



S.A.No.545 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.545 of 2017

and

C.M.P.No.13297 of 2017

Saravanan

... Appellant

VS.

Pakkirisamy

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 07.03.2017 in A.S.No.8 of 2016 on the file of Principal District Court, Thiruvarur, confirming the Judgement and Decree dated 14.06.2016 in O.S.NO.80 of 2013 on the file of Sub Court, Mannarkudi.

For Appellant : Mrs.P.Veena Suresh

For Respondent : Mr.S.Chandrasekaran



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J U D G E M E N T

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The unsuccessful plaintiff is the appellant. He filed a suit for declaration and recovery of possession from the respondent. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the appellant has come by way of this second appeal. Thiruthuraipoondi

2. According to the appellant/plaintiff, 12 cents of land in S.No.42/11 situated at Komalappettai Village, Thiruthuraipoondi Taluk originally belonged to one Ramakrishna Iyer and he purchased the same under registered Sale Deed dated 30.03.1975 under Ex.A3. Thereafter, the said Ramakrishna Iyer and his brother Balasubramania Iyer entered into a partnership business in the name and style of 'Sri Ambika Power Mills'. The Mill was constructed in the property which was purchased by Ramakrishna Iyer. After sometime, due to misunderstanding, the Ramakrishna Iyer had withdrawn the partnership business. The said Ramakrishna Iyer executed a Kai Letter on 20.03.1980 conveying the suit property to his brother Balasubramania Iyer. Thus, the Balasubramania Iyer become absolute



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owner of the suit properties. The plaintiff purchased the suit properties from said Balasubramaniya Iyer under two Sale Deeds namely Exs.A1 and A2 dated 10.03.2008 and 16.04.2013 respectively. Thus, the appellant/plaintiff claim right over the suit properties. It was further case of the appellant that Balasubramaniya Iyer permitted the respondent/defendant to enjoy the suit properties and do business. Therefore, the respondent is only a permissible occupier of the suit properties. The permission granted to the respondent was cancelled by the appellant by pre-suit notice dated 24.05.2013. The respondent came up with a false reply claiming right over the suit properties and hence, the appellant was constrained to file suit for declaration of title and recovery of possession.

3. The respondent herein filed a written statement and specifically denied the right of the appellant's vendor Balasubramania Iyer to convey the suit property to the appellant. It was further averred by the respondent that the suit property was purchased by defendant as a vacant site from his original owner under a oral sale and he had been in possession and enjoyment of the same for more than 14 years. It was also claimed that he put up house and shops in the suit property and had been enjoying the same



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as his own property. Thus, by denying the title of Balasubramania Iyer to execute a sale deed in favour of appellant, the suit was resisted by the respondent.

4. Before the Trial Court, the appellant was examined as PW.1 and 16 documents were marked on behalf of appellant as Exs.A1 to A16. On behalf of respondent, he was examined as DW.1 and 9 documents were marked on his behalf as Exs.B1 to B9.

5. The Trial Court on consideration of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove his title over the suit property and consequently, dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.8 of 2016 on the file of the Principal District Court, Tiruvarur. The First Appellate Court also found that the vendor of appellant namely Balasubramania Iyer had no title to convey the same to the appellant and consequently, confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the First Appellate Court, the appellant has come by way of this second appeal.



6. At the time of admission, this Court formulated the following substantial questions of law:-

“(a) When the dissolution of Partnership between Plaintiff's vendor and one Ramakrishnan is well established from Exhibit A5, are the Courts below right in ignoring the same, especially when there is no claim whatsoever from the legal heirs of the said Ramakrishnan all these years?”

“(b) Are the Courts below right in dismissing the suit of the Plaintiff, when the Plaintiff has established his title to the suit property, against the Oral sale claim by the Defendant, especially when there is no specific pleading as to from whom he claims oral sale?”

7. The learned counsel appearing for the appellant submitted that the respondent herein claimed title over the suit property under a oral sale. However, he failed to lead any evidence to show that he has got right over the suit property. When he was examined as DW.1, he clearly admitted that he had been enjoying the suit property only under permission from appellant and his predecessor-in-interest namely Balasubramania Iyer. In such circumstances, being a permissible occupant, the respondent is bound to



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deliver the possession to the appellant when the permission was revoked by issuing pre-suit notice. The learned counsel further submitted that the original owner of the suit property namely Ramakrishna Iyer executed a Kai Letter under Ex.A5, by releasing his right over the suit property in favour of Balasubramania Iyer, Thereafter, the Balasubramania enjoyed the suit property and conveyed the same to the plaintiff under Exs. A1 and A2-Sale Deeds. Therefore, the title of the appellant/plaintiff had been proved and the same has not been properly appreciated by the Courts below.

8. It is admitted case of the appellant/plaintiff that suit property was originally belonged to one Ramakrishna Iyer and he purchased the same under Ex.A3 dated 30.03.1975. It was also contended that Ramakrishna Iyer and his brother Balasubramania Iyer, namely vendor of the appellant had partnership business. After sometime, due to some misunderstanding Ramakrishna Iyer withdrew from partnership business by executing an unregistered Kai Letter dated 20.03.1980 marked as Ex.A5. In the said document, Ramakrishna Iyer stated that he had released his right in suit property in favour of appellant's vendor Balasubramania Iyer, he also agreed to execute a registered document in favour of Balasubramania Iyer as and



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when a request was made by Balasubramania Iyer.

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9. There is no evidence available on record to show subsequent to Ex.A5, Ramakrishna Iyer executed any registered document conveying his right to the suit property in favour of the appellant's vendor namely Balasubramania Iyer. When there is no registered document in favour of appellant's vendor Balasubramania Iyer, he will not acquire any interest over the suit property under unregistered Kai Letter allegedly executed by Ramakrishna Iyer. In fact, the learned counsel appearing for the respondent pointed out that in Ex.A5, there is no attestation and Ex.A5 is only a document concocted for the purpose of filing the suit. Even assuming Ex.A5 is a valid document, an unregistered Kai Letter will not convey any title to the Balasubramania Iyer. Therefore, as contended by the respondent, the title of appellant's vendor Balasubramania Iyer is not at all proved. In such circumstances, the subsequent sale deeds executed under Exs.A1 and A2 would not convey any title to the appellant/plaintiff. Hence, both the Courts below on correct appreciation of evidence available on record, came to the conclusion that the appellant failed to prove his title over the suit property.



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10. The learned counsel appearing for the appellant also submitted that there is an admission by respondent himself that he had been running his business in the suit property under permission from Balasubramania Iyer. It is settled law that a truncated statement in cross examination cannot be relied on and the evidence of witness has to be seen as a whole. The appellant issued a pre-suit notice to the respondent claiming that respondent was in possession of the suit property under the permission from him and from his predecessor Balasubramania Iyer. The respondent issued a reply notice under Ex.A8 specifically denying alleged permission pleaded by the appellant. Even in the cross examination, when DW.1 was questioned that due to prior acquittance, Balasubramania Iyer permitted him to do business in the suit property, the said suggestion was specifically denied by him. In fact, he had gone to the extent of denying any prior acquittance with Balasubramania Iyer. Thereafter, the learned counsel for the appellant/plaintiff put a suggestion to the respondent that he was doing business in the suit property under the permission from plaintiff and he answered in affirmative. The answer of the respondent to one question cannot be taken into consideration in isolation without considering his evidence as a whole.



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11. A perusal of evidence of DW.1's evidence as a whole and his reply notice to the pre-suit notice would establish that the plea of permissive occupation raised by the appellant was specifically denied by the respondent. In such circumstances, the said contention raised by the learned counsel for the appellant is also not acceptable to this Court.

12. In view of the discussions made earlier, both the substantial questions of law raised at the time of admission are answered against the appellant and in favour of the respondent.

13. It is made clear that the unregistered Kai Letter executed by Ramakrishna Iyer in favour of the appellant's vendor Balasubramania Iyer will not convey any title to the appellant's vendor. In such circumstances, the appellant is not entitled to seek a declaration of title and recovery of possession. However, it is always open to the legal representatives of Ramakrishna Iyer to file a suit for appropriate relief, if so advised. With these clarifications, the Second Appeal is dismissed.



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In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there shall be no order as to costs.

01.12.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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To

1.The Principal District Court,
Thiruvarur.

2.The Sub Court, Mannarkudi.



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S.SOUNTHAR, J.

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