



S.A.No.32 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 32 of 2021
&
C.M.P. No. 877 of 2021

1.Ramaiyan

2.Rajendran

...Appellants

Vs.

1.Rajam

2.Sudhakar

3.Sundaramoorthy

4.Sumathi

...Respondents



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree made in A.S.No.82 of 2017 dated 05.08.2020 on the file of the Additional Subordinate Judge, Mayiladuthurai confirming the Judgement and Decree made in O.S.No.316 of 2015 dated 19.09.2017 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellants : Mr. T.A.Shagul Hameed

For Respondents : Mr. A.Muthu Kumar.

JUDGMENT

The defendants are the appellants before this Court. The facts which have culminated in the filing of the Second Appeal is herein below narrated and for ease of understanding the parties are referred to in the same ranking as before the Trial Court.



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2. The plaintiffs had filed the suit in O.S.No.316 of 2015 on the file of the Additional District Munsif, Mayiladuthurai for recovery of possession in respect of the property which has been described in the schedule, measuring an extent of 0.33.0 ares situate at R.SNo.401/6, Vanathirajapuram Village, Kuttalam Taluk, Mayiladuthurai.

3. It is the case of the plaintiff that the property was purchased by Subramaniam from one Ramu Chettiyar under a sale deed dated 07.06.1972. The said Subramaniam is the husband of the plaintiff and father of plaintiffs 2 to 4 and from the date of the purchase he has been in possession of the same by cultivating it. On 10.03.1984, he died and the property devolved on the plaintiffs. The patta was transferred in the name of the 1st plaintiff who is cultivating the land. The plaintiff has planted coconut saplings, plantains, etc., and had also planted casuraina saplings and the coconut trees are over 10 years old and the other trees are 2 to 3 years old.



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4. The defendants are financially well off and have been purchasing agricultural lands adjacent to the suit property. Since the suit property is adjacent to the lands belonging to one Malliga, Sister in law of the 1st defendant and mother in law of the 2nd defendant, the defendants were calling upon the plaintiffs to execute the sale deed in respect of the suit lands in their favour. Since the plaintiffs were cultivating the land they had refused to sell the property. This had agitated the defendants and they had attempted to trespass into the property. Therefore, the plaintiffs had earlier filed a suit for permanent injunction in O.S.No.211 of 2014 on the file of the very same Court.

5. The defendants had filed a written statement in the said suit inter alia contending that the deceased Subramaniam had entered into an agreement of sale on 13.03.1979 in respect of the suit property for a total sale consideration of Rs.9,840/- of which an advance of Rs.8,840/- was paid. The balance sum of Rs.1,000/- was to be paid at the time of registration. The possession of the property was handed over to the 1st defendant on the same date. These facts have been denied by the



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plaintiff.

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6. Pending the suit O.S.No.211 of 2014, the defendant had forcibly entered the suit property. The plaintiff had thereafter withdrawn O.S.No.211 of 2014 and filed the present suit for the aforesaid reasons.

7. The 1st defendant had filed a written statement inter alia denying the contentions raised in the plaint. They would submit that they had entered into an agreement of sale with Subramaniam in the year 1979 and has been in the enjoyment of the same since then. The 1st defendant would submit that they are continuously cultivating the lands with paddy and have also planted coconut in the suit property. From the year 1990 onwards these coconut trees have yielded coconut for the past 15 years. They would further submit that they have been in undisturbed possession for over 37 years.



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8. The defendants would further submit that in the earlier suit, the plaintiff had filed an application in I.A.No.222 of 2015 seeking permission of the Court to withdraw the suit with liberty to file a fresh suit with same cause of action. Though the plaintiff had alleged that the defendants had violated the interim injunction granted by the Court, no steps have been taken to punish them which would clearly show that the defendants were in possession of the property. The suit without the relief of declaration and simply for recovery of possession is not maintainable.

9. The defendants had also raised a plea that the deceased had two wives, the other wife is one Lakshmi and it is after the demise of the said Lakshmi that Subramaniam had married the 1st plaintiff and she has no knowledge about the agreement of sale entered into by her husband without such knowledge she has come forward with the suit in question. He would also contend that the present suit was barred since the earlier suit was withdrawn without obtaining liberty to file second suit on the same cause of action. Therefore, the defendants would seek



to have the suit dismissed.

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10. The learned Trial Court Judge had framed the following issues:

“(i)Whether the plaintiff is entitled for recovery of possession as prayed in the suit ?

(ii)To what other relief the plaintiff is entitled ?

Additional Issues:

“(i)Whether the cause of action in this suit is false cause of action or not ? If false cause of action whether this suit is maintainable by law and abuse process of court or not ?

(ii)Whether the plaintiffs raised coconut trees in this suit land or not ? If plaintiff not raised coconut trees in the suit land, no prayer for removal of encroachment in the plaint and whether relief can be granted or not ?



(iii) Whether 1st plaintiff giving false information, false cause of action and filling false affidavit in this case it would be amount to criminal contempt If 1st plaintiff do criminal contempt whether he obtained relief for recovery of possession or not,?

(iv) Whether 1st defendant entitled to the suit property by way of adverse possession ?

(v) Whether the plaintiffs comes to the court with clean hands to filing relief of recovery of possession or not ?

(vi) Whether the agreement dated 13.03.1979 in between the 1st and deceased Subramanian is true valid in the eye of law ?

11. The 1st plaintiff examined herself as P.W.1 and marked

Ex.A.1 to Ex.A.5. On the side of the defendants, the 1st defendant examined himself as D.W.1 and had also examined 4 other witnesses.

The defendants had marked Ex.B.1 to Ex.B.20.

12. Ultimately, the suit was decreed by the Trial Court. Aggrieved by the same, the defendants had filed A.S.No.82 of 2017 on the file of the Additional Sub Court, Mayiladuthurai. The learned Judge confirmed the Judgment and Decree of the Trial Court and dismissed the appeal.

13. Challenging the same, the above Second Appeal is filed. The Second Appeal has been admitted only on the following substantial questions of law:

“Whether the Plaintiffs are precluded from instituting a fresh suit under Order XXIII Rule 1(4) C.P.C. in respect of the subject-matter since the earlier suit was “not pressed” without permission of the Court?”



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14. Heard the learned counsels and perused the records.

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15. Since the substantial questions of law raised does not require this Court to elaborately traverse through the fact of the case, it would suffice if the relevant facts for disposing of the Second Appeal on this question of law are extracted. Admittedly, the plaintiff had filed the suit O.S.No.211 of 2014 on the file of the Principal District Munsif, Mayiladuthurai, for bare injunction. In the said suit, the plaintiff had pleaded that on 19.08.2014, the defendants openly proclaimed that they would cut and remove the saplings from the suit property unless the plaintiff obliges to convey the suit property in favour of the defendants.

16. It is the case of the plaintiffs that pending the suit though the plaintiff had an order of interim injunction in I.A.No.392 of 2014, the defendants had trespassed into the property. Therefore, the plaintiff had to file an application for withdrawing the suit with liberty to



institute another the suit on the very same cause of action. The said application was filed in June 2015. This application was dismissed as not pressed and ultimately, the suit was also dismissed as not pressed by Judgement and Decree dated 19.11.2015. In the application filed seeking leave of the Court to withdraw the suit, the plaintiff had stated that the 2nd defendant had trespassed into the suit property and is now in possession of the same.

17. In the written statement filed by the 2nd defendant he has contended that he is in possession of the property on the basis of agreement of sale executed between the 2nd defendant and the plaintiff's husband and it is for this reason that the application was moved to file an another suit on the same cause of action. Thereafter, the suit which is now the subject matter of the Second Appeal has been filed.

18. Mr. T.A.Shagul Hameed, learned counsel appearing on behalf of the defendants would submit that the suit in O.S.No.316 of 2015 is barred by the provisions of Order XXIII Rule 1 (4) of the CPC since

the suit has been withdrawn without seeking leave and the provisions clearly stated that a second suit on the same cause of action would not arise.

19. However, the learned counsel appearing for the plaintiffs would submit that the cause of action for the second suit is for recovery of possession based on title. The issue of title was never in question in the earlier suit which was simplicitor a suit seeking a permanent injunction. However, in the present suit the question of title has to necessarily be gone into. He would draw the attention of this Court to the Judgement of the Hon'ble Supreme Court reported in **2008 (4) SCC 594 – Anathula Sudhakar Vs. P.Buchi Reddy and Others**, with particular reference to paragraph no.14, wherein the Hon'ble Supreme Court has observed that where the suit is filed for permanent injunction the suit could be withdrawn with the permission of the Court to file a comprehensive suit for declaration and injunction and the plaintiff could also file a suit for declaration with consequential relief even after the suit for injunction is dismissed, if in that suit the only issue that was



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raised was one about possession and not about title to the property.

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20. This Judgement would apply in all fours of the facts of the instant case as the earlier suit was simplicitor one for possession where the title to the property was not in issue.

21. Therefore, I see no reasons to interfere with the concurrent Judgement and Decree of the Courts below. Accordingly, the Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The Additional Subordinate Judge,
Mayiladuthurai



2. The Additional District Munsif,
Mayiladuthurai.

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P.T. ASHA, J,

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