



S.A.(MD)No.377 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD)No.377 of 2006

1.Sundarraaj

2.Punnavu

...Appellants

vs.

1.Poovammal

2.Jothimani

3.Karuppasamy @ Chelladurai

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.07.2005 in A.S.No. 3 of 2005 on the file of the Subordinate Court, Kovilpatti confirming the Judgment and Decree dated 15.06.2004 in O.S.No.102 of 2000 on the file of the District Munsif Court, Kovilpatti.

For Appellants : Mr.B.Rajesh Saravanan

For Respondents : Mr.Hema Karthikeyan



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JUDGMENT

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The appellants are the defendants in the suit in O.S.No.102 of 2000 on the file of the District Munsif Court, Kovilpatti. The respondents are the plaintiffs in the above suit.

2. The suit was filed by the respondents / plaintiffs seeking for declaration and permanent injunction restraining the appellants / defendants and their men from interfering with the respondents 1 and 2 / plaintiffs 1 and 2's possession and enjoyment of the suit schedule properties.

3. The case of the plaintiffs is that the first plaintiff is the wife of the second plaintiff. The third plaintiff is the father of the first plaintiff. The first defendant is the brother of the third plaintiff. The second defendant is the wife of the first defendant. The suit schedule properties originally belonged to one Karuppanan Kumarar Mahalingam and he was in possession and enjoyment of the same. Thereafter, Karuppanan Kumarar Mahalingam executed a registered Gift Deed dated 01.12.1984 in favour of the third plaintiff who is his daughter Devasundharammal's



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son. Thereafter, the third plaintiff sold the property to his daughter / first plaintiff and son-in-law / second plaintiff via sale deed dated 14.07.1997.

Thereafter, the first and second plaintiffs are in possession and enjoyment of the suit schedule properties. The defendants have no right over the same. Since the defendants interfered with the first and second plaintiff's possession and enjoyment of the suit schedule properties from 27.11.1999 onwards, a legal notice was sent on 03.12.1999. Even thereafter, the defendants continued to interfere with the first and second plaintiff's possession and enjoyment of the suit schedule properties. Therefore, the plaintiffs filed the suit.

4. The case of the defendants is that it is true that the suit schedule properties originally belonged to Mahalingam. Panjali is the wife of Mahalingam. Mahalingam has no male heir, he has only female heirs. When Mahalingam was alive, in order to give the suit schedule properties to his grandsons and granddaughters, he nominally settled the same in favour of the first son of the Devasundharammal @ Chinnathayi, with the intention that his siblings would also enjoy the properties. The Gift Deed dated 01.12.1984 executed by Mahalingam in favour of the



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third plaintiff was not authenticated. The third plaintiff never enjoyed the suit scheduled properties alone as per the Gift Deed. The Gift Deed is not legally valid. The Sale Deed executed by the third plaintiff in favour of the first and second plaintiff is fraudulent. The suit was filed by the plaintiffs in order to commit fraud and usurp the suit schedule properties to be received by the first defendant and his siblings.

5. Before the Trial Court, the plaintiffs have examined the second plaintiff as PW1 and marked 8 documents as Exs.A1 to A8 in order to substantiate their case. The defendants examined four witnesses DW1 to DW4 including the first defendant (DW1) and marked 5 documents as Exs.B1 to B5 in order to substantiate their case.

6. After considering the oral and documentary evidence on both sides, the Trial Court passed the Judgment and Decree declaring that the items 1, 2 and 3 of the suit schedule properties are the properties of the plaintiffs. However, the Trial Court granted permanent injunction only with regard to the first and second item of the schedule mentioned properties. As far as the third item of the suit schedule properties is



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concerned, the Trial Court refused to grant injunction as prayed for, citing the reason that, PW1 during his examination has admitted that the first defendant is in the possession of the property.

7. Against the aggrieved portion of the Trial Court Judgment and Decree, the plaintiffs filed an appeal in A.S.No.3 of 2005 on the file of the Subordinate Court, Kovilpatti. In the appeal suit, the main stand taken by the plaintiffs was that, PW1 had wrongly admitted in his oral evidence that the first defendant was in possession of the property and that when the suit was filed in the year 2000, the first defendant was actually in Jail. After hearing the submissions on either side and considering the oral and documentary evidence, the first Appellate Court held that since during the relevant point of time, the first defendant was in jail, there is no possibility of him enjoying the 3rd item of the suit schedule properties at that time. Therefore, while confirming the Judgment of the Trial Court with regard to all other aspects, the first Appellate Court reversed the findings of the Trial Court in refusing to grant permanent injunction with regard to the 3rd item of the suit schedule properties and decreed the appeal in all extent as prayed for by



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the plaintiffs. Aggrieved over the same, the appellants / defendants filed the present Second Appeal.

8. This Court admitted this appeal on 08.08.2006, by framing the following substantial questions of law.

"1. Whether the Civil Court can grant decree for declaration and perpetual injunction in favour of the plaintiffs when the plaintiffs themselves admitted that the defendants are in possession of disputed properties?"

2. Whether the Civil Court can grant a decree for declaration in favour of one who already sold the property?"

3. Whether the Judgment and Decree given by the first Appellate Court is valid when the first Appellate Court had not framed proper issues?"

9. The learned counsel appearing for the appellants / defendants fairly submitted that the appellants / defendants have not preferred any appeal with regard to declaration of the suit schedule properties in favour



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of the respondents / plaintiffs and with regard to grant of permanent injunction in respect of items 1 and 2 of the suit schedule properties. The present appeal is filed challenging only the grant of permanent injunction of the 3rd item of the suit schedule properties in favour of the respondents / plaintiffs. The learned counsel would submit that second respondent / second plaintiff examined as PW1, in his oral evidence has clearly admitted that the first appellant / first defendant was in possession of the property. However, without properly appreciating the evidence of PW1, the first Appellate Court reversed the Trial Court Judgment and Decree and granted permanent injunction of the 3rd item of the suit schedule properties in favour of the respondents / plaintiffs. The learned counsel would also submit that the first Appellate Court failed to consider the documents filed by the appellants / defendants to prove their possession. Therefore, he would strongly contend that when PW1 itself has admitted the possession of the first appellant / first defendant, the first Appellate Court has erred in granting permanent injunction of the 3rd item of the suit schedule properties in favour of the respondents / plaintiffs.



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10. Per contra, the learned counsel appearing for the respondents / plaintiffs would submit that as far as the documents filed by the appellants / defendants are concerned, they are pertaining to the items 1 and 2 of the suit schedule properties and have nothing to do with the 3rd item of the suit schedule properties. Those documents will have no relevance to the present appeal. The learned counsel would submit that the Trial Court has refused to grant permanent injunction with regard to the 3rd item of the suit schedule properties, on the ground that PW1 in his oral evidence has admitted the possession of the first appellant / first defendant. However, the learned counsel would submit that the oral evidence of PW1 was not supported by any other documentary evidence. Furthermore, the suit was filed in the year 2000 and the first defendant was in jail from the year 1998 to 2003. Hence there is no possibility for the first appellant / first defendant to have been in possession of the 3rd item of the suit schedule properties during that relevant point of time. The first Appellate Court has also appreciated the above aspects and granted permanent injunction in favour of the respondents / plaintiffs for the 3rd item of the suit schedule properties as well. Therefore, he would



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submit that the well reasoned Judgment of the first Appellate Court need not be interfered with.

11. Heard the learned counsel for the appellants / defendants as well as the learned counsel for the respondents / plaintiffs and also perused the materials available on record.

12. Admittedly, the present appeal is only with regard to the permanent injunction granted in favour of the respondents / plaintiffs in respect of the 3rd item of the suit schedule properties . The case of the appellants / defendants is that the second plaintiff who has examined himself as PW1 has admitted in his evidence that the first appellant / first defendant was in possession of the property. A perusal of the deposition of PW1 would show that PW1 has admitted that the first appellant / first defendant was in possession of the property. However, there is no documentary evidence to substantiate the same. The present suit came to be filed in the year 2000, for which, cause of action arose on 27.11.1999. The fact remains that the first appellant / first defendant was in jail from the year 1998 to 2003 and therefore, the statement made by PW1 is



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unbelievable. In addition to the above, deposition of PW1 does not state anything about the possession and enjoyment of the second appellant / second defendant. The appellants / defendants have not also filed any document to prove that atleast the second appellant / second defendant was in possession of the property during that relevant point of time. The documents filed by the appellants / defendants were all pertaining to the items 1 and 2 of the suit schedule properties and they are no way connected to the 3rd item of the suit schedule properties. Such being the circumstances, the first Appellate Court considered all the above aspects and granted permanent injunction for the 3rd item of the suit schedule properties as prayed for by the respondents / plaintiffs. Therefore, I do not find any infirmities or illegalities in the Judgment and Decree passed by the first Appellate Court.

13. As per the averments in the plaint, oral and documentary evidence, the third respondent / third plaintiff has sold the property to the respondents 1 and 2 / plaintiffs 1 and 2. When the plaintiffs 1 and 2 as well as the 3rd plaintiff are parties to the proceedings, I do not find any incapacity for the Courts below to grant decree in their favour, when all



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the parties are before the Court praying for declaration and permanent injunction. Accordingly, this Court is inclined to confirm the Judgment and Decree of the first Appellate Court. The substantial questions of law framed by this Court are answered in favour of the respondents / plaintiffs.

14. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 20.07.2005 in A.S.No.3 of 2005 on the file of the Subordinate Court, Kovilpatti is hereby upheld. No costs.

24.08.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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- 1.The Subordinate Judge, Kovilpatti
- 2.The District Munsif, Kovilpatti
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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