



S.A.No.3 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.3 of 2021
&
C.M.P.No. 115 of 2021

1.R.Ramasamy

2.K.Palanisamy

3.P.C.Duraisamy

4.E.Velusamy

...Appellants

Vs

1.S.Nataraj

2.Thangamuthu

... Respondents



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Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 11.12.2019 passed by the learned Subordinate Judge, Kangayam in A.S.No.33 of 2018 reversing the Judgement and Decree dated 28.11.2017 passed by the learned District Munsif, Kangayam in O.S.No.110 of 2012.

For Appellants : Mr. L.Mouli

For Respondent 1: Mr. N.Manokaran

For Respondent 2: No Appearance

JUDGEMENT

The defendants 1 to 4 have challenged the Judgement and Decree passed in A.S.No.33 of 2018 by the learned Sub Judge, Kangayam in and by which the learned Sub Judge, Kangayam reversed the Judgement and Decree passed by the District Munsif, Kangayam in O.S.No.110 of 2012. While setting out the facts of the case herein below, parties are being referred to in the same ranking as before the



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Trial Court.

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2. The suit O.S.No.110 of 2012 was filed by the plaintiff for a bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule properties. It is the case of the plaintiff that under a sale deeds dated 24.11.1999 and 04.09.2000, the plaintiff purchased the suit schedule properties from one Eswaramoorthi and his son Velusamy, the 4th defendant in the suit. From the date of the purchase, the plaintiff was in possession of the suit property and has been enjoying the same within specific boundaries together with a right of access to the respective pathways.

3. The plaintiff's case is that the 1st defendant's property is situate to the south of the suit property, lands of defendants 2 and 3 are situate on the western side and on the northern side the property is bounded by the 4th defendant's land and it is within these boundaries that the



plaintiff is enjoying the property.

4. It is the case of the plaintiff that the defendants are adjacent owners and on 20.03.2012, the 1st defendant had demanded that the suit property be sold to him at a lesser price. Since the plaintiff had categorically rejected the request, the defendants were aggrieved and they started disturbing and interfering with the peaceful possession and enjoyment of the suit property. Therefore, the plaintiff has come forward with the suit in question.

5. A written statement has been filed by the 4th defendant which was adopted by defendants 1, 2, 3 and 5. It is the contention of the 4th defendant that there was no cause of action for filing the suit. The 4th defendant had gone on to deny his signatures in the registered sale deeds dated 24.11.1999 and 04.09.2000 and contended that these deeds were forged. The 4th defendant would submit that his father



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Eswaramoorthi was leading a way ward life and not taking care of his family and the plaintiff had taken advantage of this and obtained the sale deeds. The 4th defendant would submit that he had not affixed signatures to the deeds. The possession of the suit property by the plaintiff was also denied. The 4th defendant in his written statement would state that he is yet to file a suit challenging the sale deeds. Considering the fact that the suit properties are absolute properties of the 4th defendant, the plaintiff does not have any right to the same. The 4th defendant would also submit that he had one sister, who had a share in the suit property.

6. The learned District Munsif, Kangayam, on the basis of the above pleadings had framed the issues as to *whether the plaintiff was entitled to relief of permanent injunction and what other reliefs he would be entitled to?*



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7. The plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.4. On the side of the defendants, the 4th defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.3.

8. The learned District Munsif, Kangayam on considering the evidence on record had come to the conclusion that the plaintiff has not proved the cause of action and therefore was not entitled to a decree. The learned District Munsif, Kangayam relied upon the oral evidence of the plaintiff as P.W.1 to arrive at this conclusion.

9. Aggrieved by the said Judgement and Decree, the plaintiff has filed A.S.No.33 of 2018 on the file of the Sub Court, Kangayam.

10. The learned Sub Judge, Kangayam after hearing the submissions of the learned counsels observed that the 4th defendant who had alienated the property to the plaintiff was now attempting to



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prevent the plaintiff's right to use the pathway. The learned Sub Judge, Kangayam has also observed that the cause of action which was pleaded has not been denied. The learned Sub Judge, Kangayam relied upon the Judgement of the Hon'ble Supreme Court reported in ***AIR 1967 SC – A.K.Gupta and sons Vs. Damodar Valley Corporation*** and held that from the pleadings, the defence as set out in the written arguments and the admission of D.W.1, the plaintiff had not only asserted his possession over the suit property but it was the case where the defendants had questioned the right of the plaintiff which by itself was an infringement and interference. Therefore, the Judgement and Decree of the Trial Court was set aside and the appeal was allowed.

11. The above Second Appeal has been admitted on the following Substantial Questions of Law:

“a) Whether the Lower Appellate Court is correct in granting permanent injunction on the ground that the



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first respondent's apprehension is utmost genuine and true and therefore he had come to this Court to protect his right and possession by way of the suit for permanent injunction based on assumption and presumption without any evidence on record?

b) Whether the Lower Appellate Court is correct in decreeing the suit for permanent injunction in respect of common path-way when both the appellants and respondents are co-owners?"

12. Mr. Mouli, learned counsel for the defendants would base his argument on the ground that the plaintiff who had pleaded interference by the 1st defendant in his evidence would state that it is the 4th defendant which itself would show that the cause of action pleaded is a concocted one. Once the cause of action pleaded fails the suit has to be



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dismissed and the Lower Appellate Court by allowing the appeal has committed a grave error.

13. Mr. N.Manokaran, learned counsel for the 1st respondent / plaintiff would rely upon the Judgement reported in **2023 (2) CTC 565 – Ganesh Prasad Vs. Rajeshwar Prasad and others**, where the Hon'ble Supreme Court had discussed what a cause of action would constitute. The Hon'ble Supreme Court has observed as follows:

“Cause of action should also be distinguished from 'remedy' which is the means or method whereby the cause of action or corresponding obligation is effectuated and by which a wrong is redressed and relief obtained. The one precedes and gives rise to the other, but they are separate and distinct from each other and are governed by different rules and principles. The cause of action is the obligation from which springs the "action", defined as the right to enforce an obligation, A cause of action arises when that which ought to have been done is not done or



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that which ought not to have been done is done. The essential elements of a cause of action are thus the existence of a legal right in the plaintiff with a corresponding legal duty in the defendant, and a violation or breach of that 'right or duty' with consequential injury or damage to the plaintiff for which he may maintain an action for appropriate relief or reliefs. The right to maintain an action depends upon the existence of a cause of action which involves a combination of a right on the part of the plaintiff and the violation of such right by the defendant."

14. Heard the learned counsels and perused the records.

15. Admittedly, the defendants have not filed any counter claim to the plaintiff's suit. The plaintiff has come to the Court seeking an injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties. The plaintiff has asserted that when he had refused to execute a sale in favour of the 1st



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defendant, the defendants have joined together and challenged the plaintiff's ownership and attempted to disturb his peaceful possession and enjoyment of the suit schedule property.

16. The written statement does not deny the contentions raised by the plaintiff in paragraph no.6 of the plaint. On the contrary, the defence is that the two sale deeds which have been marked as Ex.A.1 and Ex.A.2 by the plaintiff are forged documents and the signatures therein are not that of the 4th defendant. This has not been taken note of by the Trial Court. However, the Lower Appellate Court had taken this into consideration.

17. The fact that the 4th defendant who has executed the sale deeds has denied the same, by itself would create a reasonable apprehension in the mind of the plaintiff; that such a stand is taken with an intent to interfere with the possession and enjoyment of the



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plaintiff. Further, in the plaint the plaintiff has pleaded that the defendants collectively were interfering with his possession and enjoyment of the suit property. The defendants have not denied this statement. Therefore, the Lower Appellate Court has rightly allowed the appeal. The substantial questions of law are answered against the defendants / appellants.

18. In fine, the Second Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order



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To,
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1. The Subordinate Judge, Kangayam.
2. The District Munsif, Kangayam



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P.T.ASHA, J.,

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