



S.A.No.310 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.310 of 2013

Harak Chand J.Golecha

.. Appellant

Vs.

1.Babulal B.Tater

2.Leeladevi S.Tater

3.Bhagavathi Devi R.Tater

4.Ishwarchand B.Tater (Died)

5.Pushpa Devi

6.Tarun Tater

7.Kunal Tater

8.Pinky Shrisrimal

9.Aruna Chordia

10.Surekha Kothari

11.Sandhya Palrecha

.. Respondents



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(R4 died, RR8 to 11 brought on record as LR's of the deceased R4 vide Court order dated 04.08.2022 made in C.M.P.No.9854 of 2022 in S.A.No.310 of 2013 by TVTSJ and RR5 to 7 brought on record as LRs of the deceased R4 viz., Ishwarchand B.Tater vide Court order dated 22.11.2021 made in C.M.P.No.12058 of 2021 in S.A.No.310 of 2013 by TKRJ)

Prayer : The Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 24.06.2011 passed by the learned VII Additional City Civil Judge, Chennai in A.S.No.27 of 2010 confirming the judgment and decree, dated 24.08.2009 passed by the learned XI Assistant City Civil Judge, Chennai in O.S.No.6711 of 2007.

For Appellant : Mr.Prahlad Bhat
for Rahul Balaji

For RR1 to 3 &
RR5 to 11 : Mr.K.S.Sundar



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JUDGMENT

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The present Second Appeal arises out of the judgment and decree of the Court of the learned VII Additional City Civil Judge at Chennai in A.S.No.27 of 2010, dated 24.06.2011 in confirming the judgment and decree of the Court of the learned XI Assistant City Civil Judge at Chennai in O.S.No.6711 of 2007, dated 24.08.2009.

2. O.S.No.6711 of 2007 was presented for the relief of :

- (a) Bare recovery of possession of 1383 Sq.ft. of the portion marked in the sketch attached with the plaint and
- (b) for payment of cost.

3. The case of the plaintiff is that the property was originally owned by one S.Thirugnanam and his mother, S.Rukmani. The total extent of the property is about 1 ground and 1250 Sq.ft. He had entered into an agreement with S.Thirugnanam and his mother, S.Rukmani on 27.08.1990. The plaintiff claims that he had paid a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the aforesaid persons.



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4. The plaintiff claimed that, dehors this agreement of sale, he had entered into a lease agreement with S.Thirugnanam and S.Rukmani on 15.09.1993. Thereby, he became a tenant of 0.75 grounds marked 'B' in the schedule property. An agreement had been entered in the year 1993 and the agreement was for a period of eleven months. He was running a commercial establishment under the name and style of “Balaji Engineering Works”.

5. The plaintiff would state that for 1000 Sq.ft., he was paying rents regularly till March 1996 to S.Thirugnanam and S.Rukmani. Since S.Thirugnanam and S.Rukmani had vacated an another tenant by name Radhakrishnan in the 383 Sq.ft., that portion had fallen vacant and he had entered into an agreement for the above mentioned portion on 30.04.1996. In all, he had been in occupation of 1383 Sq.ft. out of 5353 Sq.ft.

6. He would state that as he feared dispossession, he lodged a complaint with the Inspector of Police, G1 – Police Station, Vepery, Chennai to prevent any untoward incident taking place in the portion under his occupation. The fear arose because the erstwhile owners S.Thirugnanam and S.Rukmani had sold the properties to the defendants. He would state



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that insofar as 'B' schedule property is concerned, he was called for an enquiry before the police station. Under threat of coercion, he executed a document on 16.07.1996, whereby, the defendants took possession of 1383 Sq.ft. Therefore, he came forward with the suit on the ground that he had been forcibly dispossessed.

7. The defendant entered appearance and pleaded that a suit is barred as the dispossession had taken place on 16.07.1996 and the suit had been filed only on 07.08.2007. In other words, the plea is that since the suit had been filed for bare recovery of possession and since it does not answer the limitation of Section 6 of the Specific Relief Act, the suit is barred by time.

8. Insofar as the specific allegations on the agreement, the case of the defendant is that pursuant to the compromise, dated 16.07.1996, the plaintiff had received a refund of advance of Rs.30,000/- (Rupees Thirty Thousand only) which he had paid to S.Thirugnanam and S.Rukmani and also received a further sum of Rs.50,000/- (Rupees Fifty Thousand only) Which had been paid to Radhakrishnan, the tenant of an extent of 383 Sq.ft., who had vacated the property and a further sum of Rs.50,000/- (Rupees Fifty



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Thousand only) towards the alleged cost of construction of a shed put up by him. In all, the defendants had paid the plaintiff a sum of Rs.1,60,000/- (Rupees One Lakh and Sixty Thousand only) in order to take possession.

9. The defendants further pleaded that insofar as the remaining portion of 3650 Sq.ft. is concerned, on 16.07.1996 both the parties had agreed that, they will abide by the result of the specific performance suit. Therefore, they pleaded for dismissal.

10. On the basis of these pleadings, the Trial Court framed the following issues :

“ 1. Whether the suit as framed is maintainable ?

2. Whether the plaintiff is entitled to the relief of possession of the suit property as prayed for ?

3. To what relief is the plaintiff entitled ? ”

11. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.A1 to A29. On the side of the defendants, the 4th defendant was examined as D.W.1 and he marked one document i.e., Ex.B1.



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12. The learned Trial Judge dismissed the suit on two grounds. The first ground is that the suit having been filed after a period of 11 years from the date of dispossession, it is not maintainable. The second ground is that even assuming the suit is maintainable, it was liable to be dismissed since the plaintiff did not prove better title than the true owners i.e., the defendants.

13. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.27 of 2010 before the VII Additional City Civil Court at Chennai. The learned Appellate Judge confirmed the said judgment against which the present Second Appeal.

14. This Court did not admit the Second Appeal but had ordered notice regarding admission on 18.03.2013. On service of notice, originally Mr.P.K.Sivasubramaniam, had entered appearance on behalf of the respondents. Pending the appeal, the learned counsel passed away and hence, death memo was ordered by this Court to the parties. On service of notice, Mr.K.S.Sundar and B.Suresh entered appearance on behalf of the respondents.



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15. Today I heard Mr.Prahlad Bhat for Mr.Rahul Balaji for the appellant and Mr.K.S.Sundar for the respondents.

16. Mr.Prahlad Bhat would contend that the tenant had filed a suit for bare injunction in O.S.No.6830 of 1996 on the file of the City Civil Court at Madras and pending the said suit, a compromise had been arrived between the plaintiff and the defendant before the police and therefore, this would indicate that the plaintiff had been forcibly dispossessed by the defendants.

17. He would argue that the learned Trial Judge was wrong in applying Section 6 of the Specific Relief Act as the bar to the regular suit for recovery of possession. He would expand on this argument and submit that two options are open to a person who has been forcibly dispossessed either to file a suit under Section 6, which is a summary proceedings or to file a regular civil suit to enforce his civil right. He would say that, as he repudiated the contract, dated 16.07.1996, he is entitled to possession of the suit property. Therefore, he would seek for the appeal to be admitted and allowed.



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18. He would further suggested the following substantial questions of law for the purpose of consideration of this Court :

“ 1. Whether the Courts below were right in holding that the present suit filed by the Plaintiff for recovery of possession can be filed only under Section 6 of Specific Relief Act and not under Section 9 of Specific Relief Act as more than after 6 months has elapsed from the date of dispossession ?

2. When the Plaintiff had pleaded that Ex.A15 was obtained by force in police station and DW1 has categorically admitted that the plaintiff was forced to sign the agreement with the assistance of police, whether the learned District Judge is right in holding that the Plaintiff voluntarily gave possession to defendants after obtaining a sum of Rs.1,60,000/- ?

3. Whether the Courts below were right in dismissing the suit for possession solely on the ground that the defendant had better title to the suit property when admittedly the title of the defendant had not become final and binding between the parties ? ”

19. Per contra Mr.K.S.Sundar would argue that the plaintiff admittedly had given the date of dispossession as 16.07.1996 and also had filed a agreement as Ex.A15. However, he did not file a suit for declaration that the agreement is vitiated by coercion. He merely presented a suit for bare recovery of possession. On the basis of this argument, he would urge



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that the period of limitation to set aside the agreement, dated 16.07.1996 is three years from the date of the agreement and that having expired, the suit is barred by time.

20. He would further invite my attention to Ex.A15 i.e., the agreement and would state that as per the agreement, the plaintiff and the defendants had agreed that he will surrender possession of 1383 Sq.ft. and enjoy the benefit of being in possession of the remaining portion of 3650 Sq.ft. till the disposal of the suit for specific performance. He would state that having enjoying the benefit, it is not open to the plaintiff to turn around and plea that he is entitled to take possession of the remaining portion of 1383 Sq.ft. He would state that being a concurrent finding of the fact, no questions of law, much less any substantial questions of law, arise for consideration on this appeal and would seek for dismissal.

21. I have carefully considered the arguments on either side.

22. There is no dispute that the plaintiff was originally an agreement holder with S.Thirugnanam and S.Rukmani. This agreement was entered in



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1990. I am informed by both sides that a suit for specific performance was filed, which was originally decreed by the City Civil Court and on appeal, it was reversed. Both sides are *ad idem* on the point that as against the decree and judgment of this Court, a Special Leave Petition has been presented and the same is pending. I am not concerned with an extent of 3650 Sq.ft., which is the subject matter of Special Leave Petition, in this appeal. I am concerned about the remaining portion of 1383 Sq.ft.

23. 1383 Sq.ft. also can be divided into two portions, namely, 383 Sq.ft. under the occupation of one Radhakrishnan and a remaining 1000 Sq.ft. which the plaintiff claims that he was the tenant under S.Thirugnanam and S.Rukmani. Insofar as 383 Sq.ft. is concerned, according to the plaintiff, he took possession on the same from the erstwhile tenant Radhakrishnan and entered into a fresh agreement with S.Thirugnanam and S.Rukmani on 30.04.1996. It is pertinent to point out that it is only under this agreement that the plaintiff claims that he was in possession of 383 Sq.ft.



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24. As rightly pointed out by Mr.K.S.Sundar, a lease deed said to have been entered insofar as this 383 Sq.ft. is concerned, was not produced before the Trial Court or before the Appellate Court. It is rather confounding. This is because, S.Thirugnanam and S.Rukmani had sold the property to the defendants. Thereafter, they did not have any authority to put the plaintiff in possession of any portion of the property. Admittedly, the property had been sold by S.Thirugnanam and S.Rukmani in favour of the defendants in the year 1995. After the sale of the property in the year 1995, neither S.Thirugnanam nor Rukmani have the power to lease out the property.

25. It is here that I have to refer to Ex.A15, which states that the plaintiff had paid a sum of Rs.50,000/- to Radhakrishnan and took over possession from him. That is to say, for a period between 30.04.1996 (assuming S.Thirugnanam and Rukmani had the power to lease out this after their sale) to 16.07.1996, he had been in occupation of 383 Sq.ft. The plaintiff would have to give clear and specific details regarding the said lease agreement. The plaintiff has, unfortunately, failed to explain as to how after alienation by his alleged lessors in the year 1995, he entered



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possession in the year 1996, on the basis of a lease agreement entered into between S.Thirugnanam and S.Rukmani. Therefore, I am not convinced that the plaintiff was in occupation of 383 Sq.ft. which he had allegedly taken possession from Radhakrishnan.

26. Insofar as 1000 Sq.ft. is concerned, even here, the alleged agreement that had said to have been entered into between the plaintiff and S.Thirugnanam and S.Rukmani was not produced before the Court. Unless and until, this document is produced, I cannot draw an inference that he had been in occupation of the property and he had been forcibly dispossessed. Even if I were to assume that he was in possession of the property, law does not prevent a person from voluntarily surrendering the portion of the property under his possession to the original owners. This is the meat of the matter.

27. It is not, as if the defendants had lodged the police complaint forcing the plaintiff to appear before them and thereafter, an agreement had been entered into under coercion.



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28. Before proceeding further, I have to take note of Order VI Rule 4 of the Code of Civil Procedure, which calls upon the plaintiff to give specifics as regards any fraud, misrepresentation, uninfluence and coercion. The plaint should give particulars and should proceed beyond those that are exemplified in the forms. The details regarding dates and items have to be specifically stated. I searched the plaint in vain to find out if those details have been given, unfortunately, the plaintiff has not pleaded about the coercion other than a statement that an agreement had been entered into before the police on 16.07.1996.

29. Having approached the police, it does not lie in the mouth of the plaintiff to state that he had being coerced. It is theoretically possible that the police could have coerced the plaintiff to hand over possession but without the details being on record as required under Order VI Rule 4 of the Code of Civil Procedure, I am barred from probing further into the matter.

30. Apart from that, as per Ex.A15 produced by the plaintiff, he had received a consideration of Rs.1,60,000/- which includes Rs.50,000/-



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towards the cost of construction for the shed, which had been put up by him over the suit schedule mentioned property. My pointed question to Mr.Prahlad Bhat was whether, having pleaded coercion and vitiating circumstances, if he had returned the amount that had been received by him under the agreement. The positive statement of Mr.Prahlad Bhat was that the amounts continues to be with the plaintiff.

31. To complete the narration on this aspect, Mr.Prahlad Bhat referred to Sections 27 to 30 of the Specific Relief Act and pleaded that if the Court comes to the conclusion that the agreement, dated 16.07.1996 is vitiated by coercion, his client will always put the money into Court and would also pay an additional amount as may be fixed by the Court. In order to state that the agreement is vitiated by coercion, a categorical assertion by the plaintiff is necessary that he does not stand by the agreement. The plaintiff cannot enjoy the benefits under the agreement and at the same time plea that the agreement is vitiated by coercion.

32. Apart from the receipt of Rs.1,60,000/- by way of Demand Draft as is evidenced from Ex.A15, the further fact is that, both the parties have



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stood by the agreement and the plaintiff has been in possession of 3650 Sq.ft. and the defendants in occupation of 1383 Sq.ft. as agreed between them on 16.07.1996. I would come to the conclusion that the plaintiff had acquiesced to the present situation and finding that the suit for specific performance had gone in his favour, today, is turning around and pleading that the agreement, dated 16.07.1996 is vitiated by coercion.

33. I have reached this conclusion because the plaintiff had presented a suit for specific performance for the remaining portion and when the suit was taken up for trial before the Court, he had succeeded in obtaining the decree. Having obtained the benefit of the money as well as possession of 3850 Sq.ft. it is not open to the plaintiff to plea that the entire agreement is vitiated. Repudiation must be clear, unequivocal and categorical. Having enjoyed the benefits of the funds for over a period of two decades, today, if I were to grant the relief of recovery of possession, it will be inequitable on the defendants.

34. Further more, the plea on Article 58 of the Limitation Act raised by Mr.K.S.Sundar also appeals to me. The compromise agreement was



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entered into on 16.07.1996. Till the plaint was presented on 07.08.2007 and even subsequently, no relief was sought for to set aside the compromise, dated 16.07.1996. Unless and until the compromise deed is set aside, the plaintiff would not be entitled for the relief of possession.

35. Having said this, I am not in agreement with the learned Trial Judge as well as the Appellate Court on the ground that since Section 6 of the Specific Relief Act is available to a person, who is forcibly dispossessed, a regular suit for recovery of possession cannot be presented. Section 6 of the Specific Relief Act does not bar a common law right to sue for recovery of possession under Section 9 of Code of Civil Procedure.

36. Since I have come to the conclusion that the plaintiff enjoyed the benefit of the contract, dated 16.07.1996, I am not inclined to admit the Second Appeal on the questions of law suggested by Mr.Prahlad Bhat. Therefore, I would dismiss the Second Appeal not on the ground given by the learned Trial Judge but for the reasons set forth above.



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05.03.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

- 1.The VII Additional City Civil Judge,
Chennai
- 2.The XI Assistant City Civil Judge,
Chennai



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V. LAKSHMINARAYANAN, J.

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