



WEB COPY



S.A.No.589 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.589 of 2017

G.M.Babu

... Appellant

Vs.

Valliammal

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 31.08.2016 made in A.S.No.2 of 2016 on the file of the Court of the III Additional District and Sessions Judge, Gobichettipalayam, confirming the judgment and decree dated 27.10.2015 made in OS.No.120 of 2014 on the file of the Court of the Subordinate Judge, Sathyamangalam.

For Appellant : Ms.R.T.Shyamala
for Mr.S.P.Harikrishnan

For Respondent : Mr.M.S.Krishnan
Senior Advocate
Mr.R.Bharath Kumar



S.A.No.589 of 2017

WEB COPY

JUDGMENT

The unsuccessful plaintiff in the suit is the appellant. He filed a suit for bare injunction restraining the respondent from interfering with his possession. The trial Court dismissed the suit. The first Appeal filed by the appellant was also dismissed. Hence, he is before this Court.

2. According to the appellant, the suit property originally belonged to one Kumarasamy Mudhaliyar and the appellant herein is his grand-son. He entered into a sale agreement with Kumarasamy Mudhaliyar on 23.05.1994 and in pursuance of the same, the appellant herein has been in possession and enjoyment of the suit property. The respondent is the wife of said Kumarasamy Mudaliar and as possession was delivered to the appellant in pursuance of the sale agreement entered with Kumarasamy Mudaliar, the respondent has no right to interfere with the possession of the appellant. As the respondent attempted to interfere with his possession by colluding with one Nagamani and others, the appellant was constrained to file a suit for bare injunction.



S.A.No.589 of 2017

WEB COPY

3. The respondent herein filed a written statement denying the sale agreement between the appellant and her husband Kumarasamy Mudaliar. It was her specific case that the suit sale agreement was forged document. It was also averred by her that, though the suit sale agreement was time bound document, the appellant has not taken any steps to get the sale deed executed in pursuance of the suit agreement and therefore, he has no right under the agreement. The respondent also claimed that the possession was never given to the appellant and she had been in possession and enjoyment of the suit property. On these pleading, she sought for dismissal of the suit.

4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove his possession over the suit property under the sale agreement and dismissed the suit. The findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the appellant has come up with this Second Appeal.



S.A.No.589 of 2017

WEB COPY

5. The learned counsel for the appellant submitted that the appellant got possession of the suit property under the sale agreement dated 23.05.1994 entered with its original owner Kumarasamy Mudaliar and when the appellant is in possession of the suit property in part performance of the agreement, his possession cannot be disturbed except under due process of law. The learned counsel further submitted that the Courts below erred in not properly appreciating the oral and documentary evidence available on record, as far as the possession of the appellant is concerned. In order to prove his possession over the suit property, the appellant relied on Ex.B9 sale agreement. The respondent herein denied the very execution of the sale agreement and it was her specific case that the suit sale agreement was forged document. It is for the appellant to prove the due execution of the suit sale agreement Ex.B9. The appellant who was examined as DW1 clearly admitted that he did not sign in the suit sale agreement and there is no reference in the suit sale agreement as to who prepared the same. He also deposed that he was unable to recollect the value of the stamp papers in which the suit sale



S.A.No.589 of 2017

agreement was executed. The appellant failed to examine the attestors to the said document to prove due execution of the agreement. Further, in order to prove his possession under Ex.B9 sale agreement, the appellant has not produced any other acceptable evidence. The only evidence available on record is his interested testimony and as mentioned earlier the same is not useful even to prove due execution of suit sale agreement.

6. In such circumstances, both the Courts below on correct appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove that possession was delivered to him under Ex.B9 suit sale agreement. The said findings of fact are binding on this Court in the absence of any perversity in the approach of the Courts below. Accordingly, I do not find any substantial question of law to interfere with the findings of the Courts below and as a consequence, the Second Appeal is dismissed.

7. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.



WEB COPY



S.A.No.589 of 2017



WEB COPY



S.A.No.589 of 2017

S.SOUNTHAR, J.

dna

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**09.11.2023
(1/2)**

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

- 1.The III Additional District and Sessions Court
Gobichettipalayam.
- 2.The Subordinate Court, Sathyamangalam.

S.A.No.589 of 2017