



S.A.(MD).No.199 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.199 of 2009

and

M.P.(MD)No.1 of 2009

1.Raja @ Rajaraman
2.Balaguru

... Appellants

Vs.

Ravi @ Ravichandran

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.156 of 2007 on the file of the Additional Subordinate Judge, Kumbakonam, dated 17.02.2009, reversing the judgment and decree made in O.S.No.24 of 2006, dated 01.11.2007, on the file of the Additional District Munsif Court, Valangaiman at Kumbakonam.

For Appellants : Mr.V.Chandrasekar

For Respondent : Mr.S.Sivathilagar



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JUDGMENT

The second appeal is filed by the defendants in the suit against the judgment and decree dated 17.02.2009 passed in A.S.No.156 of 2007 on the file of the Additional Subordinate Judge, Kumbakonam, reversing the judgment and decree dated 01.11.2007 passed in O.S.No.24 of 2006, on the file of the Additional District Munsif Court, Valangaiman at Kumbakonam.

2. The plaintiff in the suit is the respondent herein and the defendants in the suit are the appellants herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The suit is filed for permanent injunction restraining the defendants from interfering in peaceful possession and enjoyment of the suit property. The brief facts of the case are that the suit property is absolutely owned by the plaintiff. In the suit property there are two huts and the hut situated on the southern side was dilapidated and the plaintiff was residing with his family in the northern hut. The suit property is shown as ABCD and the huts are marked in red colour as 1 & 2.



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The plaintiff's family was in possession and enjoyment for the past 50 years and patta has been granted. The plaintiff's father had constructed the hut mentioned as No.2 about 30 years ago and was residing there with his family. Recently, about 3 years back, the Hut No.2 was dilapidated and the plaintiff's father is now residing in the property on the opposite road. The house tax for the Hut No.2 stands in the name of plaintiff's father. The plaintiff had constructed the thatched Hut No.1 about 3 years ago and is residing there with his family and he has accessed property tax and he is in possession and enjoyment of the property. The defendants are brothers and they are the southern neighbours of the suit property. They are residing in the thatched house in their property and patta stands in their name.

4. The defendants demanded the plaintiff to sell the suit property to them, as the plaintiff has got property on the opposite road, but the plaintiff refused the same. Since the plaintiff refused to sell the property to them, the defendants are attempting to encroach the southern portion of the suit property wherein hut no.2 is situated stating that they have got patta to the said place. But the plaintiff stated that his family is enjoying entire suit property extent for more than 50 years. On



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25.01.2006, the defendants attempted to remove the dilapidated Hut No.2 and trespassed into the southern portion of the suit property and put a new fence but the same was prevented by the plaintiff. The defendants threatened the plaintiff with dire consequence hence, the suit is filed.

5. The defendants have filed written statement stating the suit is not maintainable on facts and law and the contents in the plaint should be proved by the plaintiff. The entire contention of the plaintiff is denied by the defendants and submitted that the suit property is in possession of the defendants. The defendants submitted that R.S.No.77/34 is owned by one Chinnakunju and Venkat son of Anarkali and the said property is purchased by the defendants. As on date the patta still stands in the name of the said Chinnakunju and Venkat, hence they are necessary parties to the suit, hence the suit ought to be dismissed for non-joinder of necessary parties. The defendants had put up house and shop in RS No.77/34 and are in possession and enjoyment of the same. The plaintiff had demanded the original owners namely, Chinnakunju and Venkat to sell the suit property to them, but they refused to sell to the plaintiff but sold it to the defendants herein. Enraged by the same, the plaintiff had filed the suit with imagined cause of action. The



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WEB plaintiff attempted to encroach upon the property in possession of the defendants.

Hence, the defendants prevented the attempt of the plaintiff and preferred a complaint before prominent persons of the village and to also took steps to measure the suit property through a surveyor on 12.12.2004. Since the measurements of the property by the surveyor was not to the expectation of the plaintiff, he had refused to sign the same. Thereafter, the plaintiff filed the suit with false allegations. The cause of action is not proved. The present suit is intended to evict the defendants from the property in RS No.77/34. Hence, the suit is liable to be dismissed.

6. After considering the pleadings, evidence and depositions, the Trial Court has granted injunction for the property situated in R.S.No.77/33 against the defendants. But the Trial Court had refused to grant injunction and the suit is dismissed against the property situated in R.S.No.77/34. Aggrieved over the same, plaintiff has preferred a first appeal and the same is allowed. Aggrieved over the same, the present second appeal is preferred by the defendants.

7. The second appeal is admitted on the following substantial questions of



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law:

“a) Whether the 1st Appellate Court is right in passing a decree in respect of the property comprised in Resurvey No.77/34, when the plaintiff miserably failed to produce any documents proving his title and possession?

b) Whether the 1st Appellate Court is right in reversing the judgment of the Trial Court on the basis of the oral evidence of the defendant, when the plaintiff has not adduced any evidence to prove his case?

c) Whether adverse inference could be drawn against a defendant for non-production of his title deed, when the plaintiff has not taken any steps for production of the same as contemplated under Order 12 Rule 8 of the Code of Civil Procedure?”

8. The plaintiff has produced a patta and has also produced house tax receipts to substantiate that the plaintiff is entitled to R.S.No.77/33 and R.S.No. 77/34. The plaintiff is claiming that the patta is granted for a larger extent which is inclusive of R.S.No.77/34 also. On perusal of the said patta, it is seen that the patta is granted only for RS No.77/33. There is no mention of the R.S.No.77/34. When the land is divided and separate survey numbers are allotted then the claim



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of the plaintiff that patta issued for larger extent which is inclusive of R.S.No. 77/34 is illegal, illogical and hence the same is not acceptable. On perusal of the house tax receipts, it also indicates for R.S.No.77/33 alone and not for R.S.No. 77/34. The Trial Court has elaborately discussed and has rendered a finding that the plaintiff has inserted R.S.No.77/34 in the patta and receipt. Further, it is seen that the defendants have taken a specific stand that R.S.No.77/34 belongs to the said Chinnakunju and Venkat, prior to the purchase by the defendants. The Appellate Court has relied on the deposition of DW1 and DW2 and has come to the conclusion that the plaintiff is entitled to R.S.No.77/34. The Appellate Court failed to consider the fact that the plaintiff has not produced any documentary evidence to prove that he is entitled to R.S.No.77/34. Simply by relying on the defendants' deposition, the Appellate Court cannot grant any injunction. It is settled proposition of law that it is the plaintiff who has to prove his case and cannot rely on the weakness of the defendants pleading and evidence. It is also settled proposition of law the plaintiff ought to stand or fall on his own legs. Further when the pleadings of the plaintiff are totally against documentary evidence submitted by the plaintiff, then the relief sought for the R.S.No.77/34 cannot be granted. The Trial Court had rightly granted permanent injunction for



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WEB R.S.No.77/33 and has rightly declined permanent injunction for the R.S.No.77/34.

And the Appellate Court had erred in reversing the Trial Court judgment by relying solely on the defendants' deposition and the Appellate Court judgment is perverse. Therefore, the first and second substantial questions of law are answered against the plaintiff / respondent and in favour of defendants / appellants.

9. As far as the third substantial question of law is concerned, the defendants have come up with a clear case that survey R.S.No.77/34 belongs to Chinnakunju and Venkat. In such circumstances, the plaintiff ought to have impleaded them and thereafter, ought to have claimed permanent injunction against the real owner. But the Appellate Court has held that the defendants are responsible for not producing the title deed of the said Chinnakunju and Venkat. When the names of the real owner are disclosed, it is incumbent on the plaintiff to take steps for production of the original documents from the real owner. Under Order 12 Rule 8 of CPC, a right is granted to the parties to seek a direction from the Court for production of document from the person who is in possession of the same. When such right is available to the plaintiff, the plaintiff has miserably failed to exercise his right. Unfortunately, the Appellate Court has taken an



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adverse inference against the defendants for non-production of title deed. The said finding is totally against Order 12 Rule 8 of CPC. Further as held supra it is the plaintiff who has to prove his case and the weakness of the defendants cannot give any right to the plaintiff.

10. Further, it is seen that the plaintiff has not deposed before the Court. It is the plaintiff's father who was examined. When the plaintiff is in possession of the property and it is plaintiff who is residing in the suit property, he will have first-hand information and knowledge. Therefore, the plaintiff is supposed to come to the witness box and depose. If he appears then, he will be subjected to cross-examination which right is available to the defendants. By not deposing, the plaintiff has curtailed the right of the defendants. Further, non-deposing by the plaintiff can be taken as adverse inference against the plaintiff. Whenever bare injunction is sought by the party, he should be in lawful possession of the property. In the present case, the real owners are the aforesaid Chinnakunju and Venkat. When the plaintiff has encroached on the property of others, he cannot claim himself to be in lawful possession. On a bare reading of the plaint, it would indicate that the plaintiff was residing in R.S.No.77/33. When their hut was in



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WEB dilapidated condition, he had shifted to a hut which was constructed recently.

Thereafter, he had put up construction in a regular place but failed to remove the hut and is claiming, possession of the same. This clearly amounts to encroachment and such acts cannot be permitted. Therefore, the plaintiff has miserably failed to prove that he is in lawful possession and the suit is bad for not impleading the real owners. The Appellate Court has fixed the burden of proof on the defendants which is against settled proposition. Therefore, the third substantial question of law is answered against the plaintiff / respondent and in favour of defendants / appellants.

11. Hence, the judgment and decree rendered by the Appellate Court is set aside and the judgment and decree rendered by Trial Court is confirmed. Therefore, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No

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1. Additional Subordinate Judge,
Kumbakonam.
2. Additional District Munsif Court,
Valangaiman at Kumbakonam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
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