants to take shelter under ex-parte decree for injunction granted in the earlier suit. As per their own pleadings the alleged status of cultivating tenant has been superseded by subsequent agreement of sale and oral sale. Therefore, unless the applicants succeed in proving passing of title from first respondent to first applicant under the sale transaction pleaded by them or by establishing adverse possession against the first respondent, they have no defence to resist the prayer for recovery of possession. Because the title of the first respondent



is admitted and the prayer for recovery of possession was resisted only on the ground of oral sale set up by the applicants. The first applicant by asserting his title also settled the suit property in favour of his wife/second applicant on 19.07.2010. The present suit was filed on 02.09.2010, even assuming settlement executed by the first applicant was an act of hostile possession the suit was filed within twelve years from the date of settlement. In these circumstances, the applicants failed to prove their defence plea against prayer for recovery of possession.

9. In view of the altered position and the specific plea raised by the applicants asserting title by abandoning the earlier plea of cultivating tenancy, the decree for injunction passed in the earlier suit will not be a bar for first respondent to maintain a suit for recovery of possession based on his title.

10. A decree for injunction will only protect the possession of the first applicant from interference by first respondent otherwise than due process of law. When the 1st respondent filed a suit for recovery of possession based on her title, the decree for injunction obtained



by the first applicant would not be a bar especially in the light of plea under oral sale raised by the applicants in the present suit by abandoning the plea of cultivating tenancy in the earlier suit. Therefore, this Court by taking into consideration the failure of the applicant to establish oral sale pleaded by them and absence of any evidence for adverse possession rightly affirmed the decree for declaration and recovery of possession passed in favour of first respondent. The submission made by the learned counsel for the applicant, the earlier decree for injunction will operate as a bar for the subsequent action for recovery of possession is not acceptable to this Court.

11. I do not find any error apparent on the face of record enabling this Court to exercise review jurisdiction in this matter.

12. Accordingly, the review application is dismissed. Consequently, connected miscellaneous petition is closed.

22.12.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation Case : Yes/No



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S.SOUNTHAR, J.

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**Pre-delivery order made in
Rev.Appl.No.28 of 2021**

22.12.2023