



S.A.No.543 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.543 of 2021

and

C.M.P.No.11380 of 2021

1. Vasuki
2. Samy Alwar Reddi

...Appellants

Vs

1. V.Krishnan
- Nallathambi (Died)
2. N.Suman Chakravarthy
3. Manoranjani
4. Elavarasi Valanthi

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 25.01.2021 and made in A.S.No.3 of 2017 on the file of the Subordinate Judge, Tiruttani by dismissing the appeal and confirming the decree and judgment dated 07.11.2016 and made in O.S.No.83 of 2013 on the file of the District Munsif, Tiruttani.



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For Appellants : Mr.M.Ramalingam

For Respondents : Mr.K.Senthilkumar

JUDGMENT

The plaintiffs who have unsuccessfully contested a suit for bare injunction are the appellants before this Court.

2.The facts are briefly set out herein below with the parties being referred to as the plaintiffs and defendants as in the trial Court. The plaintiffs filed the suit O.S.No.83 of 2013.on the file of the District Munsif, Tiruttani for permanent injunction restraining the defendants, their men and agents from taking possession of the suit properties except by due process of law.

3. The plaintiffs would submit that the first item of the suit property is owned by the first plaintiff and the second item of the suit property is owned by the second plaintiff. They have been in possession and



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enjoyment of the said properties. The defendants had issued a notice dated 04.10.2012 alleging that the plaintiffs had borrowed amounts from the Tamil Nadu Industrial Investment Corporation (TIIC). As the plaintiffs had failed to discharge the loan, TIIC had brought the properties for sale and the defendants have purchased the said properties under a public auction held on 25.07.2012. The plaintiffs had given a suitable reply to the legal notice alleging that the public auction was not valid in law. That apart, they have also stated that the properties had been undervalued and sold and the entire public auction was vitiated by fraud. The plaintiffs would further submit that the defendants were trying to take possession of the suit properties other than by due process of law. Therefore, the plaintiffs have come forward with the suit in question.

4.The defendants had filed a written statement, *inter-alia* contending that they are the successful bidders and the first defendant had purchased the first item of the suit properties for a sum of Rs.5,40,000/- and the collateral security, namely the suit second item was sold to the second



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defendant for a sum of Rs.7,00,000/-. The properties had been handed over to defendants 1 and 2. The plaintiffs had filed O.S.No.97 of 2001 against the Corporation seeking a permanent injunction and the suit was dismissed on 12.01.2007. Thereafter, a suit O.S.No.145 of 2009 was filed for an injunction directing the Corporation not to proceed against the collateral security. This suit was dismissed on 30.07.2012 and the appeal in A.S.No.8 of 2013 filed by the plaintiffs was also dismissed. After the dismissal of this appeal, the present suit has been filed. Therefore, the suit is nothing but a vexatious litigation. The suit for bare injunction without a relief of declaration is not maintainable.

5. The trial court had framed the following issues.

- 1. Whether the suit is barred by res judicata in view of the decisions in earlier suits O.S.No.97 of 2001 and O.S.No.145 of 2009?*
- 2. Whether the actual possession of suit properties were not handed over to the defendants by TIIC?*



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3. *Whether the plaintiffs are entitled to relief of permanent injunction as prayed for?*

4. *What other relief?*

6. The plaintiff had examined two witnesses and marked Exs.A1 to A10. The defendants had examined two witnesses and marked Exs.B1 to 27. After contest, the trial Court dismissed the suit, as against which, the plaintiffs had preferred A.S.No.3 of 2017 on the file of the Subordinate Court, Tiruttani. The appellate Court also confirmed the judgment and decree of the trial Court. Challenging the same, the present second appeal has been filed.

7. Heard learned counsels on either side and perused the materials available on record.

8. The substantial questions of law that are framed for consideration is set out herein below:



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“a) Whether the Court below are right in holding that a bare injunction suit will not lie on the face of the Court below finding that the appellants are in possession even after the sale of suit properties by auction sale by the SIPCOT?

b) Whether the Court below are right in dismissing the suit for bare injunction not even the appellants without due process of law when the suit properties are sold by the financial institution as it is where it is in condition of the basis of symbolic possession where the suit properties are in possession of the appellants?”

9. Both the Courts below have admitted that the plaintiffs are in possession of the suit properties, but however dismissed the suit on the ground that their possession is illegal and unlawful and therefore, cannot be protected. It is the admitted case that the properties belonged originally to the plaintiffs and the properties had been brought to sale on account of their failure to pay the dues to TIIC. Therefore, the finding of the Courts below that the possession is illegal cannot be countenanced. The defendants /



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auction purchasers have to follow due process of law to evict the plaintiffs from the possession. It is needless to state that even a trespasser of a property is entitled to have his possession protected. In the instant case, admittedly, the plaintiffs are not trespassers but the original owners whose properties had been sold in a public auction. Therefore, the dismissal of the suit by the trial Court and its confirmation by the appellate Court is totally erroneous. The observation of the Courts below that the suit for bare injunction is not maintainable with regard to the sale of the properties by the auction sale cannot be countenanced since the plaintiffs continue to be possession of the properties that too after its sale by public auction. That apart, TIIC has sold the properties in its as is where is condition. Therefore, the defendants have purchased the suit properties knowing fully well that the properties are occupied and they have to adopt the legal process for recovering possession of the properties from the plaintiffs. Therefore, the substantial questions of law are answered in favour of the plaintiffs and the second appeal is allowed. There shall be an order of interim injunction restraining the defendants, their men and agents from taking possession of



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the suit properties except by dues process of law. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
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To

1. The Subordinate Judge, Tiruttani
2. The District Munsif, Tiruttani.
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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