



Second Appeal No.309 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.309 of 2013

Sekar

.... Appellant

-Vs-

1.Aathimoolam

2.Vedhavalli

3.Ravi

4.Amudha

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 07.11.2012 made in A.S.No.64 of 2011 on the file of the learned Subordinate Judge, Nagapattinam confirming the judgment and decree dated 28.02.2011 made in O.S.No.178 of 2007 on the file of the learned District Munsif, Nagapattinam.

For Appellant : Ms.G.Lavanya
for Mr.T.Saikrishnan

For Respondents : Mr.D.Vairamoorthi

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the Subordinate Judge at Nagapattinam in A.S.No.64 of 2011 dated 07.11.2012 in confirming the judgment and decree of the learned District Munsif at Nagapattinam in O.S.No.178 of 2007 dated 28.02.2011. For the sake of convenience, the parties are referred to as per their rank in the suit.



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2. The case of the plaintiff is that the suit scheduled mentioned properties belonged to one Manickavasagam. The said Manickavasagam is none other than the father of the plaintiff Sekar. Prior to this suit, three persons viz., Thangappa, Dhanabakkiyam and Thangappa's brother Chinnappa had filed O.S.No.296 of 1991 against Manickavasagam and his sons Gunaseelan, Sekar, Govindaraj, Rajadurai and his daughter Mallika for the relief of permanent injunction. This suit was based on the sale deeds executed by the said Manickavasagam in favour of Thangappa on 19.06.1984. Thangappa has also relied upon a sale deed executed by Vasantha, the daughter of Manickavasagam, in favour of his wife Dhanabakkiyam on 24.11.1987. Originally the suit had been decreed. The plaintiff, his father and his siblings preferred an appeal before the Subordinate Court at Nagapattinam in A.S.No.45 of 1999. The said appeal was allowed on 08.07.1999. The Appellate Court allowed the appeal and remanded the matter for fresh disposal. Thereafter, due to bifurcation of jurisdiction, the suit in O.S.No.296 of 1991 stood transferred to the file of the District Munsif at Thiruthuraipoondi and was renumbered as O.S.No.337 of 2000. Finally, the said suit was dismissed for default on 26.08.2000. The plaintiff would state that since he is enjoying the properties, he is entitled to the relief of permanent injunction.

3. The case of defendants is that they admitted to the sale made by Manickavasagam in favour of Thangappa on 19.06.1984 and the purchase by



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Dhanabakkiyam from Vasantha, the daughter of Manickavasagam on 24.11.1987.

They would plead that after the purchase had been made, Dhanabakkiyam and Thangappa has been in possession and enjoyment of the property. The present defendants would state that Thangappa and Dhanabakkiyam had entered into an agreement of sale and had put them in possession and therefore the present suit for permanent injunction is not maintainable.

4. On the basis of the aforesaid pleadings before the trial Court, the following issues were framed:

1. வாதி கோரும் நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா ?
2. தாவா செலவுத்தொகை இதர பரிகாரங்கள் குறித்த உத்தரவு என்ன ?

5. On the side of the plaintiff, he examined himself as P.W.1 and marked Exs.A1 to A9. On the side of the defendants, the first defendant examined himself and another witness and marked Exs.B1 to B15.

6. The trial Court, on consideration of these facts came to the conclusion that the plaintiff has not proved his possession of the property and therefore dismissed the suit. Aggrieved by the same, an appeal was preferred before the learned Subordinate Judge at Nagapattinam, who confirmed the decree.



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7. As against the concurrent findings, the present Second Appeal has been preferred before this Court. Originally, notice regarding admission had been ordered by this Court on 05.07.2013. Thereafter, the Second Appeal was admitted on the following substantial questions of law.

" (1) Whether a counter claim agitating the possession of the appellant by virtue of a time barred sale agreement got by the respondent is valid one?

(2) Whether a time barred sale agreement of the respondents could not be valued at a later time and can it be valued as per the Transfer of Property Act and related portion as per the Specific Relief Act?

8. I heard Ms.G.Lavanya for Mr.T.Sai Krishnan, learned counsel for the appellant and Mr.D.Vairamoorthi, learned counsel for the respondents 1 to 4.

9. Ms.Lavanya would contend that Manickavasagam is the owner of the property and he had executed a Will in favour of Vasantha, his daughter and therefore she succeeded to the estate. According to her, by virtue of the testamentary succession, Vasantha is the owner. She would further invite the attention of the Court to the previous suits between Thangappa, Dhanabakkiyam and the members of the family of the plaintiff in O.S.No.296 of 1991 and would contend that since that suit has been dismissed, the plaintiff has proved



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possession of the property and therefore the Courts below had fallen in error and the plaintiff is entitled to a decree for permanent injunction.

10. Mr.D.Vaira Moorthi learned counsel for the defendants would contend that in a suit for permanent injunction, the plaintiff would have to prove possession of the property and this not having been done, the findings of the Courts below should not be interfered.

11. He would invite the attention of this Court to Ex.B10 to B12 to show that Manickavasagam during his life time had alienated the property in favour of Thangappa and Vasantha, his daughter had alienated the property in the year 1986 in favour of Dhanabakkiyam, the wife of Thangappa and having alienated the property, the former's son and the latter's brother, the brother is presenting the present suit.

12. I have gone through the records and perused the judgments of the Courts below.

13. I need not travel into the question of title because, this is a suit for bare injunction based on possession. On the side of the plaintiff, no documents worth its name have been produced in order to show that the plaintiff is in



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possession and enjoyment of the property. I am not in agreement with the submission made by Ms.G.Lavanya that since Thangappa and Dhanabakkiyam have lost, that amounts to a decree in favour of the defendants. If a suit is presented and dismissed, the Court has only come to the conclusion that the plaintiff has not proved his case. It does not mean that the decree is in favour of the defendant as if the defendant has proved his case. If the plaintiff fails to prove his case and the suit is dismissed, the buck stops there. No right accrues to the defendant. Therefore, the dismissal of O.S.No.178 of 2007 does not carry the case of the present plaintiff to the extent of coming to the conclusion that he is in possession of the property.

14. Insofar as the argument that the defendants are only agreement holders and therefore they are not entitled to prevent the true owners is concerned, a plaintiff should stand or fail on his own case. It is true that after the amendment of the Registration Act, agreement of sale together with possession requires registration. In case it is not done, it will attract the wrath of Section 17 read with Section 49 of the Registration Act. This position of law does not mean that the plaintiff is entitled to a decree against the defendants. The plaintiff still has to prove his possession of the property.



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15. As already premised, the plaintiff has not proved possession of the property, is not entitled to a decree for permanent injunction. It is always open to the plaintiff to present a proper suit as is open to him and I am sure if such a suit is presented, the suit will be decided on its own merits. In order to succeed in a suit for permanent injunction, the plaintiff has to prove his possession and unfortunately as found by the Courts below, the plaintiff has not. Consequently, the only order that has to be passed in this case is one of dismissal. Therefore, the Second Appeal stands dismissed. The judgment and decree dated 07.11.2012 made in A.S.No.64 of 2011 on the file of the learned Subordinate Judge at Nagapattinam in confirming the judgment and decree of the learned District Munsif at Nagapattinam in O.S.No.178 of 2007 dated 28.02.2011 stands confirmed. Since the parties have been litigating before the Court since 1991, I am not inclined to impose costs.

20.02.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The Subordinate Judge, Nagapattinam.
- 2.The District Munsif, Nagapattinam.



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V.LAKSHMINARAYANAN, J.

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