



S.A.Nos.692 and 693 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.Nos.692 and 693 of 2000

S.A.No.692 of 2000

S.K.Ramasamy

...Appellant

-Vs-

1.Chinnammal

2.K.Eswari

3.G.Mahalakshmi

4.Selvi.Amsavalli

5.Murugan

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 24.12.1999 passed by the learned Subordinate Judge, Palani in A.S.No.3 of 1998 confirming the judgment and decree made in O.S.No.704 of 1993 by the learned District Munsif, Palani, dated 26.11.1997.



S.A.Nos.692 and 693 of 2000

S.A.No.693 of 2000

S.K.Ramasamy

...Appellant

-Vs-

1.Chinnammal

2.K.Eswari

3.G.Mahalakshmi

4.Selvi.Amsavalli

5.Murugan

6.Erulayee (died)

... Respondents

(Memo dated 20.12.2022 presented before the Court on 21.12.2022 is recorded, as 6th respondent died, and the respondents 1 to 5, who are already on record are recorded as LR's of the deceased R6 vide Court order dated 21.12.2022 made in S.A.No.693 of 2000)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 24.12.1999 passed by the learned Subordinate Judge, Palani in A.S.No.4 of 1998 confirming the judgment and decree made in O.S.No.465 of 1996 by the learned District Munsif, Palani, dated 26.11.1997.

For Appellant : Mr.M.P.Senthil

For Respondents : No appearance

(in both second appeals)



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COMMON JUDGMENT

S.A.No.692 of 2000 is arising out of the suit for declaration and injunction filed by the respondents against the appellant. S.A.No.693 of 2000 is arising out of the suit for specific performance filed by the appellant against the respondents. The Trial Court dismissed the suit for specific performance filed by the appellant by way of common judgement and granted a limited declaration in favour of the respondents declaring the title subject to the result in O.S.No.116 of 1984 on the file of Sub Court, Dindigul filed by the sixth respondent in S.A.No. 693 of 2000 against the respondents in S.A.No.692 of 2000 and also granted injunction. Aggrieved by the said common judgment and decree, the appellant preferred two appeals in A.S.Nos.3 and 4 of 1998 on the file of Sub Court, Palani. Both the appeals were dismissed by the first appellate Court. Aggrieved by the same, the appellant is before this Court.

2. According to the appellant, the suit property originally belonged to one Ammapattian Kudumban, late husband of first respondent and father of respondents 2 to 5. The appellant entered into a sale agreement with the said Ammapattian Kudumban for purchase of suit property on 09.04.1979. The



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agreed sale price was Rs.25,000/- and an advance of Rs.12,500/- was paid on the very date of agreement. As per the terms of agreement, the appellant had to pay the balance sale consideration within three months from the date of agreement. It was also pleaded by the appellant that Ammapattian Kudumban died on 12.09.1981 and thereafter, there was misunderstanding between respondents 1 to 5 and the sixth respondent, first wife of Ammapattian Kudumban. The sixth respondent herein filed a suit for declaration that she was entitled to enjoy the suit property and for injunction in O.S.No.832 of 1983 on the file District Munsif Court, Palani, against the respondents 1 to 5. Subsequently, she also filed another suit for the relief of partition in O.S.No.116 of 1984 against the respondents 1 to 5. It was also pleaded by the appellant that the entire sale consideration was paid and since there was misunderstanding and litigation between the legal representatives of the Ammapattian Kudumban, she waited for sometime and ultimately, filed a suit for specific performance in O.S.No.465 of 1996 on 28.02.1994. The said suit was originally filed before the Sub Court, Dindigul, in O.S.No.373 of 1993 and the same was transferred to the District Court, Palani and renumbered as O.S.No.465 of 1996.



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3. The respondents herein filed a written statement denying the suit sale agreement and also payment of advance amount by the appellant. The respondents claimed possession over the property and denied the alleged possession of the appellant in pursuance of the suit sale agreement. The respondents also raised a plea of limitation.

4. Earlier the respondents filed a suit in O.S.No.704 of 1993 seeking declaration of title and injunction against the appellant by assessing their title to the suit property in their capacity as legal representatives of the above said Ammapattian Kudumban. The said suit was resisted by the appellant by filing a written statement, wherein they pleaded agreement and also possession in pursuance of agreement.

5. Both the suits were tried together and evidence was recorded in the suit in O.S.No.704 of 1993. The trial Court, on consideration of oral and documentary evidence, came to the conclusion that the suit for specific performance filed by the appellant was hopelessly barred by limitation. It also granted a qualified injunction in favour of respondents 1 to 5 by declaring the title



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subject to the result of the suit in O.S.No.116 of 1984 filed by the sixth respondent against the respondents 1 to 5 and also granted injunction. Aggrieved by the said judgments and decrees, the appellant herein filed two first appeals in A.S.Nos.3 of 1988 and 4 of 1988. The appeal in A.S.No.3 of 1998 was directed against the decree for declaration and injunction granted in favour of the respondents 1 to 5 and the other appeal in A.S.No.4 of 1998 was filed against the dismissal of the suit for specific performance filed by the appellant. The first appellate Court affirmed the findings of the Trial Court and aggrieved by the same, the appellant is before this Court.

6. This Court at the time of admission formulated the following substantial questions of law:-

1. Whether the suit filed by Ramasamy is barred by limitation?

2. Whether Ramasamy can invoke the benefit of Section 53(a) of the Transfer of Property Act on the ground of part performance?

3. Whether the Courts below have considered the evidence of D.W.2 to D.W.4 who speaks that Ramasamy was in possession of the suit property?



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7. Elaborating the substantial questions of law framed at the time of arguments, the learned counsel for the appellant submitted that when there was a dispute between the legal representatives, agreement vendors, the appellant was not in a position to file the suit for specific performance immediately and she waited for the result of the litigation and hence, there was some delay in filing the suit. Therefore, the Courts below ought not to have non-suited the appellant on the ground of limitation. The learned counsel further submitted that in pursuance of the suit agreement, the appellant was put in possession of the suit property and he had been in possession and enjoyment of the same. In spite of ample evidence available on record to prove his possession over the suit property, the Courts below erroneously granted an injunction as if the respondents 1 to 5 proved their possession over the suit property. Hence, it is the contention of the learned counsel for the appellant that the findings of the Courts below with regard to the possession over the suit property in a result of misreading of evidence and consequently, sought for allowing of the second appeal.

8. The suit sale agreement was marked as Ex.B3. The same was entered on 09.04.1979. As per the terms of agreement, the appellant paid an advance amount



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of Rs.12,500/- on the date of agreement itself and agreed to pay the balance sale consideration within three months. The said three months period was expired on 09.07.1979. The limitation for filing the suit for specific performance is dealt with by Article 54 of the Limitation Act and the same reads as follows:-

54.For Specific Performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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9. A reading of above Article would make it clear that there are two limbs in the provision. As per the first limb of the Article, if the date is fixed for performance of the agreement, the limitation of three years for filing the suit for specific performance starts from that date. If no date is fixed for performance, then the second limb of Article would apply, but in that case the limitation will start from the knowledge of refusal by the plaintiff. As far as the present case is concerned, a reading of Ex.B3 would make it clear that the time for performance and the time for payment of balance sale consideration was fixed as three months and that period was expired on 09.07.1979. Therefore, it is clear that the first limb



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of Article 54 of the Limitation Act is applicable to the present case. In that case, the suit should have been filed on or before 09.07.1982. On the other hand, the present suit for specific performance was filed by the appellant on 28.02.1994, i.e., after expiry of more than 12 years. Therefore, the Courts below rightly came to the conclusion that the suit for specific performance filed by the appellant is barred by limitation. Therefore, the substantial question of law No.1 is answered against the appellant.

10. As far as the contention made by the learned counsel for the appellant that the appellant was put in possession of the suit property in pursuance of the sale agreement and consequently, the Courts below ought not to have granted the relief of injunction in favour of respondents 1 to 5 is concerned, the respondents 1 to 5, in order to prove their possession over the suit property, produced revenue documents like patta, chitta and adangal. The patta in the name of the respondents was marked as Ex.A.3. The chitta in the name of the respondents was marked as Ex.A4. Admittedly, the suit properties are described as punja agricultural lands. It is settled law that the adangal extract is the best evidence to prove possession of the parties as far as agricultural lands are concerned. In the



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case on hand, the respondents 1 to 5 produced adangal extract for the fasli years 1401 to 1405, relevant to the years 1992 to 1996. The adangal extracts in the name of the respondents were marked as Ex.A5 to Ex.A9. Therefore, based on the revenue documents coupled with the oral evidence of P.W.1 and P.W.2, both the Courts below came to the conclusion that the possession of the suit property remains with the respondents 1 to 5 and possession was not handed over to the appellant in pursuance of the agreement.

11. A perusal of Ex.A3, agreement would make it clear that there is no recital in Ex.B3 that possession was handed over to the appellant in pursuance of the agreement. Further, the agreement pleaded by the appellant is a time barred one. There is no evidence available on record to show that the appellant performed his part of the contract within the time stipulated under the agreement or atleast within the reasonable time. In these circumstances, the appellant is not entitled to take shelter under Section 53(A) of Transfer of Property Act and claim performance of his part of the contract. Further, in the light of the documentary evidences produced by the respondents 1 to 5 to prove their possession, the oral evidences let in by the appellant cannot advance their case in support of their



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possession. Therefore, I concur with the findings of the Courts below that the respondents 1 to 5 proved their possession over the suit property and hence, they are entitled to the relief of injunction also. The substantial questions of law are answered accordingly against the respondents.

12. In view of the discussions made earlier, these second appeals are dismissed by confirming the judgments and decrees passed by the Courts below. However, there will be no order as to costs.

20.02.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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S.SOUNTHAR, J.

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To

- 1.The Subordinate Judge, Palani.
2. The District Munsif, Palani.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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