



S.A.No.486 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

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1.Sankarapandia Konar (died)
2.Karuppaiah (died)
3.Shanmugaiah
*(A2 and A3 are brought on record as LRs
of the deceased sole appellant as per order
dated 03.01.2019)*

4.K.Senthamarai Kannan
5.K.Sankar
*(A4 and A5 are brought on record as LRs
of the deceased 2nd appellant vide Court
order dated 09.11.2021)*

... Appellants / Respondent / Plaintiff

Vs

1. Muthusamy Karayalar(died)
2. Aandi Karayalar(died)
3. Padmanaba Karayalar
4. Ramiah Konar(died)
5. Subramanian (died)



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6. Sivasubramanian

7. Chandrasekar (died)

8. Karuppasamy

(R5 is brought on record as legal representative of deceased R1 and

R6 is brought on record as legal representative of deceased R2 and

R7 and R8 are brought on record as legal representative of deceased R4 vide Court order dated 03.01.2019)

9. R.Muthuveni

(R9 is impleaded as legal representative of deceased R4 vide Court order dated 12.12.2019)

10. M.Subbulakshmi

11. Kumari

(R10 and R11 are brought on record as legal representatives of deceased R1 vide Court order dated 09.01.2000)

12. A.Nithya

(R12 is brought on record as legal representatives of deceased 2nd respondent vide Court order



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dated 09.01.2020)

13. S.Rajasaraswathi

14. S.Imani

15.S.Abiramani

*(R13 to R15 are brought on record
as legal representatives of the
deceased 5th respondent vide Court
order dated 20.12.2021)*

16.A.Balasaraswathy

17.C.Shanmuganathan

*(R16 and R17 are brought on record
as legal representatives of the
deceased R7 vide Court order dated
20.04.2022)*

... Respondents /Appellants / Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to allow the appeal and thereby setting aside the judgment and decree in A.S.No.66 of 1998 on the file of the Additional Sub Court, Tenksai dated 30.07.1999, reversing the judgment and decree in O.S.No.375 of 1993 on the file of the Principal District Munsif Court, Sankarankoil, dated 07.01.1998.



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For Appellant : Mr.H.Arumugam
for M/s.S.Kumar

For Respondents : Mr.M.Saravanan
R3,R6 & R13 to R16

J U D G M E N T

The plaintiff in the suit is the appellant. He filed a suit for specific performance of oral agreement dated 15.02.1977 and for injunction, restraining the respondents from interfering with the possession. The suit was decreed by the trial Court. Aggrieved by the same, the respondents 1 to 4 filed an appeal before the Additional Subordinate Judge, Tenkasi in A.S.No.66 of 1998. The first appellate Court reversed the finding of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiff is before this Court.

2.According to the plaintiff, he agreed to purchase 90 Ares of agricultural land belonging to the respondents 1 to 3 under oral agreement



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dated 15.02.1977. According to him, the sale consideration was fixed at Rs.2500/- and an advance amount of Rs.1,200/- was paid to respondents 1 to 3 on the date of agreement. He also averred that the possession of the suit property was given to him under the agreement on the date of agreement itself. It was also contended by the appellant that the time for payment of balance sale consideration was not stipulated under the agreement. It was further averred that subsequently one Shanmugaiah Thevar attempted to encroach portion of the suit property and later on intervention by appellant's son in law, the possession was handed over to the appellant. It was further averred by the appellant that the fourth respondent claimed to have been purchased the suit property and registered a sale deed from respondents 1 to 3 and tried to disturb the possession of the appellants and consequently the present suit was laid for the above said relief.

3.The respondents 1 to 3 filed a written statement denying oral agreement pleaded by the appellant. The payment of advance amount was also denied by the respondents. It was further averred in the written



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statement that a bungalow in the second item of the suit schedule property was let out to appellants on an understanding that he should pay monthly rent of Rs.100/- per month. It was also pleaded that the appellant should pay the land tax for the suit properties and after paying the land tax, out of rent, the balance amount has to be paid to the respondents. It was also averred in the written statement that the appellant had obtained patta to the suit property behind the back of the respondents 1 to 3 by abusing the position of his son in law who was employed as VAO.

4.The fourth respondent herein who purchased the suit properties from the respondents 1 to 3 filed a written statement raising a plea of bonafide purchaser. Before the trial Court, the appellant was examined as P.W.1 and his son in law was examined as P.W.2. Yet another independent witness that is the Taluk Surveyor, was examined as P.W.3. On behalf of respondents 1 to 3, the third respondent was examined as D.W.1. On behalf of the fourth respondent, he was examined as D.W.2.



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5.On the side of the appellant eleven(11) documents were marked as Ex.A1 to Ex.A11. On behalf of respondents, two documents were marked as Ex.B1 and Ex.B2. The Trial Court on appreciation of an oral and documentary evidence, upheld the oral sale agreement and granted a decree for specific performance and injunction as prayed for.

6.Aggrieved by the same, the respondents 1 to 4 filed an appeal before the First Appellate Court. The First Appellate Court disagreed with the findings of the trial Court with regard to the oral agreement pleaded by appellant and consequently set aside the findings of the trial Court and allowed the First appeal. Aggrieved by the same, the appellants / plaintiff is before this Court.

7.At the time of admission, this Court formulated the following questions of law vide order dated 15.03.2000.

"1) Whether the Lower Appellate Court failed to note that



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possession was handed over the appellant and the patta was transferred handing over of the possession?

2) Whether the Lower Appellate Court failed to note that the 4th respondent is not a bonafide purchaser for value?"

8.The learned counsel for the appellant elaborating the substantial questions of law, framed at the time of admission, submitted that Ex.A1 is a letter written by the first respondent addressed to the son in law of the appellant namely, P.W.2. In the said letter, the first respondent admitted the oral sale agreement entered into between the parties and mentioned that the appellant had to pay the balance sale consideration of Rs.1,300/- to him. The letter was marked by the appellant as Ex.A1 and the same was admitted by D.W.1, when he was cross examined. The learned counsel vehemently submitted that Ex.A1, letter written by the first respondent, proving the oral sale agreement between the parties and consequentially finding arrived at by the First Appellate Court that the appellant failed to prove the oral agreement was vitiated by non-consideration of material evidence available on record. Even according to the case of the respondent, the appellant was



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allowed to occupy a portion of the suit property on a rental arrangement.

Therefore, when the appellant proved the possession by producing various revenue records, the Court below ought to have granted a decree for injunction to protect his possession. The dismissal of the entire suit by the appellate Court is not at all warranted in view of the admission made by the respondents with regard to the possession of the appellant.

9.Per contra, the learned counsel for the respondents submitted that absolutely there is no evidence available on record to prove the oral agreement pleaded by the appellant. It is the submission of the learned counsel for the appellant that the appellants failed to examine any independent witness to prove the alleged oral agreement between the parties. In the absence of any acceptable evidence to prove oral sale agreement, the First Appellate Court was justified in disbelieving the same.

10.The learned counsel for the respondents further submitted that even assuming the oral agreement between the parties pleaded by the



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appellant was proved, there is no evidence on record to prove the readiness and willingness on the part of the appellant. Hence, the appellant is not entitled to a decree for specific performance. As far as the relief of injunction is concerned, the learned counsel for the appellant submitted that the patta produced by the appellant was obtained by misusing the position of the appellant's son in law as a Village Administrative Officer and the same was issued behind the back of the respondents 1 to 3. The learned counsel further submitted that there is no evidence available on record to connect tax receipts to the suit properties and consequently, the possession of the appellant was not proved. On these circumstances, he prayed for dismissal of the Second Appeal.

11.Heard the arguments of the learned counsel for the appellants and the learned counsel for the respondents. Perused the typed set of papers and other records.

12.In order to prove the plea of oral agreement made by the appellant, the learned counsel appearing for the appellant, mainly relied on Ex.A1. It



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is a letter written by the first respondent to appellant's son in law namely D.W.2. In the said letter, it was stated that the appellant informed the first respondent about the disturbance made by a third party in respect of the property given to him and the addressee namely D.W.2 must take appropriate steps. It was further mentioned in Ex.A1 that the appellant shall pay the amount of Rs.1300/-. The vernacular extract of Ex.A1 reads as follows:

"உங்கள் மாமாவுக்கு நாங்கள் கொடுத்த இடத்தில் யாரோ தகராறு செய்வதாக கூறினார். நாங்கள் வேண்டியது செய்து கொடுக்கவும். மேலும் உங்கள் மாமா இன்னும் ஆயிரத்திழுன்னு கொடுக்க வேண்டியிருக்கிறது. அதை சீக்கிரமாக கொடுக்க சொல்லவும்."

13.The learned counsel for the appellant interpreted this letter by saying that the amount referred to in Ex.A1 is only with reference to the balance sale consideration under the oral sale agreement and therefore, Ex.A1 proved the existence of oral sale agreement between the parties. A close scrutiny of the extracts made in Ex.A1 would make it clear that from the statement made in Ex.A1, we cannot come to a definite conclusion that



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Ex.A1 refers to an earlier oral sale agreement. It was explained by the respondents that the appellants were in possession of bungalow in the Item -2 of the suit schedule property and they were in arrears of rent. In Ex.A1, the first respondent only mentioned the arrears of rent as Rs.1,300/-. In the absence of any other acceptable evidence, to show the existence of oral agreement and payment of portion of the sale consideration in favour of respondents 1 to 3, this Court is unable to accept the plea of oral agreement set up by the appellant. Therefore, the findings rendered by the first appellate Court in this regard is confirmed.

14.As rightly contended by the learned counsel for the respondents even assuming that the appellants proved the oral agreement pleaded by them in order to get a decree for specific performance, they have to prove the readiness and willingness from the inception of agreement to the date of filing of the suit. In the case on hand, as per the plea raised by the appellant, oral agreement was entered into on 15.02.1977 and whereas the suit was filed by them leisurely in the year 1993 nearly after 10 years. Absolutely, there is no explanation for the appellant for a long delay in



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approaching the Court for specific performance. Even assuming there is no time stipulated in the agreement, the specific performance shall be sought for within a reasonable time. Further there must be some evidence for payment of advance amount and the readiness and willingness of the appellant to pay balance sale consideration. In the absence of any evidence regarding readiness and willingness, this Court is unable to find fault with the findings rendered by the First Appellate Court, negating the main prayer in the suit namely specific performance of the oral sale agreement.

15.As far as the second relief sought for in the suit is concerned, even as per the admitted case of the respondents, the appellant was allowed to occupy portion of the suit property namely the bungalow in the Item-2 of the suit schedule property on a rental arrangement. When the appellant's possession over portion of the suit property is already admitted, the respondents are not entitled to take law into their own hands and disturb the possession of the appellant insofar as item-2 of the suit schedule property is concerned. It is settled law that a person in possession of the property is



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entitled to protection of his possession except by due process of law. Even original owner cannot take law into his own hands and disturb the possession of the person who is found to be in settled possession of the property. In the case on hand, the respondents 1 to 3, the original owners of the properties themselves admitted that the bungalow in the item-2 of the suit schedule property was let out to the appellants.

16. In the circumstances, without taking due process of law neither respondents 1 to 3 nor the persons claiming under him namely the fourth respondent are entitled to disturb the possession of the appellant, in respect of item-2 of the suit property. As far as item-1 of the suit property is concerned, the appellant though produced tax receipts and patta for the item-1 of the suit property in Ex.A3 and Ex.A4 as rightly observed by the First Appellate Court, the Ex.A3 patta was not issued by Tahsildar. Though in Ex.A3 the seal of Head Quarters, Deputy Tahsildar is found, but the signature of the Tahsildar is not found. It is only signed by the Village Administrative Officer as true copy. Therefore, the Court cannot rely on



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Ex.A3 which is an incomplete document. In the absence of Ex.A3, the tax receipts produced by the appellants cannot be connected with the suit property. Therefore, there is no evidence available on record to prove the possession of the appellant in respect of a first item of the first schedule of the suit property. Therefore, I am inclined to interfere with the finding of the First Appellate Court in so far as the second item of the suit property alone that too with respect to the relief of injunction is concerned. In other respects, the First Appellate Court Judgment is confirmed.

17. In fine, the Second Appeal is partly allowed,

(i) by setting aside the judgment and decree Court passed by the First Appellate Court, in so far as the relief of injunction in respect of Item-2 of the suit property is concerned.

ii) In other respects, the findings rendered by the First Appellate Court are confirmed.

iii) The suit is dismissed in respect of the prayer for specific performance and injunction in respect of Item No.1 of the suit.



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iv) The appellant is entitled to a decree for injunction against the respondents in so far as Item-2 of the suit property is concerned by restraining the respondents from interfering with the possession of the appellant except by due process of law.

v) In the facts and circumstances of this case, there will be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023

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

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To

- 1.The Additional Sub Court, Tenksai.
- 2.The Principal District Munsif Court, Sankarankoil.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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