



S.A.No.562 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.01.2024

Delivered on: 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.562 of 2018
and
C.M.P.No.16855 of 2018

K.Kanimozhi

...Appellant

Vs.

D.Muthulakshmi

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 13.10.2017 passed in A.S.No.81 of 2017 on the file of the Principal Judge, City Civil Court, Chennai reversing the Judgment and decree dated 10.01.2017 in O.S.No.1145 of 2015 on the file of the VII Assistant City Civil Judge, Chennai.

For Appellant : Mr.V.Manoharan

For Respondent : Mr.G.RM.Palaniappan



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JUDGMENT

The unsuccessful plaintiff in a suit for permanent injunction is the appellant herein.

2. The material facts that are necessary for deciding the above Second Appeal are as follows:

The plaintiff, claiming to be residing in the ground floor of the suit property and that she had contributed a sum of Rs.3,50,000/- for purchase of the property in the name of the defendant her mother and believing the representation of the defendant that the defendant would give half share in the property to the plaintiff, while occupying the suit property, on the allegation that the defendant was trying to sell the suit property behind the back of the plaintiff and attempting to disturb the peaceful possession and enjoyment of the plaintiff, the suit.

3. The defendant resisted the said suit on the ground that the plaintiff, after marriage were residing in her matrimonial home and she was not in



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possession of the suit property. Considering that the plaintiff was not having a property of her own and was living in a rented place, shifting her residence from time to time, the defendant permitted the plaintiff and her daughter to use the suit address for record purposes. The Trial Court decreed the suit in part granting a permanent injunction restraining the defendant from causing disturbance to the plaintiff, except by due process of law.

4. Aggrieved by the said judgment and decree the defendant/mother preferred an appeal in A.S.No.81 of 2017. The First Appellate Court reversed the judgment and decree of the Trial Court, finding that the plaintiff had not proved her physical possession and consequently was not entitled to relief of permanent injunction.

5. Aggrieved by the reversing finding rendered by the First Appellate Court, the plaintiff has preferred the present Second Appeal.

6. For the sake of convenience, the parties are referred to as per their



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rank before the Trial Court.

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7. On 26.08.2019, this Court framed the following substantial questions of law:

“1. Whether the appellate Court followed the provisions of Evidence Act, while appreciating the evidentiary value of deposition of PW1 and DW1 and also marked the exhibits on their behalf?

2. Whether the appellate Court has not properly appreciated the pleading of the plaintiffs and the defendants in respect of their defence?”

8. As both the questions of law are interconnected they are taken up together and decided.

9. I heard Mr.V.Manoharan, learned counsel for the appellant/plaintiff and Mr.G.R.Palaniappan, learned counsel for the respondent/defendant.

10. The relationship between the parties is admitted, being daughter



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and mother. It is not disputed that the suit property was purchased in the name of the mother, the defendant. Though the plaintiff state a claim over the said property on the strength of an allegation that she had contributed a sum of Rs.3,50,000/-, during trial, the plaintiff was not able to establish the said factum by letting in satisfactory oral and documentary evidence. The Courts below have rightly rejected the said plea of the plaintiff that she had contributed a sum of Rs.3,50,000/- towards purchase of the suit property.

11. The only point that survives for consideration in the Second Appeal is as to whether the plaintiff was in physical possession of the suit property on the date of filing of the suit. In order to establish physical possession, the plaintiff exhibited Exs.A1 to A6. Exs.A1 to A4 are self serving documents and therefore cannot come to the rescue of the plaintiff for the purposes of proving that she was in physical possession of the suit property. Exs.A5 and A6 are the voter id and family card, wherein the name of the plaintiff is found. However, even in the written statement, the mother, the defendant has explained the circumstances under which the name of the



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plaintiff came to be included in Exs.A5 and A6.

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12. Per contra, on the side of the defendant, she exhibited Exs.B1 to B14 in support of her defence. Exs.B9 to Ex.B12 are relevant for the purpose of deciding the contentious issue viz., the factum of physical possession being with the plaintiff or not. The plaintiff has been served with the caveat filed by the defendant before the High Court as well as the City Civil Court on different dates in March 2014 and December 2014. The address in which the defendant has been served is her mother-in-law's address. Similarly in Ex.B9, the reply notice dated 27.03.2014 also a copy has been marked to the plaintiff personally which is also received by her only at the matrimonial home and not in the suit property. These aspects have been rightly gone into by the First Appellate Court before holding that the plaintiff was not in physical possession of the suit property on the date of filing of the suit.

13. Though the learned counsel for the appellant/plaintiff would harp on Exs.A5 and A6, I do not find the said family card or voter id helping the plaintiff's cause because the defendant has convincingly explained the



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reasons for providing the suit property address as the address of the plaintiff even at the first instance viz., written statement and the same has not been rebutted by the plaintiff during her evidence.

14. On the contrary, the learned counsel for the respondent would state that there was no satisfactory pleading also with regard to physical possession and mere reliance on Exs.A5 and A6 would not establish that the plaintiff was in physical possession when the defendant had let in evidence in the nature of clearly proving that the plaintiff was not residing in the suit property by marking Exs.B9 to B12.

15. The learned counsel for the defendant would also state that the plaintiff has received the various caveats and reply notices on different dates which would clearly show that the plaintiff was residing only in the matrimonial home and not in the suit property.

16. The Trial Court has primarily placed reliance on Exs.A5 and A6 to



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hold that the plaintiff was in physical possession and that her possession could be disturbed only by due process of law and not otherwise. The First Appellate Court has rightly discussed the oral and documentary evidence and found from Exs.B9 to B12 that the plaintiff was not in physical possession of the suit property. The said finding of the First Appellate Court was based on pleading and oral and documentary evidence available on record. The said finding of the First Appellate Court is not perverse or illegal, requiring interference U/s. 100 of C.P.C. Consequently, both the substantial questions of law are answered against the plaintiff.

In fine, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2024

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Internet : Yes/No
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To

1. The Principal Judge, City Civil Court, Chennai
2. The VII Assistant City Civil Judge, Chennai.



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P.B.BALAJI, J,

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Pre-delivery Judgment in

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and

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