



S.A(MD).No.293 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.293 of 2023
and C.M.P(MD)No.6764 of 2023

M.Veera Perumal

... Appellant/Appellant/Defendant

Vs.

S.Jothi

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 24.01.2023 passed in A.S.No.06 of 2021 on the file of the Sub Court, Periyakulam, confirming the judgment and decree dated 02.03.2021 passed in O.S. No.97 of 2013 on the file of the District Munsif Court, Periyakulam.

For Appellant : Mr.K.Appadurai
For Respondent : Mr.George Raja

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The defendant in the suit is the appellant herein. The respondent is the plaintiff in the said suit.



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2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The suit in O.S.No.97 of 2013 was filed by the plaintiff for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit schedule property. The plaintiff claimed that he is the absolute owner of the suit schedule property by virtue of a sale deed date 09.07.2012 registered as document No. 2103/2012 which is marked as Ex.A.4 before the trial court. The plaintiff has also traced his title over the suit schedule property in the following manner:

- a) Originally, the suit schedule property was owned by Chandran, who had purchased the same from Srinivasan under sale deeds dated 17.11.2011 and 23.01.2012 and the said documents were registered as document Nos.3702/2011 and 226/2012 respectively. They were marked as Ex.A.1 and Ex.A.2 respectively before the trial court.
- b) Thereafter, Chandran, who became the owner under the aforesaid sale deeds, executed a gift settlement deed dated 30.01.2012 in favour of his wife Chitra, which is marked as Ex.A.3. Chitra has sold the suit schedule property to the plaintiff under the sale deed dated



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09.07.2012, registered as document No.2103/2012 and the said document was marked as Ex.A.4. The plaintiff claimed that ever since his purchase, he has been in possession and enjoyment of the suit schedule property. However, according to the plaintiff, the defendant is interfering with his peaceful and enjoyment of the suit schedule property. In such circumstances, the suit in O.S.No.97 of 2013 came to be filed by the plaintiff seeking permanent injunction.

4. However, as seen from the written statement filed by the defendant, he claimed that he was put in possession of the suit schedule property only with the permission of Chandran, the predecessor in title of the plaintiff. According to him, the predecessor in title of the suit schedule property namely, Chandran and himself were the promoters of the suit schedule property as well as other neighbouring properties. According to the defendant, he was put in possession of the suit schedule property by Chandran and he has been running a Timber Depot in the suit schedule property even before the plaintiff purchased the suit schedule property under the sale deed dated 09.07.2012 (Ex.A.4). However, according to him, without following the due process of law, the plaintiff is attempting to dispossess the defendant from the suit schedule property and has falsely



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filed the suit as if the plaintiff is in possession of the suit schedule property.

According to the defendant, the suit filed by the plaintiff for permanent injunction is not maintainable as the defendant is in possession of the suit schedule property and not the plaintiff as pleaded in the plaint.

5. Based on the pleadings of the respective parties, the trial court namely, the District Munsif Court, Periyakulam, in O.S.No.97 of 2013 framed the following issues:

- a)** Whether the plaintiff is entitled for the relief of permanent injunction?
- b)** Whether the suit schedule property is in possession of the plaintiff?
- c)** To what other reliefs?

6.i) Before the trial court, the plaintiff had filed four documents, which are marked as Ex.A.1 to Ex.A.4, through which the plaintiff traced his title over the suit schedule property. They are as follows:

Ex.A.1	17.11.2011	Sale Deed-3702/211	Original
Ex.A.2	23.01.2012	Sale Deed-226/2012	Original
Ex.A.3	30.01.2012	Gift Settlement No.336/2012	Original
Ex.A.4	09.07.2012	Plaintiff's Registered Sale Deed 2103/2012	Original



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On the side of the plaintiff, the plaintiff herself was examined as P.W.1.

WEB COPY 6.ii) On the side of the defendant, he had filed 14 documents, which were marked as Ex.B.1 and Ex.B.14. They are as follows:

Ex.B.1		Layout Sketch issued from the Town Panchayat	Certified Copy
Ex.B.2		Approval granted to S.No.63/1	Certified Copy
Ex.B.3	11.01.2011	Gist Receipt and Development Charge Receipt to S.No.63/1B which was paid by the defendant	Certified Copy
Ex.B.4	25.06.2010	General Power of Attorney	Certified Copy
Ex.B.5	07.07.2010	Sale deed executed in favour of Arockiam	Certified copy of the Sub Registrar
Ex.B.6	12.07.2010	Sale Deed	Certified Copy
Ex.B.7	12.07.2010	Sale Deed	Certified Copy
Ex.B.8	12.07.2010	Sale Deed	Certified Copy
Ex.B.9	06.09.2010	Sale Deed	Certified Copy
Ex.B.10		Labour Tax Receipt 7 paid for Om Muruga Timber Shop	
Ex.B.11		Labour Tax Receipts 9 Nos. paid till 2012-2013 for Om Muruga Timber Shop	Original
Ex.B.12		Sketch of the suit schedule property	
Ex.B.13	29.10.2011	Sale agreement	Xerox
Ex.B.14		General Power Deed	Original

The defendant himself was examined as D.W.1.



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7. Based on the oral and documentary evidence, the trial court by its judgment and decree dated 02.03.2021 in O.S.No.97 of 2013 decreed the suit in favour of the plaintiff by granting the relief of permanent injunction by giving the following findings:

- a) The plaintiff has proved his title over the suit schedule property and that she is in possession of the same by producing the documents Ex.A.1 to Ex.A.4;
- b) Possession follows title and hence, the plaintiff is entitled for the relief of permanent injunction;
- c) The documents filed by the defendant which are marked as Ex.B.10 to Ex.B.14, which includes certain tax receipts standing in the name of the defendant, are all the documents which are obtained by the defendant subsequent to the filing of the suit and are suspicious in nature. Ex.B.10 tax receipt also stands in the name of Ravindran not in the name of the defendant.
- d) Even though the defendant has pleaded that he is running a Timber Depot in the suit schedule property, the defendant has not produced any license to prove that he is running the same in the suit schedule property.



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8. Aggrieved by the judgment and decree of the trial court namely, the District Munsif Court, Periyakulam, dated 02.03.2021 in O.S.No.97 of 2013, the defendant in the suit filed a first appeal before the Sub Court, Periyakulam in A.S.No.06 of 2021.

9. The lower Appellate Court by its judgment and decree dated 24.01.2023, also confirmed the findings of the trial court by dismissing the first appeal filed by the defendant. Aggrieved by the concurrent findings of the courts below, this Second Appeal has been filed by the defendant in the suit.

10. Admittedly, the plaintiff has proved his title over the suit schedule property by producing his original registered sale deed dated 09.07.2012 (Ex.A.4) and he has also traced his title through Ex.A.1 to Ex.A.3. Ex.A.1 is the sale deed dated 17.11.2011 and Ex.A.2 is the sale deed dated 23.01.2012 and under those two sale deeds, Srinivasan had sold the suit schedule property to Chandran. Thereafter, Chandran has executed a gift settlement deed dated 30.01.2012(Ex.A.3) in favour of his wife in respect of the suit schedule property. Chandran's wife, who became the owner of the suit schedule property by virtue of a gift settlement deed dated 30.01.2012, has



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sold the suit schedule property to the plaintiff under a sale deed dated 09.07.2012 (Ex.A.4).

11. Admittedly, the defendant has not produced any revenue records to show that he is in possession of the suit schedule property. He has also not produced any document to show that the plaintiff has put him in possession of the suit schedule property. Even though he contends that he was put in possession of the suit schedule property by the plaintiff's predecessor in title namely, Chandran, he has not filed any documentary evidence to prove the same. The tax receipts produced by the defendant (Ex.B.10 and Ex.B.11) are dated subsequent to the filing of the suit. The trial court has rightly held that those documents are fabricated documents. The trial court has given a finding that possession follows title in favour of the plaintiff who has purchased the suit schedule property under a registered sale deed (Ex.A.4) and he has also traced his title through registered documents. This Court does not find any infirmity in the said finding. The defendant has claimed that he is running a Timber Depot in the suit schedule property but no documentary evidence in the form of license or any other valid document has been produced by him to show that he is running a Timber Depot. The plaintiff has categorically denied that the



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defendant is running a Timber Depot. When no iota of evidence has been produced by the defendant to prove that he is in possession of the suit schedule property, the trial court based on the evidence available on record has rightly decreed the suit in favour of the plaintiff by granting the relief of permanent injunction as prayed for in the suit.

12. The defendant has also not till date challenged the sale deed dated 09.07.2012 (Ex.A.4) standing in the name of the plaintiff despite lapse of almost 10 years from the date of filing of the suit by the plaintiff. The trial court as well as the lower Appellate Court by concurrent findings have taken into consideration the afore mentioned factors and have rightly held that the plaintiff is entitled for the relief of permanent injunction as prayed for in the suit.

13. The substantial questions of law raised by the appellant/defendant in the grounds of this Second Appeal are all issues, which have already been considered by the courts below correctly only in accordance with law. There are no debatable issues of fact or law involved which requires further consideration by this Court under Section 100 C.P.C.



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14. In the result, there is no merit in this Second Appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
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To

- 1.The Sub Court, Periyakulam,
2. The District Munsif Court, Periyakulam.
- 3.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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