



S.A.(MD).No.316 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.316 of 2021

Muthu @ Karuthakannan

... Appellant

--Vs--

Poongodi

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.102 of 2019 dated 25.01.2021 on the file of the Sub-Judge, Thirumangalam reversed in decree and judgment in O.S.No.23 of 2015 on the file of the District Munsif cum Judicial Magistrate, Peraiyur, dated 30.08.2019.

For Appellant : Mr.J.Gunaseelanmuthiah
For Respondent : Mr.K.Sivabalan

JUDGMENT

The present second appeal is filed against the Judgment and Decree dated 25.01.2021 passed in A.S.No.102 of 2019 on the file of the



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Sub-Judge, Thirumangalam by reversing the Judgment and Decree dated 30.08.2019 passed in O.S.No.23 of 2015 on the file of the District Munsif cum Judicial Magistrate Peraiyur.

2. The plaintiff in the suit is the appellant herein and the defendant in the suit is the respondent herein. For the sake of convenience, the contesting parties shall be referred to as plaintiff and defendant as per the ranking in the suit.

3. The plaintiff had filed the suit for declaration to declare the suit property belonging to him and consequently recovery of possession. The brief facts as stated by the plaintiff is that the suit property originally remained as a vacant site was purchased by the plaintiff through registered sale deed dated 12.03.1973 executed by Chellaiah Thevar, son of Periyakaruppa Thevar and the said sale deed is marked as Ex.A.1, thereafter had constructed a small house in the site. The suit property which was originally classified as punja land was converted into natham by the Special Tahsildar (Nathan Settlement Scheme) after issuing notice to the plaintiff. The plaintiff was in possession and enjoyment of the suit



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property from the date of purchase. While that being so, the plaintiff has left the village and migrated to Thirupparankundram to eke out a livelihood and the house was under lock and key. The plaintiff used to visit the village during festival seasons or any ceremonies and during the period he would stay in the suit property. The defendant who is none other than the plaintiff's brother's son has taken undue advantage of the absence of plaintiff in the village and the close relationship with the plaintiff, broke the lock and trespassed into the suit property in the month of January 2014. After knowing the illegal act of the defendant through the relatives residing in the village, the plaintiff went to village and asked the defendant about the illegal activities, but the defendant threatened the plaintiff with dire consequences and assaulted the plaintiff. Hence, the plaintiff preferred police complaint and also issued legal notice dated 13.05.2014 to the defendant. The attitude of the defendant is adverse to the rights of the plaintiff over the suit property, hence the suit for declaration and consequential relief.

4. The defendant had filed written statement, wherein it is stated that the suit property was purchased from one Chellaiah Thevar on



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12.03.1973 by the plaintiff but he was not in possession and enjoyment of the suit property, further patta was not issued to the plaintiff. The suit property was in possession of defendant's father namely Rasu Thevar for more 30 years. The plaintiff had sold the suit property to the defendant on 09.05.1997 for the valuable consideration of a sum of Rs.4,000/- on the basis of the unregistered sale deed in the presence of the brother of the plaintiff and his relatives. After purchase of the suit property on 09.05.1997 the defendant had put up construction and residing in the suit property and hence the defendant is in possession and enjoyment of the suit property but the plaintiff was never ever was in enjoyment of the suit property. Even though the electricity connection in SCNo.186012354 stands in the name of the plaintiff, the defendant was paying the electricity charges. The defendant was paying the property tax to the said property. The defendant is residing in the suit property along with his family and having ration card for the said address. Since patta is not in the name of the plaintiff, the plaintiff could not execute registered sale deed, hence the parties have executed unregistered sale deed. But the plaintiff had promised to obtain patta and execute proper registered sale deed, but the plaintiff had failed to execute any registered sale deed, but demanded over



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and above Rs.5000/- from the defendant. Thereafter the plaintiff now and then quarreled with the defendant and registered First Information Report on the file of Sedapatti Police Station using his influence. The defendant is residing in the suit property from 09.05.1997 after constructed the house, but the said facts are concealed by the plaintiff and hence the defendant prayed to dismiss the suit.

5. After scrutinizing the pleading and evidence put forth by the parties, the Trial Court had allowed the suit. Aggrieved over the same the defendant had preferred an appeal, wherein the Appellate Court had allowed the appeal. Aggrieved over the same, the present second appeal is preferred raising various substantial questions of law and the same are reframed as under:

“i. When both the plaintiff and defendant admitted Ex.A.1 registered sale deed dated 12.03.1973 in favour of plaintiff, when the defendant rely on unregistered sale deed dated 09.05.1997 marked as Ex.B5 executed by plaintiff in the name of the defendant, when the plaintiff is entitled to the prayer of declaration?

ii. When Ex.B5 is unregistered document can that be valid



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document and whether it can be taken as proved by the defendant?

iii. When the defendant had proved his continuous possession in the suit property through evidence, if so whether the plaintiff is entitled to the prayer of injunction?

vi Whether the suit is affected by law of limitation?"

6. The Trial Court had held that both the parties had admitted that the suit property was purchased by the plaintiff through the sale deed dated 12.03.1973 executed by Chellaiah Thevar, son of Periyakaruppa Thevar which is marked as Ex.A.1. Even the Appellate Court had held that the defendant had admitted that the plaintiff had purchased the property through the sale deed Ex.A1. In such circumstances the Appellate Court had failed to grant the prayer for declaration that the suit property belonging to the plaintiff. Further when the defendant is claiming right over the property through an unregistered sale deed Ex.B5 and the same cannot be admitted as evidence at all. At the most the Ex.B5 can be treated as sale agreement and the defendant had not filed any suit for specific performance and as on date the period of limitation had lapsed. The



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defendant had not preferred any counter claim. Therefore, this Court is of the considered opinion that the plaintiff is entitled to the prayer of declaration and the first and second substantial question of law is held in favour of the plaintiff and against the defendant.

7. The next substantial question of law is when the defendant had proved his continuous possession in the suit property through evidence, if so whether the plaintiff is entitled to the prayer of injunction. The Trial Court had held that the plaintiff had not filed any documents to prove the continuous possession. The Trial Court further held that defendant had claimed continuous possession, while considering the said plea the Trial had rightly held that to prove the continuous possession the defendant had not filed any counter claim and hence the same cannot be considered. This Court is of the considered opinion based on the circumstances of the case when the plaintiff has ownership through registered sale deed, then the ownership would be followed by possession. When there is no counter claim then the plaintiff is having possession also and the entry of the defendant in the suit property either would be permissive possession or trespass or encroachment.



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8. It is seen Ex.B1 and Ex.B4 are electricity payment and Ex.B2 and Ex.B3 are tax receipts payment and the same is paid by the defendant in her name. If the plea of the defendant that the plaintiff had agreed to sell the property through Ex.B5 is accepted, then the defendant ought to have paid electricity bills and tax receipts from 1997 onwards, but the Ex.B1 and Ex.B4 are electricity payment and Ex.B2 and Ex.B3 are tax receipts are paid from 2002, 2005 etc. and not from 1997 onwards. Interestingly it is seen the defendant had admitted in the written statement that initially the electricity connection was in the name of the plaintiff, then the same would amount to permissive possession granted by the plaintiff to the defendant. Further changing the name in the electricity connection and property tax, the plaintiff ought to be heard before such change of name, no evidence was produced by the defendant to prove the name change was carried out after issuing notice to the plaintiff and after hearing the objections of the plaintiff. When there is no evidence to that effective then the defendant had unauthorizedly changed the name in the electricity connection and property tax. Therefore, this Court is of the considered opinion that the defendant was staying in the suit property under permissive possession. Hence, the third substantial question of law is



answered in favour of the plaintiff / appellant.

9. The fourth substantial question of law is limitation. The plaintiff had submitted that while purchasing the suit property the same was vacant site. Further the plaintiff had admitted in the deposition that the defendant had demolished the property and had put up construction and the same is extracted hereunder:

“ 1997-ம் வருடத்திலிருந்து பிரதிவாதி தாவா சொத்தில் வீடு கட்டி அனுபவித்து வருகிறார் என்றால் என்னுடைய வீட்டை இடித்துவிட்டு பிரதிவாதி வீடு கட்டிக் கொண்டார். அவர்தான் தற்போதும் தாவா சொத்தை அனுபவம் செய்து வருகிறார்.”

The fact that the electricity connection was in the name of the plaintiff (which fact is admitted by the defendant in his written statement) would prove that there was a construction put up by the plaintiff. After demolishing the same the defendant had put up construction and it is thereafter the defendant had changed the name in the electricity connection and also in property tax. That is the reason the defendant could not produce the electricity bill and property tax receipts in the name of the defendant



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from 1997 onwards. However, the fact the defendant had put up construction in the suit property was known to the plaintiff since the plaintiff and his wife are aware of the same which is evident in their deposition. At the most the defendant would be entitled to the cost of the construction, provided if the same was put up after obtaining permission from the plaintiff. In short, the transaction between the parties would be that the plaintiff had leased the land to the defendant and the defendant had put up construction in the land. Since the plaintiff and the defendant are closely related (defendant's father is plaintiff's brother i.e. plaintiff is Chittappa to defendant) there was some understanding between them. It is in the year 2014 there was difference of opinion, wherein the plaintiff had locked the premises since he was the owner of the land and the defendant had break open the same since he had put up construction, which had ended in police complaint before Sedapatti Police Station. Even though while deposing the defendant had denied about the police complaint but it is admitted in the written statement that the plaintiff had registered a complaint by using force. Hence immediately prior to police complaint the cause of action arises between the parties. Therefore, the limitation would arise from 2014 onwards and the suit is filed in the year 2015 and hence



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the suit is within the period of limitation. Therefore, the fourth substantial question of law is answered in favour of the plaintiff / appellant.

10. For the reasons stated supra, the second appeal is allowed, the judgment and decree dated 25.01.2021 passed A.S.No.102 of 2019 is set aside and the judgment and decree passed in O.S.No.23 of 2015 is confirmed.

31.01.2024

Index : Yes / No

NCC : Yes / No

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To

1. Sub-Judge, Thirumangalam.
2. District Munsif cum Judicial Magistrate,
Peraiyur.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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