



S.A.No.1800 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1800 of 2002

1.A.Ahmed Musthafa (died)

2.Ayushakani

3.Shenusha Banu

4.Mohammed Abdul Kadar

5.Saddiqul Jinna

6.Samsu Nisha

7.Sitthri Lana

8.Dahira Banu

9.Ramjaniya

... Defendant/Appellant/Appellant

(Appellants 2 to 9 are brought on record as Lrs of the deceased sole appellant vide Court order dated 10.11.2021 made in C.M.P(MD).Nos.7265 to 7267 of 2021 in S.A.No.1800 of 2002)

-Vs-

Mohd.Meerasa

... Plaintiff /Respondents/Respondents

1/13



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PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 19.10.2001 in A.S.No.12 of 1999 on the file of Subordinate Judge, Pudukottai reversing the judgment and decree dated 10.11.1997 in O.S.No.94 of 1995 on the file of District Munsif, Aranthangi.

For Appellants : Mr.AL.Ganthimathi

For Respondent : Mr.N.Balakrishnan

JUDGMENT

The first appellant is the defendant and the respondent is the plaintiff in the suit. The respondent filed a suit against the first appellant in O.S.No.94 of 1995, on the file of the District Munsif, Aranthangi for declaration and recovery of possession. The trial Court after completing the pleadings, framed the issues and trial decreed the suit in favour of the respondent.

2. Challenging the said judgment and decree passed by the trial Court, the first appellant herein filed an appeal before the Subordinate Judge, Pudukottai in A.S.No.12 of 1999. The appellate Court, after considering the material and re-appreciating the evidence, dismissed the appeal. Challenging the above said



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dismissal of the appeal, the first appellant herein has filed the second appeal before this Court by raising the following substantial questions of law:

1. Whether the courts below are correct in relying on Ex.A3, which is inadmissible in evidence?
2. Whether the courts below are correct in granting a decree for possession after finding that there is no relationship of landlord and tenant between the parties?
3. Whether the courts below erred in comparing the signature of the defendant, with that in Ex.A3, when both are entirely different names and granting a decree based on that?
4. Whether the courts below erred in brushing aside Ex.B9, which clearly proves the possession of defendant.
5. Whether the learned subordinate Judge erred in mechanically confirming the findings of trial Court?



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3. The case of the respondent is that he purchased the property on 12.07.1985 from one Nasuruthin and in turn, he purchased the property on 01.02.1985. Thereafter, in the year 1986, the respondent rented out the property to the first respondent herein and monthly rent was fixed as Rs.125/- and he did not pay the rent regularly. Therefore, the respondent asked the defendant to vacate the building and the first appellant refused to vacate the building. Thereafter, there was a Panchayath and in that Panchayath, one Muchalikka was entered on 26.05.1989 in which the first appellant agreed to vacate the building within a period of three months and at that time of vacating, the respondent has to pay a sum of Rs.3,500/-. Subsequently, he refused to vacate the building and thereafter, the respondent sent a legal notice and after receiving the notice, he did not send reply to the same and the respondent filed a suit for declaration and recovery of possession.

4. The case of the first appellant is that he never in possession of the building as a tenant and he has also denied the sale deed in favour of the respondent and he purchased the property from the brother of the appellant by way of oral sale and thereafter, he was in possession and enjoyment of the



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property. The first appellant also stated that it is an ancestral property and he paid the house tax, electricity bill and also stated that door number of the building is also not mentioned in the plaint and therefore, he was in possession on his own by way of oral sale and not as a tenant and he has no obligation to vacate the premises.

5. On completion of the pleadings, the trial Court framed the issues and in order to substantiate the case, on the side of the plaintiff, 5 witnesses were examined as P.W.1 to P.W.5 and 9 documents were marked as Ex.A1 to Ex.A9. On the side of the defendants, two witnesses were examined as D.W.1 to D.W2 and 18 documents were marked as Ex.D1 to Ex.D18.

6. After considering the pleadings, the oral and documentary evidence, the trial Court decreed the suit and thereafter, first appellant herein filed an appeal before the Subordinate Judge, Pudukottai and the same was also dismissed. Therefore, the present second appeal has been filed by the first appellant herein before this Court. At the time of admitting the second appeal, this Court has framed the following substantial questions of law:



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" (i) Whether the Courts below are correct in relying on Ex.A3, which is inadmissible in evidence?

(ii) Whether the Courts below are correct in granting a decree for possession after finding that there is no relationship of landlord and tenant between the parties?"

7. The learned counsel for the appellants submitted that the appellants did not admit the Muchalikka (Ex.A3) dated 26.05.1989 and first appellant has also denied the signature in the Muchalikka. Exs.A3- Muchalikka is concocted by the respondent for the purpose of filing the suit stating that the first appellant was in possession of the suit property as a tenant. He further stated that once he denied the execution of the Muchalikka, it is the duty of the respondent to prove the same that the property belongs to the respondent and the first appellant entered into the premises as a tenant, but the respondent has failed to prove the Muchalikka in the manner known to law. He further submitted that the trial Court failed to consider that Ex.A3 is an inadmissible document and is not a valid one



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and therefore, the decree passed by the trial Court, which is erroneous in nature and further, the first appellant did not enter into the possession as a tenant in the suit property and he purchased the property by way of oral sale. The first appellant is the owner of the property and also patta was issued in his name and he has also paid the house taxes and he has never been in possession as a tenant. These entire facts have been failed to be considered by the trial Court and the trial Court granted the decree in favour of the respondent.

8. The first appellant approached the lower appellate Court and which is the fact finding Court failed to re-appreciate the evidence and erroneously confirmed judgment and decree passed by the trial Court. Challenging the judgment of the lower appellate Court, the first appellant approached this Court by way of filing this second appeal. Since Ex.A3 is inadmissible and is not a valid one, the substantial questions of law have to be answered in favour of the appellants and the appeal has to be allowed.



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9. The learned counsel for the respondent submitted that the appellants have claimed title from the respondent, saying that the property was purchased from the respondent's brother by way of oral sale and they have not stated as to when the property was purchased. He further submitted that the oral sale was not proved and they have not stated the date for the sale and they have only obtained patta on the basis of possession only. The appellants relied on several documents and the same are not sufficient to prove that he is the owner of the property. Therefore, the appellants cannot claim title through patta and Patta is not a document of title. The appellants have not proved their case by producing necessary documents and both the Courts below rightly appreciated and re-appreciated the evidence and granted decree in favour of the respondent.

10. The learned counsel for the respondent further submitted that the respondent has purchased the property from his brother on 12.07.2985 and from the date of purchase onwards, he is the owner of the property. Taking advantage of the continuous possession and in the absence of any documentary evidence to prove that he is the tenant, the first appellant claimed the title over the property. According to the respondent, the first appellant had entered into the possession as



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a tenant. Taking advantage of continuous possession, he claimed title and both the courts below rightly appreciated the evidence and decreed the suit in favour of the respondent herein. Therefore, there is no merit in the appeal.

11. Heard both sides and perused the materials available on record.

12. Since the respondent filed the suit for declaration and recovery of possession, in order to prove the declaration, the respondent/plaintiff has stated in the pleadings that originally his brother purchased the property on 01.02.1985 from his predecessor and thereafter, the respondent purchased the property from his brother on 12.07.1985. In order to prove the same, he was examined as witness. The sale deeds in the name of his brother was marked as Ex.A1 sale deed executed by his brother in favour of the respondent was marked and Ex.A2, would clearly show that the respondent's brother has purchased the property and subsequently, from him the respondent purchased the property and the respondent has produced the tax receipts also which shows that after purchase, he has paid the taxes regularly. Since the respondent has proved the title and according to the respondent, the first appellant was in possession as a tenant.



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13. The respondent as a plaintiff filed the suit for declaration and recovery of possession. Though the respondent claimed that after purchasing the property, the same was leased to the first appellant and the first appellant agreed to pay a sum of Rs.125/- (Rupees One Hundred and Fifty Five Rupees only) as rent per month. The first appellant specifically denied the Muchalikka (Ex.A3). He has also denied the execution and the signature. In order to prove Ex.A3, respondent examined P.W.3 to P.W.5, they have clearly spoken about the execution of A3.

14. Even assuming that Ex.A3 is inadmissible and not proved as valid and the Courts below have given a finding that Ex.A3 is valid one. The first appellant has stated that he purchased the suit property from the brother of the respondent and the same was not proved. However, the respondent has produce Exs.A1 and A2 and proved the title and also the first appellant has not proved title over the property. However, he was in possession, but he has to prove that he has right to be in possession in the manner known to law. Since the first appellant has not proved the oral sale and also the respondent has purchased the property from his brother, this Court also independently finds that the respondent got the title over the property and the respondent admitted that the first appellant was in



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possession of the property. However, the first appellant has not proved the title of the property. When the respondent has proved his title, it is the duty of the first appellant to prove his possession based on the title. The first appellant has not proved his possession based on the title and therefore, the respondent/plaintiff is entitle to get the relief of recovery of possession, even though Muchalikka (Ex.A3) is not valid one. The decree granted in favour of the respondent does not warrant any interference, since the respondent proved his title and the first appellant has not proved the right to be in possession of the property. The substantial questions of law are answered accordingly and the second appeal is dismissed on merits. No Costs.

13.04.2023

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

- 1.Subordinate Judge,
Pudukottai.
2. District Munsif, Aranthangi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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