



S.A.No.554 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.554 of 2012

and

M.P.No.1 of 2012

1.Amutha

2.Balu

... Appellants

vs.

Sethurajan

...Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.08.2011 in A.S.No.40 of 2010 passed by the learned Additional Sub Judge, Mayiladuthurai, confirming the judgment and decree dated 10.03.2010 in O.S.No.141 of 2009 passed by the learned Principal District Munsif, Mayiladuthurai.

For appellants : Mr.B.Jawahar

For respondent : Mr.R.Ravichandran

J U D G M E N T

The defendants in the suit are the appellants before this Court.

Pending Second Appeal, the second appellant died and no steps have



S.A.No.554 of 2012

been taken to substitute his legal heirs.

WEB COPY

2. This Second Appeal is filed challenging the judgment and decree dated 30.08.2011 in A.S.No.40 of 2010 on the file of the Additional Sub Court, Mayiladuthurai, confirming the judgment and decree dated 10.03.2010 in O.S.No.141 of 2009 on the file of the Principal District Munsif Court, Mayiladuthurai.

3. For the sake of convenience, the parties will be referred to as per the ranking before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are as follows:

4. According to the plaintiff, the plaintiff's mother Dhanalakshmi and the first defendant's mother Panchavarnam are sisters. Therefore, the plaintiff and the first defendant are also brother and sister. The second defendant is the husband of the first defendant. The plaintiff had purchased the suit property on 24.04.2008 and from then, he had been in possession and enjoyment of the suit property and carrying on cultivation and had also been paying kist to the Government. The plaintiff



S.A.No.554 of 2012

WEB COPY

had borrowed a loan from the defendants and when the plaintiff wanted to repay the loan amount, the defendants demanded high rate of interest. Therefore, due to enmity, the defendants attempted to trespass into the property on 11.03.2009 and also the plaintiff issued a legal notice to the defendants on the same day, for which, the defendants sent an evasive reply on 13.03.2009. Since the defendants continued their attempt, the plaintiff came up with the suit for bare injunction.

5. The defendants resisted the suit by contending that the plaintiff had purchased the suit property on 24.04.2008 from one Ramamoorthy, where the defendants were actually residing. The defendants, even though, admitted the title of the plaintiff, claimed that the plaintiff was not in actual possession. According to the defendants, the plaintiff had executed an agreement of sale in favour of the second defendant on 28.09.2008 for a total consideration of Rs.2,25,000/- and the plaintiff had received an advance of Rs.1,60,000/- on the date of agreement itself and agreed to receive the balance sum of Rs.65,000/- by the end of the Thai month to execute the sale deed. The second defendant was put in possession of the suit property. From then, the second



S.A.No.554 of 2012

defendant had been in possession of the suit property and carrying on cultivation and he had insured the standing crops in the suit property with the Agricultural Co-operative Bank, Uluthukuppai. Since the plaintiff attempted to sell the suit property, he issued a paper publication on 20.03.2009. Therefore, the present suit was filed and sought for dismissal of the suit.

Documents and evidence:

6. During trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and two other witnesses viz., Tamilarasan and Rajasekar were examined as P.W.2 and P.W.3, respectively and Exs.A1 to A5 were marked. On the side of the defendants, the second defendant was examined as D.W.1 and two more witnesses viz., Subramanian and Govindaraj were examined as D.W.2 and D.W.3, respectively and Exs.B1 to B3 were marked.

Findings of the Courts below:

7. After appreciating the evidence and documents, the Trial Court decreed the suit. The Trial Court rejected the sale agreement in



S.A.No.554 of 2012

Ex.B1, as there was several corrections and interpolations and the defendants have not proved the agreement. The Trial Court also found that the plaintiff was in possession of the suit property.

8. Aggrieved by the same, the defendants filed the appeal in A.S.No.40 of 2010, on the file of the Additional Sub Court, Mayiladuthurai. The Lower Appellate Court, after re-appreciating the evidence, dismissed the appeal confirming the judgment of the Trial Court.

9. Aggrieved by the concurrent finding of fact, the defendants are before this Court in this Second Appeal.

Substantial questions of law:

10. This Court, by order dated 27.04.2012, framed the following substantial questions of law:

“1. Whether the judgment of the Courts below are liable to be set aside, in its granting a decree for bare injunction, when plaintiff failed to prove his possession



WEB COPY



S.A.No.554 of 2012

over the suit property?

2. Whether the Courts below erred in not adverting to the material admission of P.W.1 that possession of suit property was handed over to appellant on the date of Ex.B1?"

Submissions on both sides:

11. The learned counsel appearing for the defendants/appellants argued that even though the defendants had admitted the title of the plaintiff in respect of the suit property, when the plaintiff had admitted the signature in Ex.B1/sale agreement, then, automatically, the contents of the documents had also been admitted.

12. The learned counsel further argued that P.W.1/plaintiff, in his evidence, stated that in fact, he has admitted that the possession of the suit property was handed over and also the plaintiff was residing 80 kilometers away from the suit property. Hence, it was not possible for him to personally carry on cultivation. The learned counsel also pointed out that P.W.2, in his evidence, stated that for the loan availed by the plaintiff alone, promissory notes were executed and therefore, it cannot



S.A.No.554 of 2012

WEB COPY

handed over pursuant to part performance of the sale agreement in Ex.B1, the defendants cannot seek protection of possession, as per Section 53A of the Transfer of Property Act, 1882.

15. The learned counsel further submitted that the Courts below have rightly rejected the sale agreement in Ex.B1 and have found that the plaintiff is in possession of the suit property. Therefore, the finding of fact arrived at is based on the materials available on record and sought for dismissal of this Second Appeal.

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

Analysis of the submissions:

17. It is admitted by the parties that the plaintiff had purchased the suit property on 24.04.2008 through sale deed in Ex.A1 and the plaintiff is the owner of the suit property. It is also admitted that the plaintiff's mother and the first defendant's mother, being sisters, the plaintiff and the first defendant are brother and sister and they are close



S.A.No.554 of 2012

WEB COPY

relatives. The plaintiff, apart from filing of sale deed in Ex.A1, has filed the document in Ex.A2, which is the kist receipt in his name.

18. According to the plaintiff, pursuant to the purchase of the suit property, he has been in possession and enjoyment by carrying on cultivation in the suit property. Even though, in his evidence, he has stated that he is residing 80 kilometers away, it does not mean that there is no possibility for him to carry on cultivation. The evidence of the plaintiff only goes to show that the suit property was in his direct cultivation, which would have been carried on by engagement of men and labours. It is the case of the plaintiff that he had borrowed a loan from the defendants and pursuant to the loan, the documents were executed and when the plaintiff sought to repay the loan amounts, since the defendants demanded huge interest, enmity arose between them, due to which, the defendants tried to trespass with the suit property, which led to filing of the suit.

19. On the contrary, the claim of the defendants is that the sale agreement in Ex.B1 was executed by the plaintiff on 28.09.2008 for a



S.A.No.554 of 2012

total sale consideration of Rs.2,25,000/- and an advance of Rs.1,60,000/- was paid on the same day and the balance sum of Rs.65,000/- had to be paid at the end of Thai month for execution of the sale deed. Further, the claim of the defendants is that even on the date of execution of the sale agreement, the second defendant was put in possession of the suit property as part performance of the agreement executed in Ex.A1. It is also admitted that he has not filed any suit for specific performance of the agreement in Ex.B1, however, only seeks to protect his possession, which was allegedly handed over to him on 28.09.2008 in view of Section 53A, *ibid.*

20. Even though the second defendant is entitled to protect his possession as per Section 53A, *ibid.*, he has to establish that the sale agreement was executed and pursuant to the sale agreement, he had been put in possession of the suit property. It is the case of the defendants that in the evidence, since the plaintiff had admitted the signature, then, naturally, the contents are also deemed to be admitted and therefore, the sale agreement in Ex.B1 stands proved and the defendants are entitled to protect their possession.



S.A.No.554 of 2012

WEB COPY

21. Admittedly, the sale agreement in Ex.B1 is an unregistered sale agreement and the plaintiff had categorically admitted that he had availed loan from the defendants and had executed the documents and when the loan was sought to be repaid, enmity arose between the parties. When the evidence of P.W.2 will go to show that in fact, the loan was availed by the plaintiff from the defendants and promissory notes were executed and when it has been established that there was a loan transaction between the plaintiff and the second defendant, it cannot be taken that the contents of the document in Ex.B1 have been admitted by the plaintiff.

22. As already stated, even if the sale agreement in Ex.B1 is taken to be subsisting, it is for the second defendant to prove that actual possession was handed over to him on part performance of the agreement in Ex.B1. The defendants heavily relied on evidence of P.W.3/Village Administrative Officer, who had given evidence, the second defendant is carrying on cultivation. As rightly held by the Courts below, when P.W.3/Village Administrative Officer has deposed before the Court that he can only give evidence based on the records available with him and



S.A.No.554 of 2012

when P.W.3 had given evidence that the crop was insured and also had entered into the Adangal register, those documents have not been produced before the Court and when the evidence is let in by P.W.3 without the availability of these documents, oral evidence cannot be taken into account and have been rightly rejected by the Court.

23. The Courts below also found that there are several corrections found in the unregistered sale agreement in Ex.B1 and the defendants have not taken any steps to examine the attestors to the sale agreement in Ex.B1 to prove that document.

24. When the plaintiff filed the documents in Ex.A2, which are kist receipts issued in the name of the plaintiff and the defendants have not established through documents and evidence that they were actually put in possession of the suit property by executing the sale agreement in Ex.B1, the defendants cannot sustain the claim that he is entitled to protect the possession under Section 53A, *ibid*.

25. Since the Courts below have concurrently found that the



S.A.No.554 of 2012

WEB COPY

plaintiff is in possession of the suit property, which is based on evidence and materials available on record and there is no illegality and perversity, this Court is not inclined to interfere with the concurrent finding in the Second Appeal.

26. In view of the above, the substantial questions of law are answered against the appellants and in favour of the respondent.

27. In the result, this Second Appeal stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.03.2024.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd

To

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



WEB COPY



S.A.No.554 of 2012

G.ARUL MURUGAN,J

apd

S.A.No.554 of 2012

20.03.2024