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S.A.No.590 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.590 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.121 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



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Mr.R.Bharath Kumar

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JUDGMENT

The defendant who suffered a decree for injunction is the appellant. The respondent herein filed a suit for bare injunction and the same was decreed by the trial Court. Aggrieved by the same, the defendant preferred an Appeal and the same was also dismissed. Challenging the concurrent findings against him, he has come up with this Second Appeal.

2. According to the respondent/plaintiff, the suit property originally belonged to her husband Kumarasamy Mudaliar under family partition deed dated 19.01.1961 and he died on 07.02.1998 leaving the respondent as his only legal heir. After death of Kumarasamy Mudaliar, the revenue documents got mutated in favour of the respondent/plaintiff and as such she has been in possession and enjoyment of the suit property. The appellant herein prepared a forged sale agreement and filed a suit for specific performance based on the same in O.S.No.396 of 1994 against the husband of respondent when he was alive. As respondent's husband contemplated criminal prosecution, the appellant was constrained to withdraw the said suit. Subsequently, after expiry of 16 years, the appellant issued a legal notice



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seeking performance of the agreement and the same was replied by the respondent suitably. In these circumstances, the appellant attempted to interfere with the possession of the suit property and consequently, the respondent was constrained to file a suit for bare injunction.

3. The appellant herein filed a written statement denying the possession of the respondent over the suit property. He claimed that he was the grand-son of late Kumarasamy Mudaliar and he entered into a sale agreement with him on 23.05.1994 with respect to the suit property and claimed that he was in possession of the suit property under the said agreement. The appellant also claimed that he filed a suit for injunction against the respondent and the present suit is filed only as counter blast for the suit filed by him. On these pleading, he sought for dismissal of the suit filed by the respondent.

4. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the respondent proved her possession over the suit property in her capacity as legal heir of late Kumarasamy Mudaliar and granted a decree for injunction. Aggrieved by



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the same, the appellant preferred an Appeal in A.S.No.3 of 2016 on the file of the III Additional District and Sessions Judge, Gobichettipalayam. The first Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings against him, he has come up with this Second Appeal.

5. The learned counsel for the appellant submitted that the respondent herein in order to prove her possession has not let in any acceptable evidence and therefore, the decree for injunction granted by the Courts below have to be set aside. The learned counsel for the appellant further submitted that the appellant has got legal possession over the suit property under sale agreement entered into with his grand-father Kumarasamy Mudaliar and therefore, the judgment and decree passed by the Courts below are liable to be set aside.

6. It is admitted case of both the parties that late Kumarasamy Mudaliar was original owner of the suit property. It is not in dispute that the respondent is the wife and only legal heir of Kumarasamy Mudaliar. Therefore, after death of Kumarasamy Mudaliar, the respondent is deemed to be the person in possession of Kumarasamy Mudaliar's property. However, in



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the case on hand, the appellant claims that he entered into a sale agreement with Kumarasamy Mudaliar under Ex.B1 and possession was delivered to him under the sale agreement. However, the Courts below on appreciation of evidence available on record came to the conclusion the appellant failed to prove execution of sale agreement by Kumarasamy Mudaliar. In order to prove the execution of the sale agreement by Kumarasamy Mudaliar, the attestors to the said agreement were not examined by the appellant. The only evidence available on record in support of the appellant's case is his interested testimony as DW1. During his cross examination, he clearly admitted that he did not sign the agreement and there is nothing in the agreement as to who prepared the same. He also admitted that he could not recollect the value of the stamp paper in which, suit agreement was prepared. The appellant failed to produce any acceptable evidence to show his possession under agreement.

7. In such circumstances, the Courts below on appreciation of oral and documentary evidence available on record came to the conclusion the appellant failed to prove sale agreement pleaded by him and delivery of possession under said sale agreement. In the absence of proper proof of sale agreement pleaded by the appellant, the respondent as legal representative of



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Kumarasamy Mudaliar is presumed to be in possession of the suit property.

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8. Therefore, both the Courts below on correct appreciation of oral and documentary evidence available on record came to the conclusion that the respondent was entitled to decree for permanent injunction. The said factual findings reached by the Courts below with regard to the legal possession of the respondent and her entitlement for decree for injunction, calls for no interference by this Court in the absence of any perversity in appreciation of evidence by the Courts below and accordingly, the Second Appeal is dismissed.

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

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

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Index : Yes/No
Internet : Yes/No



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Neutral Citation Case : Yes/No
dna

To

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



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S.SOUNTHAR, J.

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