



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**10.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1043 OF 2008

Murugan

:Appellant/Appellant/Plaintiff

.VS.

1.Arunachalam(died)

2.Dhanalakshmi

3.Krishnamoorthy

4.Sundaram

5.Saravanan

6.Gnanamani

7.Kalaiarasi

(Respondents 6 and 7 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in M.P(MD)Nos.1 to 3 of 2015 in S.A(MD) No.1043 of 2008, dated 26.4.2017)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.21 of 2006, dated 3.4.2007, on the file of Principal Subordinate Judge, Kumbakonam confirming the judgment and decree made in O.S.No. 198 of 2003, dated 21.11.2005, on the file of Additional District Munsif Court, Kumbakonam.



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For Appellant :Mr.S.Sivathilakar
Respondent-1 :Died
For Respondents :Mr.A.Jayaramachandran
2 and 4 to 7
For Respondent-3 :Mr.R.Devaraj

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.21 of 2006, dated 3.4.2007, on the file of Principal Sub-ordinate Judge, Kumbakonam confirming the judgment and decree made in O.S.No.198 of 2003, dated 21.11.2005, on the file of Additional District Munsif Court, Kumbakonam.

2.The Plaintiff in the suit is the appellant. The suit is filed for bare injunction. The suit was dismissed by the trial Court. On appeal, the First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the unsuccessful plaintiff has approached this Court by way of this Second Appeal.

3.According to the appellant/Plaintiff, the suit property absolutely belongs to the first defendant. He mortgaged the suit property with the Cooperative Urban Bank, Kumbakonam and



obtained a loan of Rs.75,000/-. Since the first defendant was unable to discharge the mortgage amount, the plaintiff, being the son of first defendant, discharged the same. The first defendant had no wherewithal to repay the amount to the plaintiff and hence on 1.4.2002, he created usufructory mortgage in respect of suit property in favour of the plaintiff for a sum of Rs.75,000/-. The usufructory mortgage was under an oral arrangement and the same was for a period of three years. It was further claimed by the plaintiff that he had been in possession and enjoyment of the suit property as a usufructory Mortgagee on condition that the first defendant has to repay the above said sum of Rs.75,000/- to the plaintiff on or before 1.4.2005 to get back the possession of the suit property. The second defendant is the second wife/step-mother of the plaintiff and defendants 3 to 5 are the children of first defendant through the second defendant. The defendants colluded together and dispossessed the property and hence the suit was filed for the relief of bare injunction.

4.The first defendant filed a written statement and the same was adopted by the other defendants. The defendants denied the right and possession of the plaintiff over the suit property. The allegation in the plaint as if the plaintiff discharged the mortgage debt due to the Coopeative Bank was specifically denied by the



respondents and it was further claimed by them that the mortgage debt was discharged by the first defendant himself. It was also claimed that the plaintiff was allowed to reside in the property by the first defendant and the plaintiff taking advantage of the relationship, had stolen the title documents of the suit property and filed the present suit. The oral usufructory mortgage as pleaded by the plaintiff was specifically denied by the defendants. Therefore, asserting title as well as possession over the suit property, the defendants sought for dismissal of the suit.

5. Before the trial Court, the plaintiff was examined as P.W.1 and the paternal aunt and sister of the first defendant was examined as P.W.2. On behalf of the plaintiff, three documents were marked as Ex.A1 to Ex.A3. The first defendant was examined as D.W.1 and 34 documents were marked as Ex.B1 to Ex.B34.

6. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his possession over the suit property and dismissed the suit. Aggrieved by the same, plaintiff preferred an appeal in A.S.No.21 of 2006, on the file of Principal Sub-Court, Kumbakonam. The First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts



below, the plaintiff is before this Court by filing this Second Appeal.

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7.The learned counsel for the appellant submitted that the paternal aunt of the plaintiff and sister of the first defendant was examined as P.W.2 and she clearly deposed about the possession of the plaintiff over the suit property and her material evidence was over-looked by the Courts below. The learned counsel further submitted that the original title documents of the suit property stands in the name of the first defendant was produced by the plaintiff from his custody and the same was marked as Ex.A1 and production of the said document from the custody of the plaintiff probablise his case and the same has been overlooked by the Courts below.

8.As per the plaint averments, the first defendant is the owner of the suit property. The plaintiff claims possession over the suit property under an usufructory mortgage. Mortgage of immovable property shall be made by way of a registered document. The oral mortgage is not recognized in law. In any event, the plaintiff miserably failed to prove the oral mortgage arrangement by leading convincing evidence. Though P.W2- paternal aunt of the plaintiff and sister of the first defendant, it was claimed by the defendants that there was a misunderstanding



between P.W.2 and the first defendant and the first defendant refused to agree for the marriage of P.W.2's daughter with his son. During the course of evidence, P.W.2 admitted that the first defendant did not invite her for the marriage of her son. Therefore, it is clear that the relationship between P.W.2 and first defendant got soured and therefore, the Courts below rejected the evidence of P.W.2. In order to prove the possession over the suit property, the plaintiff failed to produce any revenue documents like kist receipts. The only document filed by him is the title deed of the suit property which stands in the name of the first defendant. It is stated by the defendants that taking advantage of the close relationship, the plaintiff had stolen the document from the custody of the first defendant. In the absence of any positive evidence on the side of the plaintiff to prove his possession in furtherance of the alleged oral usufructory mortgage arrangement, both the Courts below rightly came to the conclusion that the plaintiff has miserably failed to prove his right and possession over the suit property. Production of kist receipts, electricity charge receipts and various mortgage deeds executed by the first defendant in respect of the suit property marked by the defendants as Ex.B1 to Ex.B34 clearly establish his physical possession over the suit property. Therefore, both the Courts below rightly came to the conclusion that the plaintiff has failed to prove his possession over



the suit property. The concurrent findings reached by the Courts below are based on concrete evidence available on record and the same is not vitiated by any perversity or illegality and thus the Second Appeal fails.

9. In fine, the Second Appeal stands dismissed. No costs.

10.07.2024

Index: Yes/No

Internet: Yes/No

NCC: Yes/No

vsn

To

1. The Principal Subordinate Judge,
Kumbakonam.
2. The Additional District Munsif,
Kumbakonam.
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.1043 OF 2008

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