

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.1445 of 2000
and
C.M.P(MD)No.13606 of 2000

1.Sethumathava Rao(Died) ... Plaintiff/Appellant/Appellant
2.P.Geetha Bai
3.S.Srinivasan
4.S.Girivasan
*(A2 to A4 are brought on record
as LR's of the deceased sole
appellant vide Court order dated 29.03.2022)*

-Vs-

1.Radhabai
2.Srinivasan @ Kumar(Died)
3.Krishnamurthy
4.Beemasenan
5.Raghu
6.Murali
7.Sakunthala
8.Padmavathy
9.Suseela
10.Narmatha
11.Saroja ... Defendants/Respondents/Respondents

*(R12 is brought on record as LR of the deceased
R2 vide Court order dated 29.03.2022)*

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 12.04.2000 made in A.S.No.9 of 1998 on the file of the Sub-Court, Kulithalai, confirming the judgment and decree, dated 18.06.1997 made in O.S.No.76 of 1992 on the file of the District Munsif, Kulithalai.

For Appellants : Mr.P.Thiagarajan

For R2 : No appearance

For R4 : No appearance

For R3, R4, R6
to R9 & R11 : Given up

J U D G M E N T

Being aggrieved by the concurrent findings of the trial Court and the first appellate Court, the plaintiff herein has preferred this second appeal, against the judgment and decree, dated 18.06.1997, passed in O.S.No.76 of 1992, on the file of the District Munsif,

Kulithalai and the judgment and decree, dated 12.04.2000, passed in A.S.No.9 of 1998, on the file of the Sub-Court, Kulithalai.

2.Parties are indicated as per their litigative status and ranking referred before the trial Court.

3.According to the plaintiff viz., Sethumathava Rao, his brothers and himself partitioned their family property through a registered partition deed in the year 1929 and they are in possession and enjoyment of their respective shares. The suit property was allotted to the share of the plaintiff's brother Gopal Rao and he was in possession and enjoyment of the suit property and he died in the year 1961. The first defendant is the wife of Gopal Rao and rest of the defendants are their children. The suit property is a residential house and the plaintiff spent an amount of Rs.500/- for effecting repair. At the request of the first defendant, the plaintiff agreed to purchase the suit property for consideration of Rs.2,000/-. He paid an

amount of Rs.1,500/- on 15.07.1977 and obtained a receipt from the defendants. After ten days, the remaining amount of Rs.500/- was also received by the defendants. Thereby, he acquired title of the suit property. To the knowledge of the defendants, openly the plaintiff is in possession and enjoyment of the suit property. The plaintiff further claims that he felt that obtaining of sale deed is not necessary and he did not show any interest to get the sale deed from the defendants. The plaintiff obtained electricity connection in E.B.No.59 and by planting Coconut saplings in the suit property. He also let out the suit property from 1981 to 1990 to the Primary Co-operative Bank for monthly rent of Rs.100/-. He also obtained loan from the bank by hypothecating the suit property. Patta has been granted in the name of the plaintiff. It is his further claim that he has been in continuous possession and enjoyment of the suit property for the past 14 years and he has prescribed title to the suit property. At the instance of his another brother Ramachandran, the defendants issued notice to the Tamil Nadu Electricity Board not to grant EB connection to the

plaintiff. This was intimated to him by the Electricity Board. Hence, this suit.

4. Whereas the first and second defendants would claim that the plaintiff is in possession and enjoyment of the suit property not as a owner. The property details in the plaint given are incorrect. Door No.13/8 house was allotted to the defendants' father through partition in the year 1929. The second defendant's father purchased a land with tiled varantha measuring an extent of 15 x 275 feet. Therefore, the suit property belonged to the family of Gopal Rao viz., his wife first defendant and his children of the deceased Gopal Rao. The defendants stoutly refuted the claim of the plaintiff that the plaintiff purchased the property for a sale consideration of Rs.2,000/- and he obtained receipt also. The said receipt is not valid one and it will not enure any ownership to the plaintiff. One of the son of Gopal Rao has also contended the above said details in line with the first and second defendants.

5. Based on the rival submissions, the trial Court framed the following issues.

(1) Whether the suit property belongs to the plaintiff?

(2) Whether it is true that the plaintiff has right over the suit property by way of adverse possession?

(3) Whether the plaintiff is entitled to get the relief of declaration and permanent injunction?

(4) Whether this Court has jurisdiction to entertain the suit?

(5) to what other relief the plaintiff is entitled to?

6. At trial, the plaintiff Sethumadhava Rao has examined himself as P.W.1. Exs.A1 to A32 were marked. Receipt for the amount of Rs.1,500/- issued by the first defendant Radhabai and his son second defendant Kumar, dated 15.07.1977 in favour of the plaintiff Sethumadhava Rao is Ex.A1. On the defendants' side, second defendant Kumar has examined himself as D.W.1. Exs.B1 to B5 were marked.

7.Upon evaluating the evidence, the trial Court has observed that since the plaintiffs appeared to have not taken any steps towards purchase of the suit property, the plaintiff does not get any right over the suit property and the suit ended in dismissal.

8.Against which, on appeal by the plaintiff. The first appellate Court has observed that as the first defendant's husband along with family, due to work, were residing in various places, the plaintiff was in possession and enjoyment of the suit property and in order to purchase the suit property and in pursuance of the same, the plaintiff had paid an amount of Rs.1,500/- towards the same and the first and second defendants have issued a receipt to that effect and the plaintiff has not proved that the suit property is in possession and enjoyment as a true owner is not proved and ultimately, the judgment of the trial Court was confirmed and dismissed the first appeal.

9.The learned counsel for the appellant/defendant would strenuously argue that to prove the factum that the plaintiff was going

to purchase the property and the first and second defendants have admitted the issuance of receipt of Rs.1,500/- viz., Ex.B1 would go to show that the plaintiff is the owner of the suit property. He would further contend that the plaintiff retained an amount of Rs.500/- in order to get the original document pertaining the suit schedule property. The electricity connection stands in the name of the plaintiff for the suit property and the property tax was also assessed in the name of the plaintiff and he managed the property as the owner and he is entitled for permanent injunction, which was denied by both the trial Court as well as the appellate Court.

10.Per contra, the learned counsel for the respondents/defendants would vehemently contend that admittedly the suit property belongs to Gopal Rao and it was got in their family partition and the wife and all the children of Gopal Rao are the joint owners of the suit property. The plaintiff was only inducted as a tenant only, he was in possession and enjoyment of the suit property.

It is his further argument that the possession of the plaintiff has to be protected as per Section 53 A of the Transfer of Property Act.

11. Based on the aforesaid details, the following substantial question of law arise for consideration:

When the defendants having admitted possession of the suit property with the plaintiff and also the agreement of sale executed by D1 is the learned Subordinate Judge right in negating the plea of the benefit claimed under Section 53A of the Transfer of Property Act.

12. The suit is filed for the relief of permanent injunction in the capacity of not as a owner. According to the plaintiff, there is no sale agreement entered between the plaintiff and his brother Gopal Rao, the husband of the first defendant. The documents marked by the plaintiff candidly prove that he is in possession and enjoyment of the suit property. D.W1/second defendant has also admitted that he

along with his mother first defendant have issued receipt in favour of the plaintiff for having received an amount of Rs.500/-.

13. When the proposed transferee has taken possession of the property or continues to be in possession/being already in possession and has done some act in furtherance of the contract and has performed or is willing to perform the part of the contract, a transferor is debarred from enforcing any right in respect of the property. Where a person claims benefit of part performance under Section 53A of the Transfer of Property Act, he has to prove that he was inducted into possession for the first time subsequent to the contract and this would be a strong piece of evidence regarding the contract. It is interesting to note that continuous possession of tenant in the suit property even after entering into the sale agreement never amounts to part performance. It is necessary to invoke 53A of the Transfer of Property Act that possession should have been taken in part performance of the contract.

14. Therefore, in this case, the plaintiff does not plead that he has entered into an agreement for sale for purchasing the suit property. Hence, the plaintiff cannot take shelter under Section 53A of the Transfer of Property Act. Ex.A1 receipt and the EB receipts, tax receipts would never clothe with the plaintiff's exclusive right over the suit property. Admittedly, the suit property is the property of the plaintiff's brother Gopal Rao and after his death, it belongs to the wife of Gopal Rao viz., the first defendant and all his children(8 children). When that be the case, having produced a receipt for an amount of Rs.1,500/- issued by the first defendant and the second defendant, it should not lie in the mouth of the plaintiff that the first and second defendants intended to sell the property to him and in pursuance of the same, Ex.A1 receipt was issued. Admittedly, suit property belonged to Gopal Rao and after the death of Gopal Rao, all the legal heirs of Gopal Rao have got right in the suit property. Therefore, taking into account of the aforesaid discussion, the plaintiff has utterly failed to prove that he is in possession of the suit property and

he is in authorised possession of the suit property. Had it been true, Gopal Rao children would not have raised objection for the issuance of EB connection in the name of the plaintiff. After evaluating the evidence, the trial Court came to a proper conclusion that the plaintiff is not entitled for the relief of permanent injunction and it was rightly accepted by the first appellate Court.

15.In view of the foregoing discussion, substantial question of law is answered in favour of the respondents.

16.In fine, this Second Appeal stands dismissed. The suit in O.S.No.76 of 1992, is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected C.M.P is closed.

29.11.2023

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

1.The Sub-Court,
Kulithalai,

2.The District Munsif,
Kulithalai.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.No.1445 of 2000

R. KALAIMATHI,J.

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