



S.A.No.515 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.02.2024

Judgment pronounced on : 23.02.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B.BALAJI

S.A.No.515 of 2018
and CMP.No.14092 of 2018

1. Meena
2. Rajamani

...Appellants

vs.

Dhanapal

...Respondent

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree, dated 06.01.2018 in AS.No.21 of 2014 on the file of the learned Subordinate Judge, Rasipuram confirming the judgment and decree dated 28.03.2014 in OS.93 of 2013 on the file of the District Munsif, Rasipuram and thereby allow the appeal.

For Appellants : Mr.N.Suresh

For Respondent : No Appearance



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JUDGMENT

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The unsuccessful defendants in a suit for permanent injunction are the appellants in the present second appeal. The parties are described as per their litigative status before the Trial Court.

2. It is the case of the plaintiff that on 19.03.2010, he purchased the suit property from one Kandasamy, who represented the minor owner as guardian. It is further stated that on attaining the age of majority, a consent deed was also executed by the minor on 15.10.2012, ratifying the sale in favour of the plaintiff. The defendants are daughters of the said Kandasamy i.e. the sisters of the then minor son.

3. It is the case of the plaintiff that the defendants, without having any semblance of right in the suit property, were trying to interfere with the plaintiff's possession and therefore, the plaintiff approached the Court seeking the relief of permanent injunction.

4. The defendants filed written statement stating that they are in possession of the suit property and at no point of time, the plaintiff was



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put in possession, even though the plaintiff claims to have purchased the suit property from the defendants' brother. According to the defendants, they have alone been in possession of the suit property and at no point of time, the plaintiff was put in physical possession of the suit property. The defendants also claim their right by invoking adverse possession.

5. The Trial Court decreed the suit as prayed for. On appeal, the First Appellate Court confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the defendants have preferred the present second appeal.

6. On 29.11.2018, the above second appeal was admitted on the following substantial questions of law:

"A. Whether the Courts below are right in decreeing the suit in favour of the plaintiff being a suit for permanent injunction, when the plaintiff had not proved that he is in possession and enjoyment of the property on the date of filing of the suit?"

B. Whether in law the Courts below can decree the suit for permanent injunction without the plaintiff proving that he is in possession and enjoyment of the property on the date of filing of the suit?"



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7. I have heard Mr.N.Suresh, learned counsel for the appellants and there is no appearance on the side of the respondent. I have also gone through the judgments of the Trial Court as well as the First Appellate court.

8. The learned counsel for the appellants/defendants would state that the plaintiff, though claiming his right under the registered sale deed executed by the guardian, who is the father of then minor and also the consent deed ratifying the sale deed, never established the factum of being in physical possession of the suit property on the date of filing the suit. In fact, the counsel for the appellants took me through the evidence of PW1, who had categorically admitted that the defendants are in possession of the suit property and the plaintiff resides in a different Village. The plaintiff also admitted that the suit property has no electricity service connection in his name and when suggested that the suit property enjoyed electricity service connection No.588, he has not been able to deny the said suggestion. The said electricity service connection No.588 stands in the name of the defendants.



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9. The documents exhibited on the side of the plaintiff at the time of the trial are Exs.A1 to A3. Ex.A1 is the sale deed in favour of the plaintiff, Ex.A3 is the consent deed in favour of the plaintiff, Ex.A2 is the series of house tax receipts (3 in number). On the side of the defendants, first defendant examined herself as DW1 and marked Exs.B1 to B4. Ex.B1 is the Voter ID of first defendant, Ex.B2 is the nativity certificate issued by the Tahsildar in favour the first defendant. Ex.B3 is the Voter List which reflects the name of the first defendant, Ex.B4 is the complaint given by the second defendant Rajamani in FIR Crime No.253/2013 against the plaintiff on 15.05.2013.

10. In the said complaint, the second defendant stated that the plaintiff had allegedly threatened the defendants with forcible dispossession. These documents coupled with the admission of PW1 that the defendants are in physical possession of the suit property, have been totally lost sight of by the Courts below. The Trial Court as well as the Appellate Court appeared to have been carried away by the fact that the plaintiff has a sale deed in his favour, which was also ratified by way of a consent deed executed by the minor vendor, after attaining the age of majority.



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11. In a suit for permanent injunction, it is incumbent on the plaintiff to establish, by satisfactory oral and documentary evidence, that he is in possession of the suit property. Merely because the plaintiff is the title holder of the suit property, it would not straight away entitle him to a decree of permanent injunction. It is the specific case of the defendants that they have always been in possession and they are none other than the own sisters of the vendor of the plaintiff.

12. Admittedly, the vendor was a minor when the sale deed was executed in favour of the plaintiff and he was represented by his father, Kandasamy and the family was living together in the suit property. In the light of the documents exhibited by the defendants before the Trial Court and also the fact that the plaintiff himself had admitted in cross examination that the defendants were in possession and when he attempted to vacate the defendants, the same resulted in a police complaint, it is clear that the plaintiff is not in possession of the suit property. This evidence of PW1 is also corroborated by Ex.B4, FIR in Crime No.253/2013. Thus, on an over all consideration of the oral and documentary evidence, the plaintiff has not been able to establish that he



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was put in physical possession of the property as on the date of his purchase, i.e., on 19.03.2010. Further, even otherwise, the plaintiff has not been able to establish that he was in possession on the date of filing of the suit in June 2013. Except the house tax receipts in EX.A2, the plaintiff has not exhibited any other document to evidence physical possession. Normally, the house tax receipts will be issued only in the name of the title holder of the property. Admittedly, there has been a sale deed in favour of the plaintiff and therefore merely because the house tax receipts are in the name of the plaintiff, it would not automatically mean or lead to a presumption that the plaintiff is in physical possession of the suit property, during the relevant periods of payment of house tax to the Municipality or Corporation, as the case may be.

13. Thus, the Courts below have erroneously decreed the suit, without appreciating the oral and documentary evidence adduced by the parties, in a judicious manner and a proper perspective. In fact, the First Appellate Court has decreed the suit on the ground that an injunction cannot be granted against a true owner, losing sight of the fact that it is not the defendants, who came forward with a suit seeking the relief of injunction against the plaintiff, the owner. It is a converse case where the



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plaintiff himself, claiming to be the true owner, sought for an injunction.

Therefore, the well settled principle that injunction cannot be granted against the true owner will not be applicable to the facts of the present case.

14. In view of the above, both the substantial questions of law are answered in favour of the appellants. The second appeal stands allowed and the suit in O.S.No.93 of 2013 on the file of District Munsif Court, Rasipuram stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

pvs

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

1. The Subordinate Judge, Rasipuram
2. The District Munsif, Rasipuram



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P.B.BALAJI, J.

pvs

PRE DELIVERY JUDGMENT IN

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