



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**01.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)NO.1000 OF 2008

1.Gomathiammal

2.K.Lakshmi :Appellants/Respondents/Defendants

.vs.

1.K.Masanam Thevar(Died)

2.M.Subbammal

3.Arumugam

4.Malaiyandi

5.Masanamuthu

6.Lakshmi

7.Kasirajan

8.Shunmuga Sundararaja

9.Thalavai

(Respondents 3 to 9 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in M.P(MD)No.1 of 2009 in S.A(MD)No.1000 of 2008, dated 20.06.2003)

:Respondents/Appellants/Plaintiffs



PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.47 of 2005, dated 24.10.2005, on the file of the Subordinate Court, Tuticorin, reversing the judgment and decree made in O.S.No.139 of 2001, dated 03.01.2003, on the file of the District Munsif Court, Srivaikundam

For Appellants	:Mr.S.Ramesh
Respondent-1	:Died
For Respondent-2	:No appearance
For Respondents 3 to 8	:Mr.T.Arivukumar for Mr.R.Manimaran

JUDGMENT

This Second Appeal is directed against the judgment and decree made in A.S.No.47 of 2005, dated 24.10.2005, on the file of the Subordinate Court, Tuticorin, reversing the judgment and decree made in O.S.No.139 of 2001, dated 03.01.2003, on the file of the District Munsif Court, Srivaikundam.

2.The unsuccessful defendants in a suit for bare injunction filed by the respondents, are the appellants. The trial Court dismissed the suit filed by the respondents and the First Appellate Court reversed the findings of the trial Court and decreed the suit. Aggrieved by the same, the defendants are before this Court.



3, According to the respondents/Plaintiffs, the suit property are agricultural lands belonging to the first plaintiff and he mortgaged the suit property in favour of one Manickam @ Irulappa Thevar, husband of the first defendant and father of the second defendant, on 26.10.1980 and received the mortgage debt of Rs. 11,000/-. As per the terms of the Mortgage Deed, the first Plaintiff was liable to pay interest at the rate of 12% per year. It was also claimed by the plaintiffs that the mortgage was redeemed in the year 1987 itself by paying the entire mortgage debt. However, the title documents of the plaintiffs were not returned by the said Irulappa Thevar on the ground that those documents were misplaced. After some time, the said Irulappa Thevar died and hence the plaintiffs could not get the Mortgage Discharge document from him. Recently there was a misunderstanding between the plaintiffs and defendants and therefore, the defendants attempted to interfere with the peaceful possession of the plaintiffs and the same necessitated filing of the suit for bare injunction.

4. The first defendant filed a Written Statement and the same was adopted by the second defendant. In the written statement, the defendants denied the averments in the plaint as if the suit property mortgage was redeemed even during the lifetime of



Irulappa Thevar. It was claimed by the defendants that on the date of Mortgage itself, the plaintiffs executed an Yathathsu in favour of Irulappa Thevar and as per the terms of the same, the Irulappa Thevar had been enjoying the property in lieu of interest. After his death, the defendants had been in possession and enjoyment. It was also pleaded by the defendants that on 25.06.1982, there was a sale agreement between plaintiffs and Irulappa Thevar whereunder the plaintiffs have agreed to sell the suit property to Irulappa Thevar for a sale consideration of Rs.24,255/- The plaintiffs received a sum of Rs.8,755/- under the agreement apart from the earlier mortgage debt of Rs.11,000/- There was only a sum of Rs.4,500/- remained to be paid by the defendants to the Plaintiffs. On these pleadings, the defendants prayed for the dismissal of the suit.

5.Before the trial Court, the first plaintiff was examined as P.W.1 and the mortgage deed executed by the first plaintiff in favour of Irulappa Thevar was marked as Ex.A1. On behalf of the defendants, the first defendant was examined as D.W.1. Yet another witness was examined as D.W,2. On behalf of the defendants, Yathasthu, dated 26.10.1980 executed by Plaintiffs in favour of Irulappa Thevar was marked as Ex.B1.The sale agreement between the plaintiffs and Irulappa Thevar was marked as Ex.B2.



6.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs failed to prove their possession over the suit property by producing any revenue documents and hence, dismissed the suit for bare injunction. Aggrieved by the same, the respondents/plaintiffs preferred an appeal in A.S.NO.47/2005, on the file of Sub-Court, Thoothukudi. The plaintiffs filed an application under Order 21 Rule 47 of Civil Procedure Code for reception of additional evidence and produced the Adangal extracts for the suit property for the Fasli years 1403 to 1410 and the same were marked as Ex.A2 to Ex.A9. The patta stood in the name of the plaintiffs were marked as Ex.A10 and Ex.A11. The tax receipts paid by the plaintiffs were marked as Ex.A12 and Ex.A13. The First Appellate Court on the basis of the revenue documents produced by the Plaintiffs came to the conclusion that they proved their possession over the suit property and granted a decree for injunction. Aggrieved by the same, the defendants are before this Court by way of this Second Appeal.

7.The learned counsel for the appellants submitted that the defendants produced Ex.B1 Yathasthu executed by the plaintiffs in favour of defendants granting possession over the suit property to Irulappa Thevar with an understanding that he should enjoy the



property in lieu of interest payable by them. The trial Court relied on the same while dismissing the suit and the first appellate Court failed to take into consideration Ex.B1 in proper perspective. Hence the finding reached by the First Appellate Court with regard to the possession of the party is vitiated by non-consideration of material evidence available on record.

8.The first plaintiff is the admitted owner of the suit property. As per the mortgage deed marked as Ex.A1, the first plaintiff mortgaged the suit property in favour of defendants' predecessor Irulappa Thevar. The recitals found in Ex.A1 would make it clear that it is a simple mortgage and possession was not handed over to the defendants. However, the defendants relied on Ex.B1, an unregistered Yathasthu executed by the first plaintiff in favour of Irulappa Thevar. It is the contention of the defendants that the recitals found in Ex.B1 proved that the possession of the property was delivered to Irulappa Thevar on the date of mortgage itself with an understanding that he should enjoy the property in lieu of interest payable on mortgage debt. Ex.B1 is in the nature of usufructory mortgage and therefore, it requires registration. Further the plaintiffs produced Ex.A1 registered mortgage deed whereunder there is no recitals about handing over of possession to the defendants. Both Ex.A1 and unregistered Yathasthu



produced by the defendants are dated 26.10.1980. When both the parties entered into a registered mortgage deed -Ex.A1, dated 26.10.1980, absolutely there was no necessity for them to execute an unregistered document handing over the possession of the suit property to the first defendant. If really possession was delivered on the date of mortgage itself with an understanding that Irulappa Thevar should enjoy the property in lieu of interest, the parties could have incorporated the same in the registered mortgage deed. Therefore the execution of Ex.B1 by the first plaintiff in favour of Irulappa Thevar is highly doubtful. Apart from the same, Ex.A2 to ExA9, the additional documents produced by the plaintiffs before the First Appellate Court are Adangal Extracts for the suit property relevant to the Fasli year 1403 to 1410 equivalent English Calendar year 1993 to 2000. It is settled law that in respect of agricultural lands entry in the Adangal is the best evidence to prove the possession of the parties. In the case on hand, the suit was filed in the year 2001. The plaintiffs produced the Adangal extract for the years 1993 to 2000 to establish their continuous possession for nearly 8 years immediately preceding the presentation of the suit.

9. In the light of ExA2 to Ex.A9 Adangal Extracts produced by the plaintiffs, Ex.B1 an unregistered document relied on by the



defendants pales into insignificance. The first Appellate Court by taking into consideration the oral and documentary evidence on record, rightly came to the conclusion that the plaintiffs proved their lawful possession and hence, he was entitled for decree of injunction and this Court finds no reason to interfere with the factual findings reached by the First Appellate Court.

10.For the reasons aforesaid, the Second Appeal fails and the same stands dismissed. No costs.

01.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

- 1.The Sub-Judge,
Thoothukudi.
- 2.The District Munsif,
Srivaikundam.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.1000 of 2008

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