



S.A.No.175 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.03.2024	Pronounced on: 22.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.175 of 2018
and CMP. No.4497 of 2018

Paramasivam

...Appellant

Vs.

Elumalai

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree in O.S. No.42 of 2005 dated 16.04.2015 on the file of the Additional District Munsif, Villupuram confirming the Judgment and Decree in A.S. No.38 of 2015 dated 22.11.2017 on the file of the 1st Additional Sub Judge, Villupuram and thereby allow the Appeal.

For Appellant : Mr.N.Suresh

For Respondent : Mr.J.Antony Jesus



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JUDGMENT

The defendant in a suit for permanent injunction who filed a counter claim seeking a relief of specific performance, is the appellant.

2. The parties are described as per their litigative status before the trial Court.

3. The brief facts that are necessary to adjudicate the above Second Appeal are as hereunder:

4. The plaintiff filed the suit in O.S. No. 42 of 2005, seeking declaration of his title to the suit property and for a permanent injunction to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The case of the plaintiff is that he became entitled to the suit property under a partition in the family on 04.05.2004 and that he has been in possession and enjoyment of the said property. The defendant, having no right, title or interest in the suit property and being a troublesome person in the village and having lust to grab the



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property of the plaintiff, requested the plaintiff to sell the property to him.

The plaintiff declined the said request and the defendant developed animosity and started proclaiming that he would take over the property by force, claiming that the defendant was a man of means and surrounded by anti social elements and therefore, the plaintiff sought to protect his property and filed the suit.

5. The defendant entered appearance and filed a written statement along with a counter claim. While denying the allegations set out in the plaint regarding the alleged interference with the plaintiff's enjoyment, the defendant also stated that the plaintiff had executed a receipt on 25.10.1996, having received a sum of 17,500/- as sale consideration and had delivered the property to the defendant and had also specifically agreed to execute a sale deed as and when demanded by the defendant. Therefore, the defendant, in any by way of the said counter claim, sought to specifically enforce the receipt dated 25.10.1996 and to execute a sale deed in favour of the defendant.



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6. Initially, before the trial Court, the plaintiff took out an application in I.A No.449 of 2005 to exclude the said document viz., receipt dated 25.10.1996. However, the Interlocutory Application was allowed directing payment of stamp duty penalty, which was paid by the defendant. Only after stamp duty penalty was paid, the receipt dated 25.10.1996 was considered by the trial Court. It is also seen that initially the suit was filed only for a permanent injunction. However, I.A. No 363 of 2009 was filed to amend the plaint, seeking relief of declaration as well and on 23.12.2010. The said Application for amendment was allowed and relief of declaration was also included in the plaint.

7. The counter claim was also duly resisted by the plaintiff by way of a reply statement denying execution of the receipt and also the factum of the defendant being put in physical possession of the suit property and that the suit was filed in time.

8. However, the trial Court finding that the defendant had not established that he was put in possession as claimed under the receipt and



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also finding that the defendant was not ready and willing to perform his part of contract under the said receipt, decreed the suit and dismissed the counter claim.

9. On Appeal by the defendant in A.S. No.38 of 2013, the First Appellate Court, concurred with the findings arrived at by the trial Court and dismissed the Appeal. Aggrieved by the concurrent findings, the defendant has come up by way of the present Second Appeal.

10. On 29.01.2024, this Second Appeal was admitted on the following two substantial questions of law:-

“(i) Whether the Courts below have erred in dismissing the counter claim for specific performance when admittedly there is nothing on the part of the defendant to perform and the plaintiff having received the entire sale consideration ought to have executed the sale deed?”

*“(ii) Whether the Courts have erred in decreeing the suit in favour of the plaintiff when the plaintiff has admittedly approached the Court below by suppressing the material fact that the execution of agreement in favour of appellant under Ex.B3 and as such the suit ought to have been dismissed in view of the judgment of Hon'ble Supreme Court in **Dalip Singh Vs. State of Uttar Pradesh** reported 2010 (2) SCC page 114 and **Oswal Fats and Oils Ltd. Vs. Additional Commissioner Administration** reported in 2010 (4) SCC page 728?”*



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11. Heard Mr.N.Suresh, learned counsel for the appellant and

Mr.J.Antony Jesus, learned counsel for the respondent.

12. The learned counsel for the appellant would submit that the Courts below, having found the receipt dated 25.10.1996 to be true and genuine and the said finding, not having been challenged by the plaintiff, the defendant's case had to be accepted, as the plaintiff has suppressed the execution of the Ex.B3, receipt dated 25.10.1996. According to the learned counsel for the appellant, the Courts below also found that the counter claim for specific performance was in time and was not barred by limitation. He would also further state that the Courts below have non suited the defendant only on the grounds that he was not ready and willing to perform his part of contract and he has not established the factum of possession.

13. According to the learned counsel for the appellant, it was not necessary for the defendant to prove possession, since the Court had upheld the receipt dated 25.10.1996 (Ex.B3) and when the said receipt was found by the Courts below to be true and genuine, then automatically, it followed



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that the plaintiff is in possession of the suit property. Further, he would state that the question of readiness and willingness also would not arise at all, since the plaintiff had paid the entire sale consideration and had also been put in possession of the suit property and therefore, there is no necessity for pleading and proving 'readiness and willingness' as contemplated under Section 16 (c) of the Specific Relief Act, 1963.

14. The learned counsel for the appellant would also place reliance on the following decisions, in support of his arguments and he would pray for the Second Appeal being allowed.:-

(i) *Munishamappa Vs. M.Rama Reddy and others* reported in (2023) 6 MLJ 553 (SC);

(ii) *Dalip Singh Vs. State of Uttar Pradesh and others* reported in (2010) 2 SCC 114;

(iii) *Zarina Siddiqui Vs. A.Ramalingam alias R.Amarnathan* reported in (2015) 1 SCC 705; and

(iv) . *Saradamani Kandappan Vs. S.Rajalakshmi and Others* reported in (2011) 12 SCC 18



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15. Per contra, the learned counsel for the respondent, Mr.N.Antony Jesus, would submit that the defendant has miserably failed to prove and establish that possession was handed over to the plaintiff and the Courts below have concurrently found on fact that possession was with the plaintiff and such a finding of fact cannot be interfered with under Section 100 of the Code of Civil Procedure, 1908. He would also state that even otherwise, the plaintiff had not proved 'readiness and willingness' on his part and according to the learned counsel for the respondent, there was no plea regarding 'readiness and willingness' in the counter claim. He would therefore, pray for dismissal of the Second Appeal.

16. The learned counsel for the respondent places reliance on the following decisions:-

(i) *Kamal Kumar Vs. Premlata Joshi and others* reported in (2019) 3 SCC 704;

(ii) *Saraswati Devi Gupta (SMT) Vs. Har Narain Johari and others* reported in (2006) 1 SCC 729;

(iii) *Vijay A. Mittal and others Vs. Kulwant Rai (Dead) through*



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Legal Representatives and another reported in (2019) 3 SCC 520; and

WEB COPY (iv) *Ramathal Vs. Maruthathal and others reported in (2018) 18 SCC 303.*

17. I have carefully considered the rival submissions advanced by the learned counsel on either side.

18. The plaintiff's specific case is that he is the owner of the suit property and the defendant was trying to interfere with his peaceful possession and enjoyment. According to the plaintiff, the defendant requested the plaintiff to sell the property to him and since it was negated, the defendant developed animosity and started interfering with the plaintiff's possession of the suit property. As a counter claim, the defendant sought for specific performance of a receipt dated 25.10.1996. The suit for injunction has been filed only on 07.02.2005. The defendant, admittedly has not filed an independent suit for specific performance of the alleged receipt dated 25.10.1996, until such time, he received suit summons in the suit filed by the plaintiff herein, seeking permanent injunction on 07.02.2005.



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19. The case of the defendant is that since he has paid the entire sale consideration even on the date of receipt and he was also put in possession of the suit property, nothing remained to be done on his part and therefore, the question of 'readiness and willingness' would have absolutely no significance whatsoever. In this connection, the learned counsel for the appellant has relied on *Munishamappa's* case, referred herein supra. In the said case, the parties to the agreement of sale had admitted the agreement and also factum of the purchaser being put in possession of the property, which was subject matter of the agreement of sale and execution of sale was deferred only on account of statutory restriction. Therefore, in such circumstances, the Hon'ble Supreme Court held that when the entire sale consideration had been paid and possession of the suit property was also transferred, issue of 'readiness and willingness' would not be relevant. However, I am unable to see how the said ratio laid down by the Hon'ble Supreme Court would apply to the facts of the present case. Here, the execution of the receipt itself is in dispute and the factum of the defendant being in possession has been concurrently disbelieved. Therefore, the



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learned counsel for the appellant cannot attempt to draw any support from the ratio laid down in *Munishamappa's* case, referred herein supra.

20. Further, the conduct of the defendant also does not appear to be bonafide. If really, the defendant had paid the entire sale consideration and has also taken possession of the suit property, even as early as on 25.10.1996, there was no reason as to why he did not take the registered sale deed even on that date. There is absolutely no explanation forthcoming on the side of the defendant in this regard. That apart, the defendant has not made a single attempt to seek enforcement of the alleged receipt by calling upon the plaintiff to come forward to execute the sale deed in his favour. Only as a counter blast to the suit for injunction, subsequently amended to include the relief of declaration of title, the defendant has sought for specific performance, that too in the year 2005. Therefore, I am unable to see any bonafides in the acts and omissions of the defendant. Further, the Courts below have concurrently found that the defendant is not in possession of the suit property. Merely because, the Courts below have held that Ex.B3, 25.10.1996 receipt to be true and genuine, it would not automatically, as a



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consequence lead to a presumption that the plaintiff was in possession. If really according to the defendant, he was put in possession of the suit property even in the year 1996, the defendant would have to establish by satisfactory documentary evidence that the possession of suit property was only with the defendant and not the plaintiff. However, I find that excepting for alleged receipt dated 25.10.1996 and the notice sent by the defendant to the plaintiff and reply to the said notice sent by the plaintiff, absolutely no shred of evidence has been filed by the defendant to establish that the defendant was possession right from the year 1996.

21. Per contra, the plaintiff has exhibited his title deeds and also Kist Receipts in Ex.A4 to A6 to show possession to be only with the plaintiff. The Courts below have rightly considered the oral and documentary evidence and came to a conclusion that the plaintiff alone has been in possession of the suit property and the plea of the defendant that the defendant was in possession has been negated by both the Courts.

22. The learned counsel for the appellant would also place reliance on



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Dalip Singh's case, referred herein supra, where the Hon'ble Supreme Court came down heavily on false statements being made out. However, I do not find the said ratio apt, to be applied in the present case. As already discussed, the plaintiff came to the Court with the specific case that the defendant was trying to interfere with the plaintiff's physical possession and only by way of a counter claim, the defendant brought up the receipt, execution of which has been denied by the plaintiff. Therefore, it cannot be stated that the plaintiff has suppressed the execution of the alleged receipt. Merely because the trial Court had found the receipt to be true and valid and the same was not challenged by the plaintiff, I do not see such conduct of the plaintiff warranting the Court to come down heavily on the plaintiff, as done in *Dalip Singh's* case, referred herein supra.

23. In view of the plaintiff ultimately succeeding in the suit and the counter claim also having been dismissed, I do not see any reason why the plaintiff has to challenge the finding with regard to the truth and genuineness of the alleged receipt. Therefore, I am unable to countenance the submission of the learned counsel for the appellant.



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24. In *Zarina Siddiqui's*, case, referred herein supra, the Hon'ble Supreme Court held that the relief of specific performance was equitable and discretionary and it would depend on the conduct of the parties. The Hon'ble Supreme Court also held that, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the Court, then discretion should not be exercised by refusing to grant specific performance. However, before the Hon'ble Supreme Court, the facts were entirely different. The execution of a power of attorney was admitted, but it was stated that it was executed only to look after and manage the property and the said power of attorney was also withheld from the Court. However, in the case before us, it is the specific case of the plaintiff that he never executed the alleged receipt and therefore, I do not find this decision also coming to the aid of the appellant.

25. In *Saradamani Kandappan's* case, referred herein supra, the Hon'ble Supreme Court, held that a three year limitation is intended to assist purchasers in special cases, where the major part of the consideration has



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been paid and possession was delivered in part performance. In such cases, equity should be exercised in favour of the purchaser. This also will not help the appellant, since the Courts below have concurrently found that the defendant was not put in possession of the suit property.

26. On the side of the respondents, the learned counsel has relied on the aforementioned four decisions. In *Kamal Kumar's* case, referred herein supra, the Hon'ble Supreme Court has held that the plaintiff has to prove (i) existence of valid concluded contract, (ii) 'readiness and willingness' to perform his part of contract in terms of the agreement and thereafter, entitlement of the plaintiff to the equitable relief would depend on equitable considerations.

27. In *Saraswati Devi Gupta (SMT)*'s case, referred herein supra, the Hon'ble Supreme Court found that the High Court had wrongly come to the conclusion that 'readiness and willingness' was not pleaded and proved. In *Vijay A.Mittal and Others*, case referred herein supra, the Hon'ble Supreme Court held that the finding on the issue of 'readiness and



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williness' is one of the most important and relevant findings in a suit for specific performance and it is a finding based on facts and once it is recorded, it becomes a finding of fact and therefore, the same cannot be interfered by the High Court, unless the finding is found to be against the pleadings or contrary to the evidence or law governing the issue. In *Ramathal's* case, referred herein supra, the Hon'ble Supreme Court held that the High Court is empowered to interfere only when there is absolute perversity and it would not be appropriate to interfere with a question of fact, merely because two views are possible.

28. Having regard to the ratio laid down in all the above cases referred to by the learned counsel on either side and also in view of the discussion herein-above, I do not find the concurrent findings of the Courts below that the plaintiff was not ready and willing and not being put in possession of the suit sale agreement to be illegal, perverse or suffering from any irregularity. Consequently, I see no reason to interfere with the concurrent findings arrived at by the Courts below warranting exercise of power under Section 100 of the Code of Civil Procedure, 1908. The



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substantial questions of law are answered against the appellant and the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

22.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
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To

- 1.The Additional District Munsif, Villupuram.
- 2.The 1st Additional Sub Judge, Villupuram.

P.B.BALAJI, J.



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