



S.A.No.832 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.832 of 2010
and M.P.No.1 of 2010

Chandra
W/o.Raja Gopal

... Appellant

Vs.

1. Ravi @ Ravichandran
2.Elangovan
Respondents

...

Prayer: The Second Appeal is filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.21 of 2009 on the file of Principal Sub Court, Mayiladuthurai dated 15.12.2009, confirming the judgment and decree of the Trial Court in O.S.No.241 of 2002 on the file of District Munsif Court, Sirkali dated 29.11.2008.

For Appellant : Mr.R.P.Ruban Chakaravarthy

For Respondents : Mrs.M.Meenatchi

JUDGMENT

The instant Second Appeal has been filed by the plaintiff and the



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respondents herein are the defendants before the trial Court.

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2. For the sake of convenience, the appellant and the respondents will be referred to as plaintiff and defendants respectively.

3. **The brief facts which gives rise to the instant second appeal is as follows:-**

The plaintiff became the owner of the suit property by virtue of the sale deed dated 19.05.1983 and he has been in physical possession and enjoyment of the suit property. The contention of the plaintiff is that the defendant has shown interest to purchase the property from the plaintiff. Since the plaintiff refused to sell the same, the defendant is now attempting to interfere with the possession of the property. Hence, the plaintiff has preferred the Suit for permanent injunction and in alternative for delivery of possession.

4. **The Written statement in brief:-**

The said suit was resisted by the defendants by contending that though the suit property belonged to the plaintiff, he has already executed a sale agreement in favour of one Krishnamoorthy on 20.09.1987 and that she has



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also received the entire sale consideration and handed over the possession. In furtherance to the said sale agreement of Krishnamoorthy, he executed another sale agreement in favour of Elango. Therefore, the 2nd defendant viz. Elango is in physical possession and enjoyment of the property. Therefore, it is the contention of the learned counsel for the defendants that the plaintiff is not at all in possession and enjoyment of the property and hence he is not entitled for a relief of permanent injunction.

5. Evidence and Documents:-

Before the trial Court, the plaintiff has examined four witnesses as PW1 to PW4 and eight (8) documents have been marked as Ex.A1 to A8. On behalf of the defendant, four witnesses were examined as DW1 to DW4 and seven (7) documents have been marked as Ex.B1 to Ex.B7.

6. Findings of the Courts below:-

The trial Court after having considered the oral and documentary evidence, arrived at a conclusion that the plaintiff was not in possession of the property and ultimately dismissed the suit.



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7. Aggrieved by the same, the plaintiff preferred the First Appeal in A.S.No.21 of 2009. Even the First Appellate Court concurred with the findings of the trial Court and dismissed the First Appeal. Being aggrieved with the order passed by the the First Appellate Court, the plaintiff is before this Court with this present Second Appeal.

8. The learned counsel for the plaintiff would vehemently submit that she being the owner of the property, the possession follows with title and therefore when the plaintiff was found to be the owner of the suit property an injunction has to be granted in her favour.

9.Per contra, the learned counsel for the defendants would invite the attention of this Court in respect of the evidence of PW3, the Village Administrative Officer, who has categorically stated that one Ravichandran is in possession and enjoyment of the suit property.

10. The Trial Court has even relied upon the Adangal which stands in the name of one Rajagopal and the same was not in the name of the plaintiff. Therefore, the trial Court has found that the plaintiff is not at all in



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possession and enjoyment of the suit property, and ultimately dismissed the suit.

11.This Court is of the firm view that the findings recorded by the trial Court are based upon documents and the same is also a possible view. Further, there is no perversity in the said findings. However, the submissions made by the learned counsel for the plaintiff that the defendant is only an agreement holder and that since 1988 he has not taken any steps to enforce the agreement assumes significance. In such background, if the present Second Appeal is dismissed, then he would become remedy less to get the possession from the defendant. Even while seeking the prayer, the plaintiff has sought for an alternative relief of possession. But, both the Courts below did not give such alternative relief. When the suit was concurrently dismissed by the Courts below, on the ground of absence of possession by the plaintiff, at the second appeal stage this Court does not want to substitute the same by granting alternative relief, as this Court cannot see any perversity in the order of the both the Courts below.

12.Even according to the pleadings of the defendant, he was only an agreement holder and admittedly he has not filed any suit for specific performance since 1988. Though the plaintiff is not in possession of the



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property as found by the Courts below, as rightly contended by the learned counsel for the plaintiff, her ownership cannot be simply ignored.

13.In view of the above peculiar circumstances, this Court though confirms the findings of the Courts below, would like to give liberty to the plaintiff to initiate a proceedings for recovery of possession.

14.In the result, this Second Appeal stands dismissed. However, liberty is granted to the plaintiff to institute a fresh suit for recovery of possession within a period of three (3) months from the date of receipt of a copy of this order. It is made clear if the suit is filed calculating the period of limitation, the period during which this appeal has been pending shall be excluded as per Section 14 of the Limitation Act, 1963. On such filing of Suit, the same is directed to be disposed of on its own merits. There is no order as to costs.

03.04.2024

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Index: yes / no

Neutral Citation : yes / no



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To

1.The Principal Sub Court
Mayiladuthurai

2.The District Munsif Court
Sirkali



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C.KUMARAPPAN, J.

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