



S.A(MD).No.963 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	25.11.2024
Pronounced on	16.12.2024

CORAM

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

S.A(MD)No.963 of 2006

and

M.P(MD)No.1 of 2006

Sirajdeen

... Appellant

-VS-

Mookkaya Thevar

..Respondent

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree made in A.S.No.48 of 2004 dated 19.10.2005 on the file of the Subordinate Judge, Uthamapalayam, Theni District reversing the Judgment and Decree made in O.S.No.190 of 2002 dated 01.09.2004 on the file of the District Munsif, Uthamapalayam.

For Appellant

... Mr.V.N.Arjun for
Mr.N.Vallinayagam

For Respondent

... Mr.H.Lakshmi Shankar for
Mr.G.Vanjinathan



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JUDGMENT

The Second Appeal has been filed against the Judgment and Decree passed in A.S.No.48 of 2004 dated 19.10.2005 on the file of the Subordinate Judge, Uthamapalayam, Theni District reversing the Judgment and Decree passed in O.S.No.190 of 2002 dated 01.09.2004 on the file of the District Munsif, Uthamapalayam.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The plaintiff in the suit in O.S.No.190 of 2002 on the file of the District Munsif, Uthamapalayam, is the appellant in this second appeal.

4. The case of the plaintiff is that the suit property originally owned by one Veerana Thevar S/o Kamana Thevar. On 05.04.1966, one T.S.Muthusamy Iyer purchased the suit property from the said Veerana Thevar. After his death, his son M.Sivasubramanian and his brothers and sisters through a power of attorney sold the suit property and other



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properties to the plaintiff by way of sale deed dated 30.06.1994. From the said date, the plaintiff is in possession and enjoying the suit property. The defendant owns land on the north-west side. Now, he attempted to trespass into the plaint schedule property. Hence, the plaintiff filed the suit for permanent injunction.

5. The defendant filed a written statement stating that the contention of the plaintiff is false. The plaintiff filed the suit without knowing the person in the boundaries as stated in the plaint schedule. There is a clear demarcation between the plaintiff's land and the defendant's land, which is evidenced from the Advocate Commissioner's Report. The allegation of trespass is untrue and he pleaded to dismiss the suit.

6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:

1. Whether the suit property is in lawful enjoyment of the plaintiff?



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2. Whether the plaintiff is entitled to get the relief of permanent injunction?
3. To what other relief, the plaintiff is entitled to?

7. Before the Trial Court, in support of the plaintiff's case, the plaintiff examined two witnesses as P.W.1 and P.W.2 and marked 15 documents as Ex.A1 to Ex.A15. On the side of the defendant, three witnesses have been examined as D.W.1 to D.W.3 and 8 documents have been marked as Ex.B1 to Ex.B8. Besides, Ex.C1 to Ex.C.3 have been marked.

8. On consideration of the oral and documentary evidence adduced by the respective parties and the submission made, the Trial Court decreed the suit as prayed for. Aggrieved over the same, the defendant had preferred an appeal in A.S.No.48 of 2004 before the Sub Court, Uthamapalayam. The First Appellate Court, upon consideration of evidence on record, found that the plaintiff is not in possession of the plaint schedule property fully as claimed and allowed the appeal by setting aside the judgment and decree passed by the Trial Court. Now, challenging the same, the present second appeal has been filed by the plaintiff.



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9. While admitting the second appeal, this Court has formulated the following substantial questions of law:-

1. Whether the Lower Appellate Court is not wrong in not following the established dictum that, possession follows title?
2. Whether the Lower Appellate Court is correct in accepting the Commissioner's Report regarding possession?

10. The learned counsel appearing for the appellant/plaintiff submitted that the Judgment and Decree of the First Appellate Court is unsustainable in law and the First Appellate Court failed to follow the principle that title follows possession. Though the First Appellate Court came to the conclusion that the defendant is entitled to 14 $\frac{1}{4}$ cents alone and he had not title over the remaining property, ought to have granted permanent injunction in favour of the appellant/plaintiff, who is the true owner of the suit property. The First Appellate Court failed to consider the fact that the defendant in his statement has not specifically denied the right and enjoyment of the suit property by the appellant/plaintiff. The

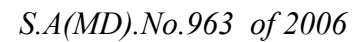


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First Appellate Court failed to note the Advocate Commissioner's Report and his observations. The First Appellate Court failed to appreciate the Advocate Commissioner's Report properly. The First Appellate Court ought not to have relied upon the Commissioner's Report regarding possession and thus, reiterated the grounds raised in the grounds of appeal. Hence, the learned counsel pleaded to allow the second appeal and set aside the judgment and decree passed by the First Appellate Court and restore the judgment and decree of the Trial Court. In support of his contention, the learned counsel for the appellant/plaintiff relied on the judgments of this court reported *in 2001(3) CTC 393 [Murugaiyan and others Vs. Subbaiyan]* and *S.A.No.1174 of 2013 dated 04.03.2024 [Radhakrishnan vs. Jagathambal]*.

11. The learned counsel for the respondent/defendant supported the judgment of the First Appellate Court and contended that there is no merit in the second appeal. He further submitted that the Trial Court, upon consideration of evidence, found that the plaintiff is not in possession of the entire plaint schedule property and also noted the dismissal of the petition filed by the plaintiff before the Trial Court in I.A.No.528 of 2003 under Order 23 Rule 1(3) C.P.C to withdraw the suit



12. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

13. This second appeal emanates from the suit pertaining to the permanent injunction.



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14. In the plaint, the plaintiff specifically pleaded that he had purchased the plaint schedule property on 30.06.1994 as per the sale deed Ex.A4 and also filed his vendor's vendor's sale deed dated 05.04.1966 (Ex.A1). Besides, he filed Chitta and Adangal stand in the name of the original owner Veerana Thevar as Exs.A2 and A3. Based on the sale deed, joint patta was issued in favour of the plaintiff, which is evidenced by Ex.A5.

15. On perusal of the records, it is revealed that the total extent of the plaint schedule property in survey No.1273/1C is 1 Acre 61 Cents. The entire 1 Acre 61 Cents owned by Veerana Thevar, which is not disputed by both the parties. In 1 Acre 61 Cents, a portion of 65 Cents was sold to Muthusamy Iyer by Ex.A1 sale deed dated 05.04.1966. Thereafter, the legal heirs of the said Muthusamy Iyer sold the same 65 cents along with other lands to the plaintiff by sale deed Ex.A4 dated 30.06.1994. After sold 65 cents in S.No.1273/1C, the said Veerana Thevar possessed remaining 96 cents. In 96 cents, Veerana Thevar sold 81 $\frac{3}{4}$ cents to one Nallandi Thevar, which is evidenced by Ex.A13 sale deed dated 07.02.1978. Therefore, the said Veerana Thevar had remaining 14 $\frac{1}{4}$ cents alone. However, Veerana Thevar and his son



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jointly sold 32 cents to the vendor of the defendant, namely, Amsu by way of sale deed Ex.B7 dated 03.02.1985. Further, the defendant's vendor sold 77 cents to the defendant by way of sale deed dated 21.11.1994 (Ex.B8). To that extent, the defendant's vendor had not title to sell the property to the defendant and the defendant's vendor also had no title to sell 32 cents in the said survey numbers as stated in Ex.B7-sale deed since the defendant's vendor's vendor had only 14 $\frac{1}{4}$ cents in the same survey number.

16. Further, a perusal of the records reveals that after filing the Commissioner's report Exs.C1, C2 and C3, the plaintiff came to knowledge that he was not in possession of 65 cents as stated in the plaint schedule and hence, he filed the petition in I.A.No.528 of 2003 under Order 23 Rule 1(3) to withdraw the suit with permission to file a an effective suit for recovery of possession with the same cause of action, which was dismissed by the Trial Court on 19.11.2003. The plaintiff failed to pursue the dismissal order and he also failed to seek the relief of recovery of possession. Under these circumstances, it is evidenced that he is not in possession of 65 cents as stated in the plaint schedule property in the same survey number.



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17. Whenever the possession of a property is in question, the same cannot be based upon the inferences drawn from circumstances. The plaintiff has to prove actual possession for grant of permanent injunction in his favour.

18. The presumption 'Possession may *prima facie* raise a presumption of title' is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very title proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party.

19. In this case, admittedly, the plaintiff's case is that at the time of filing the suit, he was in possession, but, he is not in actual possession of 65 cents as he had purchased as stated in the plaint schedule. That is why he filed the interim application to withdraw the suit with permission



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to file the suit for recovery of possession with the same cause of action.

This is essentially a finding of fact. In India, persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to through a Court. Under these circumstances, the First Appellate Court rightly allowed the appeal and set aside the judgment and decree of the Trial Court. There is no merit in the second appeal. The Judgments produced by the learned counsel for the appellant are not applicable to the present case. The First Appellate Court has no wrong in allowing the appeal and setting aside the judgment and decree of the Trial Court. The First Appellate Court disclosed about the Commissioner's Report for deciding the possession. I find no merit in this second appeal and the substantial questions of law formulated in the second appeal are answered accordingly against the plaintiff/appellant.

20. In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

- 1.The Subordinate Judge, Uthamapalayam.
- 2.The District Munsif, Uthamapalayam.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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Judgment made in
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