



WEB COPY



A.S(MD)No.165 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2023

DELIVERED ON: 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S(MD)No.165 of 2020
and
C.M.P.(MD)No.6021 of 2020

Sheela Mary

: Appellant/2nd defendant

Vs.

1.S.Antonyamy

2.Regina Mary

: Respondents/Plaintiffs

PRAYER : The Appeal Suit is filed under Section 96 of C.P.C., against the judgment and decree dated 07.02.2020 made in O.S.No.62 of 2016 on the file of the II Additional District Judge, Tiruchirappalli.

For Appellant : Mr.G.S.Ashok Adithyan

For Respondents : Mr.M.Saravanan



WEB COPY



A.S(MD)No.165 of 2020

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.62 of 2016, dated 07.02.2020 on the file of the learned II Additional District Judge, Tiruchirappalli.

2. For the sake of convenience and brevity, the parties herein will be referred as per their status/ranking in the trial Court.

3. The suit is for recovery of possession and for damages.

4. Admittedly, the plaintiffs are husband and wife and the first defendant is the sister of the first plaintiff and that the second defendant is the daughter of the first defendant.

5. It is not in dispute that the first plaintiff's father Soosai Udayar and his wife Adaikkala Mary had two sons, Antonysamy/first plaintiff, Rathinasamy and four daughters, including the first defendant.



WEB COPY

6. Pending suit, the first defendant had died and the second defendant, being her only surviving legal heir, has continued to contest the suit.

7. The case of the plaintiffs is that the first defendant and her husband had left Pudukkottai and came to the Village as he became heavily indebted and lost all their wherewithal; that the first plaintiff and his father had immediately accommodated them in a rented house at Ponmalaipatti; that the first defendant's husband died within few months leaving behind his wife and two children in lurch; that the plaintiffs, who are having no issues, were rendering all kinds of support and assistance to the first defendant and her children; that the first defendant's son had died in the age of 18 years; that the second defendant was given in marriage to one Arockia Raj and the first plaintiff alone had arranged their marriage at his expenses; that the first plaintiff, his brother Rathinasamy and unmarried daughter Jayamary were staying under one roof along with their mother Adaikkalamary; that after constructing new houses, the first plaintiff and his brother Rathinasamy had shifted to their respective houses; that the first plaintiff, out of good will and gesture, had asked the defendants to occupy the house in Door No.11/3,



WEB COPY

Kamaraj Street, Ponmalaipatti, where the entire family lived together earlier; that the first plaintiff's brother Rathinasamy after shifting to the new house, has become sick and bedridden; that since he has lost his job, he found it very difficult to maintain his family and meet out his medical expenses and at that time, the first plaintiff and his sisters including the first defendant had decided to convey their share in the common house bearing Door No.11/3, Kamaraj Street, Ponmalaipatti, in favour of their brother Rathinasamy by way of family arrangement and as per their wishes, the first plaintiff and his sisters had executed a registered release deed, dated 28.01.2014 relinquishing their shares in the property in favour of the said Rathinasamy and that pursuant to the release deed, the defendants had vacated the property and delivered possession to the said Rathinasamy.

8. It is the further case of the plaintiffs that the plaintiffs had purchased 'A' and 'B' suit schedule properties vide sale deeds, dated 17.04.1995; that the suit property consists of three houses bearing Door Nos.123, 123/1, 123/2; that since the defendants had agreed to vacate the house in Door No.11/3 Kamarajar Street, consequent to the release deed, the plaintiffs offered to accommodate the defendants in the suit 'C' schedule



WEB COPY

property and accordingly, they were permitted to occupy the suit schedule property; that subsequently, the defendants, on the ill advice of some third parties, had changed their attitude and both of them are indulging in nefarious activities against all the members of the family; that the first defendant had filed a vexatious litigation in Indigent O.P.No.21 of 2015 on the file of the District Court, Tiruchirappalli, alleging that the release deed, dated 28.01.2014 was taken from her by exercising fraud and undue influence; that the plaintiffs have then sent a legal notice revoking the permission already granted and directed the defendants to vacate the suit property and handed over the vacant possession of the same; that the defendants having received the legal notice, have neither sent any reply nor chosen to comply with the notice demand and that therefore, the plaintiffs were constrained to file the above suit for recovery of possession of suit 'C' schedule property and for future damages for use and occupation of the said property and for means profits.

9. The defence of the defendants is that the first defendant, after the demise of her husband, has been residing in the house bearing Door No.43/Kamarajar Street, Ponmalaipatti in her own right; that her father



WEB COPY

Soosai Udayar and her mother Adaikalamary had died intestate and hence, the property comprised in S.No.75A/2 of Kamarajar Street, Ponmalaipatti , Tiruchirappalli, devolved upon all the legal heirs of the said Soosai Udayar and Adaikalamary; that the defendants received a postal caveat notice and came to know that the first defendant's brother Rathinasamy has sold the said property to one Jacqueline Francis Mary and on enquiry, she came to understand that the release deed was taken from her by exercising fraud and undue influence and that therefore, she was forced to file an Indigent O.P.No.21 of 2015 on the file of the Principal District Court, Tiruchirappalli and that after receiving the summons, the first plaintiff along with his wife had filed the present suit as a counter blast.

10. It is their further defence that the alleged license set out by the plaintiffs is false; that the defendants' possession is not unlawful; that the second defendant married the cousin of the first plaintiff and the husband of the second defendant has been cultivating the lands of the first plaintiff and at the instigation of the first plaintiff, the husband of the second defendant had beaten her and also locked the premises bearing Door No.11/3, Kamarajar Street, Ponmalaipatti and that therefore, the suit is liable to be dismissed.



WEB COPY

11. Upon perusing the pleadings, the learned trial Judge has framed the following issues :

- (i) Whether the release deed, dated 28.01.2014, executed by the first defendant, first plaintiff and his sisters is true and valid ?
- (ii) Whether the defendants are the permissive occupiers of the 'C' schedule property ?
- (iii) Whether the plaintiffs are entitled for recovery of possession of the 'C' schedule property?
- (iv) Whether the plaintiffs are entitled for means profits ?
- (v) To what relief ?

12. During trial, the plaintiffs have examined the first plaintiff as P.W. 1 and exhibited 14 documents as Ex.A.1 to Ex.A.14. On the side of the defendants, the second defendant has examined herself as D.W.1 and one Arockiamary as D.W.2 and exhibited 12 documents as Ex.B.1 to Ex.B.12. The learned trial Judge, upon considering the evidence available on record and on hearing the arguments of both sides, has passed the impugned



judgment, dated 07.02.2020 partly decreeing the suit and directing the second defendant to vacate and hand over the possession of the suit 'C' schedule property to the plaintiffs within three months and dismissed the suit with respect to the relief of future damages. The learned trial Judge has further decided that the means profit will be decided separately under Order 20 Rule 12 of C.P.C. Aggrieved by the impugned judgment and decree, the second defendant has preferred the present appeal.

13. The learned counsel for the appellant would submit that the trial Court has failed to consider that the first defendant had already initiated proceedings to set aside the document, dated 28.01.2014, said to be a family arrangement under which joint family property was said to have been released in favour of the first defendant's brother Rathinasamy; that the present suit for recovery of possession was filed only as a counterblast to the proceedings initiated by the first defendant; that the defendants are in possession of 'C' schedule property in their own right and not as a permissive occupant on permission said to have been granted by the plaintiffs; that the second defendant has married the cousin of the first plaintiff and only at the instigation of the first plaintiff, the second



WEB COPY

defendant's husband started treating the second defendant with cruelty and that the trial Court has erred in holding that the defendants have no independent or pre-existing right over the suit property.

14. The learned counsel for the respondents/plaintiffs would contend that the family property, for which release deed had been executed by the first plaintiff and his sisters, including the first defendant, in favour of their brother Rathinasamy has no connection with the present suit property; that the suit properties were purchased by the plaintiffs under Ex.A1 and Ex.A2 sale deeds; that when the plaintiffs had moved to their newly constructed house and the defendants, after the execution of release deed, had agreed to vacate that property, they were permitted to occupy the suit property and that the defendants thereafter, have changed their attitude and filed a vexatious litigation in Indigent O.P.No.21 of 2015 on the file of the District Court, Tiruchirappalli, challenging the release deed, dated 28.01.2014, by alleging that the same was obtained from the first defendant by exercising fraud and under influence, that since the defendants were in permissive occupation, the plaintiffs have sent a legal notice revoking permission already granted and directed them to vacate and hand over the possession of the suit



WEB COPY

property, that the defendants have not sent any reply and that therefore, the trial Court has rightly held that the second defendant being the trespasser, is liable to vacate the suit property and hand over the vacant possession of the same to the plaintiffs.

15. The points that arise for consideration are :

(i) Whether the learned trial Judge erred in decreeing the suit granting the relief of recovery of possession, despite showing that the plaintiffs have failed to establish their title over the suit property and that the defendants have been in permissive possession of the suit property ?

(ii) Whether the judgment and decree passed in O.S.No.62 of 2016, dated 07.02.2020 on the file of the learned II Additional District Judge, Tiruchirappalli, is liable to be interfered with ?

(iii) To what other reliefs, the parties are entitled ?

Points (i) to (iii) :

16. At the outset, it is pertinent to note that the suit properties are entirely different from the property, which is subject matter of the release deed, dated 28.01.2014 alleged to have been executed by the first plaintiff and his sisters including the first defendant.



WEB COPY

17. It is not in dispute that the property shown in the release deed is the family property, where the first plaintiff along with his mother, brother Rathinasamy and unmarried sister Jayamary were residing earlier. It is the specific case of the plaintiffs that the first plaintiff and his brother Rathinasamy after constructing their new houses, had moved to their respective houses and at that time, the first defendant was allowed to reside in the said property. It is the further case of the plaintiffs that since his brother Rathinasamy has fallen sick and bedridden, he lost his job and he found it very difficult to maintain his family and meet the medical expenses and at that juncture, out of the good will and harmony, the first plaintiff and his sisters including the first defendant, had executed a release deed, dated 28.01.2014 relinquishing their shares in the said property and that the defendants had vacated the property and delivered possession to the said Rathinasamy.

18. But it is the specific case of the defendants that after receiving postal caveat notice sent by one Jacqueline Francis Mary, they came to know that the said Jacqueline Francis Mary had purchased the said property from



WEB COPY

first defendant's brother Rathinasamy. Later, the defendants came to understand that a release deed was brought out in respect of the said property as if the same was executed by the first plaintiff and his sisters, including the first defendant on 28.01.2014 .

19. It is not in dispute that the first defendant has initiated proceedings in Indigent O.P.No.21 of 2015 on the file of the Principal District Court, Tiruchirappalli, challenging the release deed by alleging that the same was obtained from her by exercising fraud and undue influence; that the said O.P was dismissed for default, that after the death of the first defendant, the second defendant has filed an application to restore the Indigent O.P.No.21 of 2015 in I.A.No. 2930 of 2017 and to implead herself as a party to the proceeding in I.A.No.294 of 2017 and the same were ordered to be dismissed on 23.07.2017 and that the second defendant has preferred an appeal in CMA(MD)No.73 of 2019 and the same is pending on the file of this Court.

20. In the written statement, the first defendant has taken a stand that she along with her family had been residing in the property bearing Door



No.43, Kamarajar Street, Ponmalaipatti, Tiruchirappalli, on her own right.

Admittedly, the suit properties were purchased by the plaintiffs 1 and 2 vide sale deed dates 17.04.1995 under Ex.A.1 and Ex.A.2 respectively.

21. It is pertinent to note that the second defendant in her evidence before the trial Court would specifically admit that the houses constructed in the suit property are belonging to the plaintiffs. The defendants have nowhere whispered in the written statement or in their evidence that they had any independent or pre-existing right in the suit properties.

22. As already pointed out, the property shown in the release deed has absolutely no connection with the suit property. Considering the evidence available on record, the learned trial Judge has rightly come to a decision that the possession of first defendant was only permissive in nature.

23. It is not in dispute that the plaintiffs have sent a legal notice under Ex.A.3 revoking the permission already granted and that though the defendants have received the legal notice, they have not chosen to sent any reply. It is not the case of the defendants that they have been in possession and enjoyment of the property as of right.



WEB COPY

24. As rightly contended by the learned counsel for the respondents, since the plaintiffs have already revoked the permission granted to the defendants, they can only be considered as trespassers and as such they are not entitled to remain in possession further. As already pointed out, pending suit, the first defendant had died and the second defendant being her daughter has preferred the present appeal.

25. Considering the above, the decision of the trial Court in decreeing the suit, directing the second defendant to vacate the suit 'C' schedule property and hand over the vacant possession of the same to the plaintiffs, cannot be found fault with. No doubt, the trial Court has also given a finding that the plaintiffs are not entitled for damages, but at the same time, future means profits can be decided separately under Order 20 Rule 12 C.P.C. The second defendant has not canvassed any other reason or ground to impugn judgment and decree, now under challenge. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the appellant must be mulcted with costs.



A.S(MD)No.165 of 2023

WEB COPY

25. In the result, the Appeal Suit is dismissed with costs and the judgment and decree, dated 07.02.2020 made in O.S.No.62 of 2016 on the file of the II Additional District Judge, Tiruchirappalli, stands confirmed. Consequently, connected Miscellaneous Petition is closed.

11.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
das

To

1. The II Additional District Judge,
Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S(MD)No.165 of 2020

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
A.S(MD)No.165 of 2020
and
C.M.P.(MD)No.6021 of 2020

11.08.2023