



S.A.No.1754 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1754 of 2003

1.Radhakrishnan (died)

2.R.Padma

3.R.Srinivasan

4.R.Eswaran

5.R.Gopala Krishnan

6.R.Jeyalakshmi

Appellants 2 to 6 are brought on record

as LR's of the deceased 1st appellant

vide order dated 01.12.2009 made in

M.P.(MD).No.192 of 2009 in S.A.No.1754 of 2003.

... Appellants

-Vs-

1.Kaliamurthy

2.Pappathi Ammal

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed by the Additional Sessions Judge cum Chief Judicial Magistrate, Tanjore at Kumbakonam in



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A.S.No.41 of 2002 on 05.12.2002 reversing the judgment and decree passed by the Additional District Munsif Judge at Kumbakonam in O.S.No.714 of 1994, dated 05.07.2001.

For Appellants : Mr.K.Sathiya Singh

For Respondents : Mr.K.Govindarajan

J U D G M E N T

The appellant herein has filed a suit in O.S.No.714 of 1994 on the file of the Additional District Munsif Court, Tanjore at Kumbakonam against the respondents herein for bare injunction.

2. The said suit was decreed by the trial Court against the respondents herein. The defendants in the said suit filed an appeal in A.S.No.41 of 2002 on the file of Additional District Sessions cum Judicial Magistrate, Tanjore at Kumbakonam. The first appellate Court, after hearing the appeal, has allowed the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit filed by the plaintiff.



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Against the said judgment and decree passed by the first appellate Court, the plaintiff has filed the present second appeal before this Court.

3. While admitting the second appeal, this Court has formulated the following substantial question of law:

In the absence of evidence to prove the case of appellant before the lower appellate Court, whether the appellate Court decree and judgment is correct?

4. The brief facts of the case of the appellant/plaintiff are as follows:

The appellant has purchased the suit property under registered sale deed dated 06.02.1979 for a valid consideration and he was put in possession of the suit property. Therefore, the plaintiff is the absolute owner of the suit property. From the date of purchase till the filing of the suit, the appellant was in possession and enjoyment of the suit property as absolute owner. He enjoyed the suit property by paying kist. The first item of the suit



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property lies on the south of the ancestral house owned by the appellant's father and the second item of the property lies on the western side of the house owned by the father of the appellant. The respondents, who are the husband and wife, are residing in a portion of the ancestral house owned by the father and in the rest of the house, the mother of the appellant and the sisters were residing. The appellant is permanently residing at Chennai and the suit property was lying as a vacant land. The first respondent is the brother of the appellant. The respondents have no right and interest over the suit property. When the appellant came to the suit property from Chennai on 19.11.1994, the respondents made a request to the appellant to permit them to construct a house in the suit property, since the present occupation in the ancestral house was not convenient for their accommodation. The appellant has refused to give permission to put up a construction in the suit property. The respondents have threatened the appellant on 20.11.1994, that they are going to construct a house. Therefore, the plaintiff has filed the suit for bare injunction restraining the respondents, their men, agents, legal representatives and others claiming right in any manner interfering with the



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appellant's peaceful possession and enjoyment of the suit property.

5. The brief facts of the written statement filed by the first respondent are as follows:

Though the appellant has purchased the suit property under registered sale deed dated 06.02.1979, for valid consideration and he was in possession and enjoyment of the suit property, however, under a family arrangement between the appellant and the first respondent, the first respondent was enjoying the suit property as absolute owner. The patta was also issued in respect of the suit property to the first respondent. He paid the tax and other Government dues and he has also obtained electricity connection and put up a construction and enjoying the suit property and the first respondent is in possession and enjoyment of the suit property to the knowledge of the appellant for more than 15 years. Therefore, the respondents also acquired right and title of the property by way of adverse possession. The description of property given by the appellant is not clear and misleading and the rest of the portions, the second respondent was in



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possession and enjoyment of the suit property. The Village Administrative Officer has also given a certificate to the effect that the respondents are in possession of the suit property for more than 13 years. The appellant is permanently residing in Chennai and he is not in possession of the suit property and the respondents are in possession and enjoyment of the suit property and the suit filed by the plaintiff is not maintainable, since the plaintiff was not in possession and he was out of possession of the suit property.

6. Based on the above pleadings, the trial Court has framed the following issues:

- (i) Whether the appellant was entitled to get a relief of permanent injunction as sought for by him?
- (ii) Whether the appellant was in possession of the suit property or the respondents?
- (iii) Whether the suit property was rightly described in the plaint and what other relief the plaintiff is entitled to?



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7. The above said issues were modified as follows:

(i) Is it true that the suit property was in possession and enjoyment of the appellant?

(ii) Is it correct to say that the appellant was not in possession and enjoyment of the suit property and only the respondents alone are in possession and enjoyment of the suit property?

(iii) Whether the appellant was entitled to get a relief of permanent injunction and what other relief the parties are entitled to?

8. Based on the pleadings, during the trial, before the trial Court, on the side of the appellant, one witness was examined as P.W.1 and 8 documents were marked as Exs.A1 to A8. On the side of the respondents, one witness was examined as D.W.1 and 5 documents were marked as Exs.B1 to B5. Besides, two documents Exs.C1 and C2 were marked.



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9. Based on the above said oral and documentary evidence, the trial Court has granted a decree in favour of the appellant and challenging the same, the respondents herein have filed an appeal before the Additional District Sessions cum Chief Judicial Magistrate, Tanjore at Kumbakonam. The first appellate Court had dealt with the appeal and re-appreciated the evidence and allowed the appeal and set aside the judgment and decree passed by the trial Court. Therefore, the plaintiff is before this Court.

10. The learned counsel appearing for the appellant would submit that the appellant has purchased the suit property under registered sale deed dated 06.02.1979 for valid consideration. The said sale deed was marked as Ex.A1. Even from the date sale deed onwards, the appellant was in possession and enjoyment of the suit property and adjacent to the suit property, the father of the appellant has got ancestral property, in which the respondents and the mother of the appellant were residing. Since the appellant was residing in Chennai, he used to come to the suit property



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occasionally. When lastly the appellant came to the suit property on 19.11.1994, the respondents requested the appellant to permit them to construct a building in the suit property for their residence, since the house situated in the ancestral property was not convenient for their accommodation, for which the appellant denied. Further, he would submit that the appellant has paid the kist and enjoyed the property, since the suit properties are vacant land. Ex.A1, sale deed itself clearly shows that the suit properties are punja land and the appellant was put in possession on the date of sale deed and the Advocate Commissioner also inspected the suit property and even prior to that, the respondents made a request to the Panchayat for constructing the building, whereas the appellant has made an objection and the oral and documentary evidence proved that the respondents were not in possession of the suit property and the appellant alone was in possession of the suit property. The kist paid by the appellant for the Fasli 1390 to 1396 were marked as Ex.A2 and the Block Development Officer written a letter to the Panchayat President, Koranatukarupoor Panchayat/Ex.A3, which clearly shows that the



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respondents were not in possession of the suit property. Therefore, he refused to give permission to the respondents to construct a house, which clearly shows that on 22.07.1999, the respondents were not in possession of the property. The respondents have not established the family arrangement said to have been referred to in the written statement. The trial Court has rightly appreciated the oral and documentary evidence and granted the decree, whereas the first appellate Court unfortunately failed to re-appreciate the evidence and simply allowed the appeal by setting aside the judgment and decree, without any valid reason, which is against Ex.A1 / recital made in the title deed of the appellant. He would further submit that D.W.1 himself admitted that whenever the appellant comes to Kumbakonam, he will stay at the suit property. Thereafter, the possession of the properties lies in the hands of the appellant, whereas the respondents have not filed any document to show that they were in possession of the suit property. Though the respondents pleaded that the suit property is not clearly shown in the schedule mentioned in the plaint, P.W.1 himself admitted in his evidence that the suit property is adjacent to the ancestral



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property and the building is situated in the ancestral property not in the suit property.

11. Further, he would submit that the first appellate Court has erred in holding that P.W.1 in his evidence deposed regarding the cultivation of the suit properties, whereas P.W.1 has not deposed any evidence regarding the cultivation in the suit property. The evidence of P.W.1 was clear regarding the possession of the property and he used to stay in the suit schedule property, whenever he come to native place. Though the appellant discloses all the facts as per Ex.A1, sale deed, whereas the first appellate Court wrongly held that the appellant suppressed the fact that the respondents are constructing the building in the suit schedule property. When the appellant came to the native, the respondents seek permission to construct a building in the suit property and occupied the same for their convenience. Therefore, the finding of the first appellate Court warrants interference.



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12. The learned counsel appearing for the respondents would submit that though the suit property was purchased by the appellant, the suit property is adjacent to the ancestral property of the appellant and the respondents and the appellant also residing in Chennai, by way of family arrangement, the respondents got the suit property and put up a construction and they are residing in the suit property. The appellant has not properly described the suit property in the plaint. The appellant has not properly identified the suit property. Therefore, an Advocate Commissioner was appointed to note down the physical features. On completion of the inspection, the Advocate Commissioner also filed a report and the same was marked as Exs.C1 and C2. Even in the Commissioner's report, the entire suit property was shown as A, B, C, D, E and as per the Commissioner report, in the suit property, there were residence in which the respondents are residing more than over and above the statutory period even with the knowledge of the appellant. Therefore, on the date of filing of the suit, the appellant was not in possession of the property. Even as per the Commissioner report, the



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suit property is not a vacant site, as stated by the appellant. The appellant has described the suit property as a vacant land, whereas the Commissioner report shows otherwise. Therefore, the appellant has not come to the Court with clean hands and suppressed the material facts. The appellant also knowing fully well that the respondents have occupied certain portion of the suit property and the suit property is not a vacant land as described in the plaint by the appellant. The Commissioner report and Exs.C1 and C2 also confirmed the same. The suit property was not a vacant land as on the date of inspection made by the Advocate Commissioner. Therefore, the appellant ought to have amended the plaint for recovery of possession. The appellant has no right and title over the suit property and as per the family arrangement, the respondents are the absolute owner and they were in possession of the property.

13. Though the trial Court has erroneously decreed the suit, without considering the oral and documentary evidence, however, the first appellate Court as a final Court of fact finding authority re-appreciated the



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entire evidence independently found that on the date of filing of the suit, the appellant was not in possession of the suit property. Therefore, the first appellate Court has allowed the appeal and set aside the decree and judgment passed by the trial Court. Therefore, there is no merit in the second appeal and there is no substantial question of law emerged in the second appeal. Therefore, all the findings are only based on the factual position and the appellate Court based on the Commissioner report and pleadings and the admission made by the appellant in his oral evidence, rightly re-appreciated the evidence and interfered with the judgment and decree passed by the trial Court and set aside the same and allowed the appeal and there is no merit in the second appeal and the same is liable to be dismissed.

14. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.



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15. At the time of admission, this Court has formulated the substantial question of law as stated above. Actually, the appellant is the plaintiff and he has filed the suit for bare injunction, stating that the suit property belongs to him and he has purchased the suit property under Ex.A1 and even as per the recital of Ex.A1, it is the punja land and from that date onwards, he was in possession and enjoyment of the property. The first respondent is the brother of the appellant and adjacent owner and tried to interfere with. Therefore, he filed the suit for bare injunction. The respondents have denied the same in the written statement itself. Though Ex.A1 was admitted by the respondents, however, they have stated that on the date of filing of the suit, the appellant was not in possession of the suit property. The appellant was residing in Chennai. The respondents are alone in possession of the the suit property. Even though the appellant has vehemently contended that the appellant was in possession of the suit property and the respondents are residing only in the ancestral property and not in the appellant's property, whereas, the respondents have not only



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denied in the written statement but also let in oral evidence. The appellant also during the evidence admitted that the respondents were in possession of a portion of the suit property. Though the appellant has denied that the respondents were not in possession of the suit property, whereas, a careful reading of the evidence, P.W.2 admitted that the respondents were in possession of a portion of the suit property and careful reading of the Commissioner report filed in the year 1999 clearly shows that within the suit property, certain construction and also thatched roof houses and other encroachments and unfortunately the appellant has not denied the same and has not made any objection for the Commissioner report and he has not taken even any steps to get the warrant for revisit the property and measure it and identify it. In the suit, though the schedule of property was described as a vacant land, even the recital shows that it is a punja land. Though the appellant has stated that he was in possession of the suit property from the date of purchase, admittedly, Ex.A1 is the sale deed purchased by him, dated 06.02.1979 and if it is an agricultural land, there must be an extract or entry in the adangal register and unfortunately the appellant has not produced any



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such document to show that he was in possession of the suit property, at the time of filing of the suit.

16. When the respondents specifically denied about the possession and enjoyment of the appellant, even though admitted that the sale deed / Ex.A1 was in the name of the appellant, the Commissioner report also shows that within the suit property, there are constructions and also some thatched roofs and other encroachments, the appellant has not taken any steps even to amend the plaint for recovery of possession. Since the appellant has filed the suit for bare injunction, the appellant has to establish his case.

17. Further, it is settled principle of law that the plaintiff has to prove his case on his own strength and he cannot take advantage of the weakness of the defence, whereas, in this case, especially the respondents have denied the possession and enjoyment of the appellant in the suit property and also the Commissioner report also shows that the suit property



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is not a vacant land as stated and described by the appellant in the plaint.

Therefore, the appellant has not established that on the date of filing of the suit, he was in possession and enjoyment of the suit property. Admittedly, the appellant was residing in Chennai regularly and occasionally he has come to the suit property. Though the trial Court has granted a decree in favour of the appellant, the first appellate Court, as a fact finding authority re-appreciated the evidence independently and set aside the decree and judgment passed by the trial Court and the entire material facts and evidence shows only it is based on factual aspects and oral and documentary evidence and given a finding that the appellant has not established the possession of the suit property. Therefore, there is no substantial question of law involved in this case and the second appeal is devoid of merits.

18. In the result, the Second Appeal is dismissed. No costs.

07.07.2023

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To

- 1.The Additional Sessions Judge cum Chief Judicial Magistrate,
Tanjore at Kumbakonam.
- 2.The Additional District Munsif Judge,
Kumbakonam
3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.

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