



S.A.No.534 of 2017
& C.M.P.No.13028 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 08.02.2024

Pronounced on: 16.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

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& C.M.P.No.13028 of 2017

K.Jayaraman, (Died).

2. Kasthuri,

3. Gayathri,

4. Thavamani,

5. Dhanalakshmi,

6. Gowthami,

... Appellants/Respondent/Defendant

Appellants 2 to 6 brought on record as LR's of the deceased sole appellant viz., K.Jayaraman vide Court order dated 24.01.2019 in C.M.P.No.18386 of 2018 in S.A.No.534 of 2017 (PTAJ).

/versus/

P.Valliyammai (Died).

1. P.Rajendran.

... Respondent/Appellant/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of C.P.C., to call for the records of the decree and judgment in A.S.No.27 of 2012 dated 21.02.2013 on the file the Principal Subordinate Judge, Mayiladuthurai, reversing the decree and judgment in O.S.No.29 of 2011, dated 09.09.2011 on the file of the Principal District Munsif Court, Mayiladuthurai and set aside the same.



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For Appellants : Mr.R.Shiva Kumar,
for M/s.K.M.Vijayan Associates

For Respondent : Mr.B.Jawahar,
for Ms.H.Kavitha

J U D G M E N T

The plaintiffs filed a suit for permanent injunction to restrain the defendant from interfering with their possession and enjoyment of the suit property. The said suit was resisted by the defendant who claimed to be in possession on the basis of an agreement of sale which was made over in his favour by the previous agreement holder and that the defendant has been cultivating sugarcane right from the year 1999 and therefore, it is the defendant who has been in possession and enjoyment of the suit property and not the plaintiff.

2. The trial Court dismissed the suit for permanent injunction finding that the plaintiffs have not proved their possession of the suit property. On appeal by the plaintiffs, the First Appellate Court reversed the findings of the trial Court and decreed the suit for permanent injunction.



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3. Aggrieved by the said reversal finding rendered by the First Appellate Court, the present Second Appeal has been filed.

4. The above Second Appeal has not been admitted. However, the Learned Counsel on either side have advanced their arguments and the Second Appeal was heard finally. The 1st plaintiff and defendant before the trial Court are not alive and their legal representatives are parties to the Second Appeal.

5. I have heard Mr.R.Shiva Kumar, for M/s.K.M.Vijayan Associates, Learned Counsel for the appellants and Mr.B.Jawahar, Learned Counsel for the respondent.

6. The Learned Counsel for the appellants would submit that the suit property is comprised in two survey numbers (i).S.Nos.127/3C and 127/4A. It is an admitted fact that the plaintiff is the owner of the suit property. The dispute pertains only to the factum of physical possession of the suit property.

7. The Learned Counsel for the respondent would contend that by production of Ex.X.4, Ex.X.5 and Ex.X.6 through D.W.3, the defendant had



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clearly established the fact that it was only the defendant who was cultivating sugarcane crops in the suit property and further, the defendant had also filed kist receipt to substantiate possession of the suit property. He would also place reliance on the decision of the Hon'ble Supreme Court in **Anathula Sudhakar -vs- P.Buchi Reddy (Dead) by Lrs and others** reported in **AIR 2008 SC 2033**, in support of his contentions. Referring to the ratio laid down by the Hon'ble Supreme Court in the said decision, the Learned Counsel for the appellants would state that the plaintiffs ought to have prayed for a relief of declaration and merely seeking a relief of injunction simpliciter, without a prayer for declaration or recovery of possession would not render the suit maintainable.

8. The Learned Counsel for the appellants would also suggest the following substantial questions of law:

(i). *Whether the respondent is legally entitled to pray for relief claimed when admittedly the possession was handed over long back and he is not prevented by doctrine of Acquiescence and Equitable Estoppel?*

(ii). *Whether the respondent who failed to raise objection for the long period and now claims for equitable relief is against settled principles of law delay defeats equity?*



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(iii). Whether the appeal filed by the respondent is hit by order XXII by virtue of the death of 1st respondent herein?

9. Per contra, Mr.B.Jawahar, Learned Counsel for the respondent would state that the defendant has categorically admitted that the plaintiffs are the owners of the suit property. However, it is the case of the defendant that under an agreement of sale, the agreement holder was put in possession of the suit property and from him, the defendant has come into physical possession of the suit property. However, the Learned Counsel for the respondent would state that the agreement of sale under which the appellant claims to be put in possession does not even confirm the said factum of the appellant being put in possession. Ex.B.1 is the sale agreement dated 27.07.1989. On perusal of the same, it is evident that under the said sale agreement, the agreement holder was not put in possession of the suit property. Further, the Learned Counsel would submit that the First Appellate Court rightly rejected Ex.X.4 to Ex.X.6 on the ground that the said documents were more in the nature of self serving documents. On perusal of the evidence of D.W.3, through whom the said document was marked, it comes out that the said witness has clearly stated that



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he has not verified any revenue records and he has also not inspected the property to find out whether the defendant was actually cultivating sugarcane crops in the suit property and that the said documents namely Ex.X.4 to Ex.X.6 were issued only on the representations of the defendant alone.

10. The Learned Counsel for the respondent would also place reliance on Ex.A.3 kist receipt and the police complaints in Ex.A.4 and Ex.A.5 to substantiate that it was only the plaintiffs who were in possession and rightly police complaints were given as there was interference with the plaintiffs' possession, which necessitated the suit to be filed seeking relief of permanent injunction.

11. Further, the Learned Counsel for the respondent would also state that there is no necessity to seek for any declaration since the defendant had admitted the title of the plaintiffs. Further, the defendant is only claiming as an agreement holder and cannot have any interest in the suit property. The Learned Counsel for the respondent would conclude his submissions stating that the First Appellate Court had rightly reversed the incorrect findings rendered by the trial Court and granted a decree for permanent injunction and



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same does not require interference under Section 100 of C.P.C.

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12. Having considered the arguments advanced by the Learned counsel on either side, it is clear that the suit property comprises of two items (i). 13.5 Ares in S.No.127/3C and (ii). 2.5 Ares in S.No.127/4A. The First plaintiffs have produced the sale deed in Ex.A.1 dated 03.06.1979 to establish the fact that they have become the absolute owners of item No.1 above mentioned, under the said registered sale deed. Ex.A.2 sale deed pertains to the plaintiffs' purchaser under which they become entitled to the item No.2 of 2.5Ares. According to the plaintiffs, the defendant attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property and therefore, the plaintiffs lodged a police complaint on 27.02.2011 and again on 22.03.2011. The plaintiffs have also produced kist receipt dated 14.02.2011 in Ex.A.3 which is in the name of the 2nd plaintiff.

13. The plaintiffs are not admitting to the agreements of sale marked as Ex.B.1 and Ex.B.2. Both the said agreements are unregistered sale agreements and as already found herein above, the agreements of sale produced by the defendant in Ex.B.1 and Ex.B.2 do not show that the agreement holder



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therein was put in possession of the suit property. The trial Court has rendered a categorical finding that Ex.B.2, Ex.B.3, Ex.B.8 and Ex.B.10 do not relate to the suit property and therefore, it cannot be stated that the defendant has proved his possession of the suit property. Even otherwise, the attempt on the part of the appellant to prove physical possession of the suit property was only in respect of S.No.127/3C and not in respect of S.No.127/4A. However, the trial Court without even giving a finding in respect of S.No.127/4A had proceeded to dismiss the suit holding that the defendant had established possession in respect of both items of the suit properties.

14. As already discussed, the primary documents under which the appellant claims to be in lawful possession is only under Ex.B.1 and Ex.B.2 which are totally silent about possession being handed over to the agreement holder. This coupled with the evidence of D.W.3 clearly establishes that the defendant has not able to demonstrate that the defendant has been carrying on cultivation of sugarcane crops in the suit property which comprises of two items.



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15. On the contrary, the plaintiffs have established their title by production of Ex.A.1 and Ex.A.2 sale deeds and also lawful possession of the suit property by production of Ex.A.3. The trial Court rejected Ex.A.3 kist receipt only on the ground that it was of recent origin without advertting to the fact that Possession follows title and therefore, Ex.A.3 would clearly establish that the plaintiffs alone were in lawful possession of the suit property. The documents filed on the side of the defendant, especially the Sugarcane cutting orders as well as the bills issued by the Co-operative Sugarmill Limited are only private documents and not revenue records. Therefore, no presumption can be drawn from these documents to hold that the defendant alone has been in physical possession of the suit property. Further, in any event, D.W.3 in the cross examination clearly stated that the documents which have been issued by the Co-operative Sugarmill Limited are only based on the statements of the defendant without even an inspection of the suit property or the revenue records. Thus, no sanctity can be attached to the documents that have been exhibited on the side of the defendant.

16. Further, it is trite law that an agreement holder cannot claim any right, title or interest in the subject property of the agreement of sale, even



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assuming the agreements of sale are true and genuine. Even then, in the absence of any covenant in the said agreements of sale that the agreement holder has been put in physical possession of the suit property, it cannot be presumed that the defendant has been put in possession. Thus, even according to the appellants, when there was no handing over of physical possession under Ex.B.1 and Ex.B.2, Courts can only presume that the possession of the property was retained with the vendors and thus, viewed from this angle also, it is clear that the plaintiffs have proved their possession of the suit property. The First Appellate Court has rightly considered all these factual aspects and also applied the correct legal position to the same. I do not find any substantial questions of law arising for consideration in the above Second Appeal, in order to interfere with the well merited findings of the First Appellate Court, especially power jurisdiction under Section 100 of C.P.C.

17. In fine, the ***Second Appeal is dismissed.*** No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No.
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Copy To:-

1. The Principal Subordinate Judge, Mayiladuthurai.
2. The Principal District Munsif Court, Mayiladuthurai.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
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