



S.A.No.1025 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE **G.ARUL MURUGAN**

S.A.No.1025 of 2012

and

M.P.No.1 of 2012

M.Paulraj

... Appellant

vs.

1.Pattusamy

2.Panjamoorthy

3.Palanivel

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 31.01.2012 passed in A.S.No.47 of 2011 on the file of III Additional Sub Court, Cuddalore confirming the judgment and decree dated 11.03.2011 passed in OS.No.545 of 2008 before the Principal District Munsif Court, Cuddalore.

For appellant : M/s.R.Meenal

For Respondents : No Appearance.



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J U D G M E N T

The defendant in the suit is the appellant and the plaintiffs are the respondents herein. The Second Appeal is filed against the judgment and decree dated 31.01.2012 passed in AS.No.47 of 2011 on the file of III Additional Sub Court, Cuddalore confirming the judgment and decree dated 11.03.2011 passed in OS.No.545 of 2008 on the file of Principal District Munsif Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

The brief facts, which give rise to the second appeal, are as follows:

3. According to the plaintiffs, the suit property at Vadalur in Item no.1 in RS.No.287/2 measuring 0.16.0 acres and Item 2 in RS.No.287/6 measuring 0.28.0 acres are the patta lands and item no.3 in RS.No.287/1 measuring 3.00 acres is Odai Poromboke. Originally the suit property belonged to one Ramalingam and he was in possession and enjoyment of all the three items of the properties for more than 70 years. The plaintiffs



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1 and 2 and one Kaliyaperumal are the sons of Ramalingam. The said Kaliyaperumal died 25 years ago and his wife also died leaving behind the third plaintiff as the legal heir. After the demise of Ramalingam and Kaliyaperumal, the plaintiffs were in possession and enjoyment of the suit properties as joint family properties.

4. According to the plaintiffs, the defendant resides in Vadalur and he is a friend of the first plaintiff. In May 2008, the defendant approached the plaintiffs and demanded to sell the property. Since the plaintiffs refused, the defendant has sent a notice on 21.06.2008 alleging that on 31.10.1983 that the plaintiffs had agreed to sell the suit property for Rs.6,300/- and executed the sale agreement. According to the plaintiffs, this agreement is fabricated and even if it is true, it cannot be enforced and it will not bind the plaintiffs. The plaintiffs sent a reply stating that they were in possession and enjoyment of the suit properties, but the defendant did not gave any reply. However, the defendant attempted to trespass into the suit property, as such the plaintiffs have filed a suit for declaration of title and permanent injunction. The revenue records in patta, adangal and chitta also stands in the name of the



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plaintiff's father Ramalingam.

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5. The defendant resisted the suit by filing a written statement stating that the suit has been filed without giving the correct survey numbers. The plaintiffs were not able to cultivate the suit item 3 of the property which is an Odai Poromboke, and also item Nos.1 and 2 of the properties. The defendant agreed to purchase the patta lands for Rs.6,300/- and pay a sum of Rs.300/- for Odai Poromboke. Based on the same, the sale agreement was executed between the plaintiffs and the defendant on 31.10.1983 for item nos.1 and 2 of the suit properties and the sale deed was executed in respect of item 3 of the suit property. The period for execution and registration of sale deed was fixed as three years. According to the defendant, since the entire amount was paid, he was put in possession of all the 3 items of the suit properties. The defendant is in possession of the suit properties by carrying on agriculture work. Whenever the defendant insisted for the execution of the sale deed, the plaintiffs were giving some excuse or other and postponed the registration of the sale deed. Since the defendant was in possession, he did not show any urgency and he was always ready and willing to perform his part of the contract. The defendant is entitled to



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the benefit under Section 53(A) of the Transfer of Property Act, and the plaintiffs are debarred from enforcing any right against the defendant in respect of the suit properties.

Evidence and Documents:

6. During trial, two witnesses have been examined on the side of the plaintiffs PW.1 and PW.2 and documents in Exs.A1 to Ex.A6 were marked. On the side of the defendant, four witnesses were examined as DW.1 to DW.2 and documents in Exs.B1 to Ex.B.10 were marked.

Findings of the Court below:

7. After analysing the evidences and documents, the trial court decreed the suit in respect of item nos.1 and 2 of the suit properties and dismissed the suit in so far as the item no.3 is concerned. Aggrieved by the judgment and decree of the trial court, the defendant filed appeal in AS.No.47 of 2011 on the file of III Additional Sub-ordinate Court, Cuddalore along with I.A.No.4 of 2011 to receive additional documents.

8. The lower Appellate Court after reappraising the evidence



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dismissed the appeal confirming the decree of the trial court, but however partly allowed I.A.No.4 of 2011 and received the FMB plan as additional document and marked as Ex.B.11. Aggrieved by the concurrent findings of the fact by the courts below, the defendant is before this Court on appeal.

9. This Court by order dated 19.11.2012, notice of motion was ordered to the respondents.

Submission made by the learned counsel for the appellant:

10. The learned counsel for the appellant argued that since item nos.1 and 2 of the suit properties are patta lands, the plaintiffs after receiving the entire sale consideration of Rs.6,300/- executed the sale agreement dated 31.10.1983 in Ex.B.2. Since item 3 of the suit property is Odai Poromboke, the plaintiffs registered the un-registered sale deed dated 31.10.1983, receiving a sum of Rs.300 in Ex.B.1. On the same day, the plaintiffs handed over the possession of the suit properties to the defendant. As per the sale agreement in Ex.B.2, the sale must be completed within a period of three years. Since the possession of the suit



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properties was handed over to the defendant on the same day, the defendant is entitled to the benefit of Section 53-A of the Transfer of Property Act and the plaintiffs cannot maintain the suit.

11. The learned counsel further contended that even though the defendant has not preferred to enforce the agreement and cannot file a suit as the time has lapsed, the defendant is always entitled to protect his possession as per Section 53(A) of the Transfer of Property Act. The defendant was put in possession of the property pursuant to the contract entered into by the plaintiffs for the transfer of the immovable property.

12. The learned counsel further contended that the defendant has filed the adangal extract in Ex.B.3 to B.7 to show that he is in possession of the property. The learned counsel further contended that both the courts below have not considered the evidences and documents in the proper perspective and therefore sought for interference of this Court to allow the second appeal.

13. Even though the respondents are served and their names are printed in the cause list, there is no appearance on the side of the



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respondents.

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14. Heard the learned counsel for the appellant and perused the material available on record.

15. Admittedly, the plaintiffs are the owners of the item nos.1 and 2 of the suit properties which are in sub division survey nos.287/2, 287/6 and item no.3 in survey no.287/1, is the Odai Poromboke land. Originally, item nos.1 and 2 of the suit properties belonged to one Ramalingam, who is the father of the first and second plaintiffs and Kaliyaperumal and the third plaintiff is the legal heir of the Kaliyaperumal. The plaintiffs, being the owners of the patta lands in item nos.1 and 2 of the suit properties, they were in possession and enjoyment of the properties. Pattas in respect of item nos.1 and 2 of the suit properties have been issued in Ex.A.1 and A.2 in favour of the plaintiffs. Only after the defendant issued a legal notice in Ex.A.5, alleging that the plaintiffs executed the sale agreement in favour of defendant with respect to item nos.1 and 2 of the suit properties dated 31.10.1983 in Ex.B.2 and also an un-registered sale deed dated 31.10.1983 in Ex.B.1, the plaintiffs issued a reply in Ex.B.6 to the defendant and have come up



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with the suit for declaration and permanent injunction. The defendant claims that the plaintiffs entered into a sale agreement with the defendant in Ex.B.2 by receiving a sale consideration of Rs.6,300/- and handed over the possession of the suit properties to the defendant on the same day. Further he executed an un-registered sale deed dated 31.10.1983 in Ex.B.1 in favour of defendant and also handed over to the possession of item 3 of the suit property to the defendant.

16. Even as per the recitals in Ex.B.2, the period fixed is three years, and the defendant, if at all, had any right, would have filed the suit within a period of three years from the date of the sale agreement dated 31.10.1983. Admittedly, the defendant had never exercised his right and filed suit for specific performance of the agreement. Therefore, the defendant lost his right of seeking specific performance of the agreement through Ex.B.2. Further, on perusal of the document in Ex.B.2, it reveals that there is no averment in respect of handing over possession of the suit property to the defendant. The agreement merely gives the right to the defendant to purchase the property and even this agreement has been disputed by the plaintiffs. When the document has been disputed by the



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plaintiffs, the onus is on the defendant who claims right under Ex.B.2 to prove the same. The defendant kept silent from the year 1983 till the suit was filed by the plaintiffs in the year 2008. Even in the suit, defendant has not taken any steps to examine the attesting witnesses in Ex.B.1 and Ex.B.2 to prove the document. Further when the plaintiffs have disputed the signature found in Ex.B1 and Ex.B2, the defendant has not taken any steps to compare the signature found in Ex.B.1 and Ex.B2 with admitted signatures, by sending the same for expert opinion. But without proving the document, the defendant simply contends that Ex.B.1 and Ex.B2 are genuine.

17. The defendant by filing the adangal in Ex.B.3 to Ex.B.7 claims that he is in possession of the suit property. There is no other material or evidence produced on the side of the defendant to show that the possession of the suit property was handed over by the plaintiffs to the defendant on the execution of Ex.B.2. Even the adangal filed by the defendant does not correlate and correspond to the suit property. It is the specific case of the defendant, that the adangal in Ex.B.1 to Ex.B.7 pertains to item no.3 of the suit property. When the item no.3 of the suit



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property is in survey no.287/1, the adangals filed by the defendant pertain to only survey no.288. As referred earlier, even the documents in Ex.B.1 or Ex.B.2, do not show that the possession was handed over. The main contention of the defendant is that he has lost his right for enforcing specific performance, but he is still entitled to protect his possession as per Section 53(A) of the Transfer of Property Act.



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18. Section 53-A of the Transfer of Property Act, 1882, is extracted hereunder,

“53-A. Part performance – Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of



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the contract”.

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19. The learned counsel for the appellant argued that since the possession was handed over by the plaintiffs towards part performance based on the contract entered into by them with the defendant in respect of immovable property in Ex.B.2, the right is always available with the defendant. Therefore, the plaintiffs cannot maintain the suit against the defendant and the claim cannot be sustained. When the defendant claims that possession was handed over to the plaintiffs to have protection under Section 53(A) of the Transfer of Property Act, it is for the defendant to establish and prove that the possession was handed over to the plaintiffs on the execution of the agreement in Ex.B.2, towards part performance of the contract entered into with him for the immovable property and that he is in possession and enjoyment of the property. As referred earlier, the defendant has failed to establish the fact that the possession was handed over by the plaintiffs to the defendant by executing the sale agreement. The defendant has failed to prove the document in Ex.B.2 and further even the perusal of the cross examination of DW.1 and DW.2 shows that they do not support the case of the defendant and also the documents filed by him does not show that the possession was handed over to the



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defendant.

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20. In such circumstances, the defendant is not entitled to any protection under Section 53(A) of the Transfer of Property Act. The trial court and the lower appellate court have concurrently found that the defendant has failed to establish that the possession was handed over to him and have not proved the documents in Ex.B.2 executed in the year 1983. From the documents filed by the plaintiffs in Ex.A.1 and A.2, the courts below have concurrently held that the plaintiffs have established their title and have decreed the suit for item nos.1 and 2 of the suit properties and dismissed in respect of item no.3 of the suit property, since it is odai poromboke land, The findings of the courts below are based on the materials available on record and are not perverse.

21. This Court does not find any question of law, much less substantial question of law, that arise for consideration in the above second appeal. In the result, the second appeal is dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous petition is closed.



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Index : Yes/No
Speaking order/Non-speaking order
drl

To

1. The III Additional Sub Court,
Cuddalore.
2. The Principal District Munsif Court, Cuddalore.
3. The Section Officer, V.R. Section, High Court, Madras.



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G.ARUL MURUGAN,J

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