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S.A.No.9 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.9 of 2019 &
C.M.P.No.47 of 2019

Seethalakshmi

... Appellant/Defendant

-Versus-

Selvi

... Respondent/Plaintiff

Appeal filed under Section 100 of C.P.C. to set aside the judgement and decree passed in A.S.No.11 of 2018 dated 11.08.2018 passed by the learned Subordinate Judge, Sathiyamangalam, reversing the Judgment and Decree passed in O.S.No.179 of 2016 dated 25.01.2018 passed by the learned District Munsif Judge, Sathiyamangalam.

For Appellant : Mr.S.Parthasarathy

*For Respondent : Mr.Titus Enock,
for Mr.I.C.Vasudevan*

JUDGEMENT

The present second appeal arises out of the judgment and decree of the court of the learned Subordinate Judge at Sathiyamangalam in A.S.No.11 of 2018 dated 11.08.2018 in reversing the judgment and decree of the learned



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District Munsif, Sathiyamangalam in O.S.No.179 of 2016 dated 25.01.2018.

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2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3. The plaintiff came forward with the aforesaid suit for the relief of permanent injunction restraining the defendant, her men, agents and subordinates from interfering with the peaceful possession and enjoyment of her property and for costs and other reliefs.

4. There is no dispute in the relationship between the parties. The plaintiff's husband, Chandrasekaran is none else than the sibling of the defendant, Seethalakshmi. According to the plaintiff, the suit schedule mentioned property belonged to the grandmother of the plaintiff's husband as well as the defendant, namely Palaniammal. The said Palaniammal had executed a sale deed in favour of the plaintiff on 07.09.2015. The document was supported by valid consideration. The plaintiff pleaded that on and from the date of the sale, she has become the absolute owner of the property. Since the defendant attempted to interfere with her possession, she came forward with the suit in O.S.No.199 of 2016



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5. On service of summons, the defendant entered appearance and filed a lengthy written statement.

6. The defendant would admit to the sale of the property by Palaniammal in favour of the plaintiff/Selvi on 07.09.2015 and would plead that the sale deed is not valid as it suffers from vitiating circumstances. She would plead that Palaniammal was taken to the hospital by Chandrasekaran and Selvi for treatment. During that time, they managed to get the document executed in favour of the plaintiff. She would state that she is in possession of the property and would plead that the suit be dismissed.

7. On the basis of these pleadings, the learned trial judge framed the following issues:

“1. Whether the suit is bad for the absence of prayer for declaration as prayed for?

2. Whether the plaintiff is in possession of the suit property?

3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

4. To what other relief?”



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8. The plaintiff examined herself as PW1 and her husband as PW2. On her side, she marked Ex.A1 to Ex.A6. Ex.A1 is a registered copy of the sale deed dated 07.09.2015 and the others are the revenue receipts issued for the suit schedule mentioned property. On the side of the defendant, she examined herself as DW1 and marked Ex.B1 to Ex.B6. Ex.B1 is the house tax receipts. Ex.B2 is the water consumption receipt and Ex.B3 is a series of documents relating to the payment of electricity bills. Apart from that, the Electoral Roll maintained by the Election Commission of India was filed as Ex.B4, the Aadhar Card as Ex.B5 and the Ration Card as Ex.B6.

9. On the basis of the oral and documentary evidence let in before the learned Trial Judge, he came to a conclusion that since the plaintiff had accepted the defendant was residing in the property during the time of Palaniammal's ownership and that, she had locked the premises and had gone away to her place in Savukku Kuttai Raod at Kallangadu, the plaintiff is not entitled to any relief. He also held that the defendant is deemed to be in possession of the property and therefore, dismissed the suit.

10. Aggrieved by the said judgment and decree, a regular appeal was



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preferred before the learned Subordinate Judge at Sathiyamangalam in A.S.No.11 of 2018. On his appreciation of the documents and evidence, the learned Appellate Judge came to a conclusion that the plaintiff is in possession of the property and decreed the suit as prayed for. Aggrieved by the same, the present second appeal.

11. The appeal was admitted on the following substantial questions of law on 09.01.2019:

“(i) Whether the Court below is right in coming to conclusion that the respondent is entitled for permanent injunction, when she has not proved possession of the suit property?”

“(ii) Whether the Court below is right in coming to the conclusion, that the respondent is entitled for permanent injunction when the appellant denied the title of suit property?”

12. On service of notice, Mr.I.C.Vasudevan entered appearance on behalf of the respondent/plaintiff.



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13. I have heard Mr.S.Parthasarathy for the appellant/defendant and Mr.Titus Enock representing Mr.I.C.Vasudevan for the respondent/plaintiff.

14. Mr.S.Parthasarathy would submit that the documents filed by the defendant would clinchingly show that she is in possession of the property and therefore, the only remedy for the plaintiff is to file a suit for recovery of possession. He would further plead that since the defendant denied the title of the plaintiff in paragraph 13 of the written statement, the appropriate remedy for the plaintiff would only be to sue for declaration of title and for recovery of possession, and a suit for bare injunction is not maintainable. In order to substantiate his case, Mr.S.Parthasarathy relying upon the judgment of this Court in *Venkatachalam and another vs. Nallathambi, (2013) 4 CTC 45*, would state that this Court in the said judgment had held that the plaintiff not having proved that he is in possession of the property, the first Appellate Court ought not to have granted a decree of injunction.

15. Per contra, Mr.Titus Enock would state that the plaintiff took possession of the property on the date of sale, namely, 07.09.2015 from the previous owner, Palaniammal. He would state that the respondent has



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subsequently mutated the revenue records in her favour and she has produced the original receipts under Ex.A5 and the payment of the electricity bill under Ex.A6. A reading these receipts in cumulation with Ex.A1 proved that the plaintiff is in legal and constructive possession of the property and therefore, is entitled to an injunction.

16. I have heard the counsel on either sides, gone through the records and perused the judgments of the courts below.

17. It is not in dispute that Palaniammal was the owner of the suit schedule mentioned property. The defendant would state that Palaniammal had permitted her to reside in the property. In other words, the status of the defendant is at best that of a licensee under Palaniammal.

18. I will now deal with the argument of Mr.S.Parathasarathy that the suit for bare injunction is not maintainable and that the suit should be for declaration and recovery of possession.

19. A perusal of the written statement would show that the defendant has



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not denied the title of Palaniammal. On the contrary, the defendant accepts the ownership of Palaniammal to the property, but would plead that Palaniammal had executed a document which due to certain depraving circumstances stood vitiated. In order to file a suit for declaration of title, the condition precedent is that the defendant should have created a cloud over the title of the plaintiff.

20. A reading of the written statement would show that the execution of the document by Palaniammal in favour of Selvi is not in dispute. The so called cloud that the defendant attempted to create was that the sale deed is vitiated. It is not for a rank stranger like the defendant to plead that the sale deed is vitiated. From the date of sale ie., 07.09.2015 till the presentation of the plaint in September 2016, the sale deed remains unchallenged. A rank third party cannot set up a plea that the sale deed executed by the previous owner in favour of the plaintiff is vitiated. It is for the party to the document to come and agitate regarding the validity of the document before the court. Apart from these, the defendant has not set up any independent title in herself, nor has she set up title in favour of any third party.

21. In the classic case of *Anathula Sudhakar vs. P.Buchi Reddy, (2008)*



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4 SCC 594, the Supreme Court had held that unless and until a cloud is created over the title of the plaintiff, he or she need not resort to expensive relief of declaration of title. As the title of the plaintiff remains unshaken, I conclude that there is no necessity for her to choose the expensive relief of declaration of title.

22. Insofar as the pleading that the defendant is in occupation of the property is concerned, a perusal of Ex.A1, the sale deed shows that the plaintiff had taken possession from Palaniammal. Ex.A2 to Ex.A6, as rightly submitted by Mr.Titus Enocks, point out to the possession of the property on the date of presentation of the plaint. As against these clinching documents, namely, the title deed- Ex.A1, and the revenue records, Ex.A2 to Ex.A6, the defendant has only projected the payment receipts made towards drinking water and electricity. In order to defeat the claim of the plaintiff who has projected a sale deed and revenue receipts; payment of service charges cannot be allowed to challenge the same.

23. The plaintiff, having proved her ownership as well as the possession, would certainly be entitled for an order of injunction. The error committed by the trial court in relying upon a fray sentence in the evidence and ignoring the



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clinging document filed by the plaintiff has been set right by the lower appellate court.

24. A careful perusal of the judgment cited by Mr.S.Parthasarathy in **(2013) 14 CTC 45** would show that the defendant in that particular case had raised serious issues regarding title of the plaintiff. Apart from that, the plaintiff in that appeal had not been able to substantiate his possession by producing any revenue records. In the present case, the plaintiff has produced Ex.A2 to Ex.A6 to substantiate that she is in possession of the property. This includes the property tax receipts as well as the electricity payment receipts. Hence, the judgment relied upon by Mr.S.Parthasarathy is inapplicable to the facts of the present case.

25. In the light of the above discussion, both the questions of law being answered as against the appellant and in favour of the respondent, the second appeal is dismissed. As the parties are close relatives, I am not inclined to impose costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Subordinate Judge, Sathiyamangalam

2.The District Munsif Judge, Sathiyamangalam.



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V.LAKSHMINARAYANAN, J.

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