



S.A.(MD)No.442 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.06.2024

PRONOUNCED ON: 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.442 of 2019

Kasi Thevar : Appellant/Appellant/
Plaintiff

Vs.

1.Indira
2.Neelamegam : Respondents/Respondents/
Defendants

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 30.08.2018 passed in A.S.No.144 of 2017, on the file of the Subordinate Court, Aranthangi, confirming the judgment and decree, dated 18.07.2017, passed in O.S.No.28 of 2009, on the file of the District Munsif Court, Aranthangi.

For Appellant : Mr.K.K.Samy

For Respondents :Mr.N.Balakrishnan



S.A.(MD)No.442 of 2019

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JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.144 of 2017, dated 30.08.2018, on the file of the Subordinate Court, Aranthangi, confirming the judgment and decree made in O.S.No.28 of 2009, dated 18.07.2017, on the file of the District Munsif Court, Aranthangi.

2. The appellant is the plaintiff. Admittedly, the first defendant is the wife of the second defendant and the plaintiff had married the second defendant's sister's daughter and as such, they are related to each other. It is not in dispute that the suit property measuring 0.27.5 Ares in S.No.4/11 of Sirunattanvayal Village, Aranthangi Taluk was owned by the second defendant and the second defendant has settled the suit property in favour of his wife – first defendant, vide settlement deed dated 17.08.1979.

3. The case of the plaintiff is that the defendants have decided to sell the suit property and the plaintiff has agreed to purchase the same,



S.A.(MD)No.442 of 2019

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that the plaintiff has paid Rs.5,000/- as sale consideration on 27.05.1986 and the defendants have executed an unregistered sale deed in the presence of the former Panchayat President Ramachandran, son of Sivanthaperumal, Ganesan, son of Kunjuathiyappan, Ramaiah, son of Sathasiva Thevar and Avudai Thevar son of Subramaniya Thevar, that the defendants have handed over the possession of the suit property on the same date and since then, the plaintiff, by cultivating paddy, has been in possession and enjoyment of the same, that the plaintiff has been paying kists in the Patta No.13 standing in the name of the first defendant, that the plaintiff has then applied and obtained patta in his favour in Patta No.137, that the defendants have preferred an appeal before the Revenue Divisional Officer challenging the issuance of patta in favour of the plaintiff, that the Revenue Divisional Officer without conducting proper enquiry, has passed an order cancelling the issuance of patta, that when the plaintiff had visited the suit property to cultivate the paddy crops, the defendants have created issues and restrained them to enter into the suit property and that therefore, the petitioner was constrained to file the present suit claiming permanent injunction restraining the defendants and their men from in any manner interfering with his peaceful possession and enjoyment of the suit property.



S.A.(MD)No.442 of 2019

WEB COPY

4. The defence of the defendants is that the first defendant since the settlement deed has been in possession and enjoyment of the same, that the first defendant has been paying the kists for the land in patta No.13, that the plaintiff due to previous enmity between them, has created a forged and fraudulent sale deed with the help of his men as if the first defendant has sold her property, that the signatures found in the said document dated 27.05.1986 are not that of the defendants, that the plaintiff without the knowledge of the defendants, have changed the patta in his favour and hence, the defendants were constrained to prefer the appeal before the Revenue Divisional Officer, Aranthangi and the Revenue Divisional Officer, after due enquiry, has passed an order cancelling the patta issued in favour of the plaintiff, that there was no occurrence on 15.03.2009 as alleged by the plaintiff and that therefore, the suit is liable to be dismissed.

5. The learned trial Judge, upon considering the pleadings of both sides, has framed the following issues:

(1) Whether the plaintiff is entitled to get the relief of permanent injunction?



S.A.(MD)No.442 of 2019

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(2) To what other reliefs, the plaintiff is entitled to?

6. During trial, the plaintiff has examined himself as P.W.1 and four other witnesses as P.W.2 to P.W.5 and exhibited 18 documents as Exs.A.1 to A.18. The defendants have examined the second defendant as D.W.1 and exhibited 20 documents as Exs.B.1 to B.20. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 18.07.2017 by holding that the plaintiff has not proved his lawful possession in the suit property, dismissed the suit. Aggrieved by the dismissal of the suit, the plaintiff has preferred an appeal in A.S.No.144 of 2017, on the file of the Subordinate Court, Aranthangi. The learned Appellate Judge, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 30.08.2018, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the present Second Appeal came to be filed by the plaintiff.



S.A.(MD)No.442 of 2019

WEB COPY

7. At the time of admission, this Court has framed the following Substantial Question of Law:

(A) Whether the Courts below are correct in law in coming to the conclusion, after considering the evidence of P.W.2 to P.W.5 and Ex.A.1 to Ex.A.12 and holding that though the plaintiff is in possession of the suit property since the possession was not a legal possession, that he cannot be granted a decree for injunction?

(B) Whether the Courts below are correct in law in overlooking the fact that the suit is one for a bare injunction and therefore, possession of the plaintiff can be disturbed only by due process of law?

8. The learned Counsel for the appellant would submit that the plaintiff and the second defendant are close relatives (பட்டாபிள்ளைகள்), that the Pangalis in the villages used to adopt give and get policy as per their demand of either money or materials for showing love and affection, that the first defendant who is the owner of the suit property has executed a document as Vennilai graiyam on 27.05.1986, in which her husband – second defendant has signed as attesting witness, that the second defendant in her evidence before the trial Court would say that the land



S.A.(MD)No.442 of 2019

WEB COPY

in question was given in mortgage with possession (ஒத்தி) to the plaintiff, that the second defendant in her evidence would also admit that she has signed some papers while receiving money towards mortgage, but the said papers were returned by the plaintiff at the time of repayment of the said amount, that the Courts below ought not to have relied upon the revenue records for showing the possession of the land in dispute, as the revenue records are meant for collection of revenue and mutation of the property, that the revenue records do not convey the title in favour of the defendants, that the learned appellate Judge has failed to consider the admission of the second defendant that the land in question was given to the plaintiff as mortgage with possession and the same was not redeemed by the second defendant and that the Courts below without considering the plaintiff's settled possession in the suit property, have given mechanical finding that since the plaintiff has not proved his lawful possession, the same cannot be protected.

9. The learned Counsel appearing for the defendants would contend that Ex.A.1 sale deed is not a legally admissible evidence, as the same was not registered, that the plaintiff has miserably failed to prove the execution of Ex.A.1 sale deed, that the plaintiff's side witness P.W.2



S.A.(MD)No.442 of 2019

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has given evidence as if the said document was executed by the second defendant before the panchayat, which is very much against the case of the plaintiff, that the first defendant, after the execution of the settlement by the second defendant, has been in possession and enjoyment of the same, that the defendants have produced adangal extract under Exs.B.2 to B.19 to show that the possession of the second defendant was recognised lang back, that though the plaintiff has obtained patta fraudulently without the knowledge of the defendants, their appeal before the Revenue Divisional Officer came to be allowed and ordered to issue patta in favour of the first defendant and that since the plaintiff has miserably failed to prove his possession, the trial Court has rightly dismissed the suit and the same was confirmed by the first appellate Court.

10. Admittedly, Ex.A.1 sale deed dated 27.05.1986 is unstamped and unregistered document and the plaintiff has subsequently paid stamp duty with penalty. The trial Court, by referring to Section 17 and Section 49 of the Registration Act and Section 35 of the Indian Stamp Act and also the decision of this Court in Kalaivani @ Devasena Vs. Ramu and others reported in 2010(1) CTC 27, has come to a finding that on



S.A.(MD)No.442 of 2019

payment of stamp duty with penalty, the document can be used for collateral purpose. The learned Appellate Judge, relying on the decision of this Court in the case of Rukmani and others Vs. G.Natarajan (died), Smt.Bagyam and others in S.S.No.158 of 2008, has come to a decision that Ex.A.1 sale deed can be considered for collateral purpose to show that the plaintiff was in possession of the suit property, but on the other hand, the appellate Court has proceeded to observe that the plaintiff has failed to prove Ex.A.1 sale deed.

11. I had an occasion to consider the validity and legality of the documents produced before the Court in the case of ***Deivanai and others Vs. Muthu @ Velayudham*** in C.R.P.(PD)(MD)Nos.9 and 10 of 2021, dated 16.09.2021 and it is necessary to refer the following passages:

“15.Admittedly, the exchange deed dated 07.08.1969 has already been produced before the trial Court and that the same is available with the Court records. Moreover, it is pertinent to note that the said document is unstamped and unregistered. As rightly pointed out by the learned counsel for the plaintiffs, the trial Court has given a finding that since the exchange deed is unregistered, the same is legally invalid and that the same cannot be used to prove the ownership of the defendant over the suit property nor to



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S.A.(MD)No.442 of 2019

prove the plea of adverse possession canvassed by the defendant. At this juncture, it is necessary to refer to the legal position relied on by the learned counsel for both the parties.

16.The learned counsel for the revision petitioner has relied on the following decisions;

(i) 2008 (5) CTC 260 (SC) : K.B.Saha and sons Private Limited Vs. Development Consultant Limited :

“Registration Act, 1908 (16 of 1908) Sections 17 & 49 – Transfer of Property Act, 1882 (4 of 1882), Section 107 – Admissibility of unregistered lease deed in evidence – Document which requires to be registered is not admissible in evidence but can be used as evidence of collateral purpose as provided in Proviso to Section 49 of Registration Act – Collateral transaction must be independent of, divisible from, transaction which requires registration – Collateral transaction should be one which does not create, extinguish title, interest, right or interest, etc. in immovable property – Once document cannot be admitted in evidence for want of registration any important clause in such document cannot be collateral purpose – Clause in lease deed enabling only named officer or his family members of Lessee occupying leased premises is important clause and could not be looked into as lease deed was not registered.

...

21. From the principles laid down in the various



S.A.(MD)No.442 of 2019

decisions of this Court and the High Courts, as referred to hereinabove, it is evident that :

1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

(ii) 2020 (1) CTC 47 (Mad) :Thangamuthu and others Vs. A. Jeyaraj :



S.A.(MD)No.442 of 2019

“12. It is clear from the Judgments that have been cited on the side of the Petitioners that a document, which is compulsorily registrable under the Registration Act, cannot be admitted in evidence, unless, it is registered. If a document is inherently bad for non-registration, it cannot be cured by paying deficit Stamp Duty and Penalty. It is even a settled position of law that such documents cannot be looked into even for collateral purposes.”

(iii) 2020 (4) CTC 395 (Mad) : Amertham Vs. Thannace and another :

“Registration Act, 1908 (16 of 1908), Section 49 – Indian Stamp Act, 1899 (2 of 1899), Section 35 – Unstamped unregistered Sale Deed – Whether admissible in evidence for collateral purpose in Suit for declaration of title – Plaintiff claimed adverse possession and marked unstamped unregistered Sale Deed to prove possession – No specific plea of Adverse Possession in Plaint – Purpose of making said sale Deed is only to prove Plaintiff's title as per pleadings – Held, document cannot be looked into for any collateral purpose as it is neither stamped nor registered – Unregistered Sale Deed cannot be admitted in evidence as Plaintiff claims title and Suit itself is for Declaration of Title based on unregistered Sale Deed – Collateral transaction must be independent and divisible from transaction, which requires registration – Collateral transaction should be one, which does not create or extinguish title or interest in



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S.A.(MD)No.442 of 2019

immovable property – Trial Court right in holding that document is inadmissible in evidence for want of Stamp Duty and Registration – Civil Revision Petition dismissed.

.....

24.

The petitioner has not even mentioned in the plaint that the document of sale deed dated 25.11.1973 is an unstamped and unregistered document. As it was pointed out earlier, the contention of the petitioner's counsel that the petitioner has pleaded adverse possession cannot be accepted as there is no specific plea as required in law. The document of unregistered sale deed is relied upon not for collateral purpose but for proving the transfer of right in immovable property as per pleadings. Though it is stated by the learned Counsel for the petitioner that the document may be relied upon to prove a oral agreement of sale, date of entry into possession of the land and nature of possession from the date of transaction, the collateral transaction referred to by the learned Counsel flow from the document of conveyance and the collateral purpose referred to by the counsel are to establish the right of petitioner under unregistered sale deed. From the pleading in the plaint, it cannot be contended that the document is required to prove a collateral transaction.

25.The judgment of the Privy Council relied upon by the petitioner has no application, since the unregistered gift



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S.A.(MD)No.442 of 2019

*deed was relied upon to prove adverse possession before Privy Council. Similarly, the judgment of the Hon'ble Supreme Court in **Bondar Singh** case is based on the pleading as borne out from the records. If we consider the issue in the background of the pleading, this Court has no hesitation to hold that the unregistered sale deed dated 25.11.1973 cannot be admitted in evidence as the petitioner claims title and the suit itself is for declaration of title based on the unregistered sale deed. As it has been held by the Hon'ble Supreme Court and this Court in several judgments, a collateral transaction must be independent and divisible from the transaction which requires registration. A collateral transaction should be one which does not create or extinguish title or interest in immovable property. In this case, the trial Court is right in holding that the document is inadmissible in evidence for want of stamp duty and registration....”*

17.The learned counsel for the respondent has relied on the following decisions :

(i) 2015 (6) CTC 467: Ramachandran and others Vs. Guruvi Reddy :

“10.In the case on hand, the plaintiff has filed the suit for declaration of title, permanent injunction, recovery of possession and for mesne profits. In the written statement, in paragraph No.5, the defendants have stated that they are



WEB COPY



S.A.(MD)No.442 of 2019

in possession of the suit property measuring an extent of 4.76 acres since the exchange deed dated 19.03.1908. Now, in order to establish that they have been in possession of the suit property since 19.03.1908, they seek to mark the document to prove their possession. The purpose for marking the document by the defendants would clearly establish that it is for collateral purpose. They are not claiming any right or title over the suit property by virtue of the exchange deed dated 19.03.1908. Even in the affidavit itself they have stated that the document is being marked only for proving their possession over the suit property. The collateral transaction does not create, extinguish title, interest or right etc., in the suit property.

11. In the judgment reported in 2003(4) SCC 161 (cited supra), the Hon'ble Apex Court held that even a sale deed that is inadmissible in evidence can be looked into for collateral purpose. As already stated, the collateral purpose in the judgment of the Hon'ble Apex Court is the nature of possession over the suit land.

12. In the case on hand, though there was exchange of properties on 19.03.1908, the defendants sought to mark the document only for proving their possession over the suit property.

13. The judgments relied upon by the learned counsel appearing for the petitioners squarely applies to the



WEB COPY



S.A.(MD)No.442 of 2019

facts and circumstances of the present case. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel appearing for the respondent, the judgments are not applicable to the facts and circumstances of the present case.

14. In these circumstances, following the judgment reported in 2003(4) SCC 161 (cited supra), I am of the view that the Trial Court should have allowed the application.....”

(ii) 2015 16 Supreme Court Cases 790 : Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others :

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exhibits B-21 and B-22 are the



S.A.(MD)No.442 of 2019

documents which squarely fall within the ambit of section 17 (i) (b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy Vs. Chinnappareddigari Vankat Reddy, has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.”



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S.A.(MD)No.442 of 2019

18. Before entering into further discussion, it is also necessary to refer Section 49 of the Registration Act, 1908, which reads as under :

“49 : Effect of non-registration of documents required to be registered - No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (IV of 1882) to be registered shall -

- (a) affect any immovable property comprised therein, or*
- (b) confer any power to adopt, or*
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.:*

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (IV of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (I of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

19. It is pertinent to mention that Section 17(1)(b) of the Registration Act mandates that any document which has effect of creating and taking away the rights in respect of an immovable property must be registered. Section 49 of the said Act imposes a bar on the admissibility of an



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S.A.(MD)No.442 of 2019

unregistered document and the proviso to the said Section provides two exceptions and the second one permits the admissibility of an unregistered document for proving any collateral transactions.

*20. There is no dispute about the legal position stated in **K.B.Saha's case** and in **Amertham's case** cited supra, relied on by the learned counsel for the petitioners. The position of law is well settled that even an unregistered and unstamped document can be received in evidence to prove a collateral purpose, provided, stamp duty is paid with penalty. But, at the same time, the same cannot be admitted in evidence to prove the primary purpose, even if stamp duty is paid.”*

12. In the case on hand, the plaintiff has not claimed to prove title to the suit property through Ex.A.1 sale deed. But on the other hand, he is attempting to show his long possession more importantly from the date of said document. It is settled law that in a suit for bare injunction, it is sufficient to decide as to who is in possession of the suit property at the time of filing of the suit and as such, but at sometimes, while deciding the possession, the Court has to necessarily consider the title to the property incidentally. In the case on hand, as rightly contended by the



S.A.(MD)No.442 of 2019

WEB COPY

learned Counsel for the appellant, since the plaintiff has not claimed any declaratory relief, the question of considering and deciding the title to the suit property does not arise. But as already pointed out, the Courts below have given a finding that the plaintiff has failed to prove the execution of Ex.A.1 sale deed, taking note of the contradictory evidence given by D.W.2 and the non-examination of other persons before whom the said document came to be executed as alleged by the plaintiff.

13. But as rightly contended by the learned Counsel for the appellant, the Courts below have failed to consider a vital and important admission made by the second defendant before the trial Court. The second defendant as D.W.1 in his evidence would say that himself and the first defendant have mortgaged the suit property with the plaintiff in the year 1986, that they have handed over the possession of the property to the plaintiff and that the plaintiff was in possession of the property till money was repaid to the plaintiff. The evidence of D.W.1 is extracted hereunder for better appreciation:

“ தாவாச் சொத்தில் நான் 1986 – ம் ஆண்டு நானும்இ என்
மனைவியும் ஒத்தி வைத்தோம். வாழ்க்குச் சொத்தினை ுமற்படி



S.A.(MD)No.442 of 2019

WEB COPY

ஒத்திவைத்தது இந்த வழக்கில் கண்ட வாதி காசி ஸ்தலமிடமிருந்து பெற்றுக்கொண்டதும். தாவாச்சொத்தின் சுவாதினத்தினை ஒப்புக்கொண்டபடி வாதிமிடம் விட்டுவிட்டான். ஸ்தலமிடம் ஒத்திக்கு திரும்ப பணம் கொடுக்கும்வரை இ மிரதிவாதிமிடம் சொத்து வாதிமிடம் அனுபவத்தில் இருந்தது. அதற்கு ஏதனும் எழுதிக்கொண்டிருக்கிறா? என்றால் இ ஒரு வெற்றிப்பயிர் என் மனைவிமிடமும் இ என்னிடமும் கையொப்பம் வாதிக்கொண்டனர். அந்த ஸ்தலமிடம் எதுவும் எழுதவில்லை. அதில் நானும் இ என் மனைவியும் தலா ஒரு கையொப்பம் ஸ்தலமிடம். அந்த வெற்றிப்பயிரை நான் பணத்தினைக் கொடுத்துபாது திரும்பிக்கொடுக்கவில்லை.”

14. No doubt, as rightly observed by the Courts below, the defendants have nowhere whispered about the above factual aspects in the written statement nor in the chief examination affidavit filed by the second defendant. It is pertinent to note that the second defendant has specifically admitted that the plaintiff had been in possession and enjoyment of the suit property from 1986 to 2007. Though the second defendant has alleged that he has repaid the mortgage amount in the year 2007, he has not elaborated anything further. Admittedly, the defendants have not produced any evidence to show that they have redeemed the suit



S.A.(MD)No.442 of 2019

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property in the year 2007 or that the plaintiff has surrendered the possession of the suit property to the defendants.

15. No doubt, the defendants have produced the adangal extract under Exs.B.2 to B.19 to prove their alleged possession. But on the other hand, the plaintiff has produced kists receipts under Exs.A.2 to A.13 to show that he alone has paid kists for the suit property in Patta No.13. Admittedly, Patta No.13 was standing in the name of the first defendant and as such, the name of the first defendant was shown in the adangal register. Though the defendants have taken a stand that they have paid kists, they have not produced any receipts. It is not in dispute that the plaintiff has applied and obtained patta in respect of the suit property in the year 2007. The first defendant, after coming to know about the same, has preferred the appeal before the Revenue Divisional Officer and that the Revenue Divisional Officer has passed an order cancelling the patta issued in favour of the plaintiff. As already pointed out, though the second defendant has produced and marked adangal register extract through his chief examination affidavit, in cross-examination, he has given a specific admission that the plaintiff alone has been in possession for the entire period between 1986 and 2007 and as such, no value can be



S.A.(MD)No.442 of 2019

given to Exs.B.2 to B.19.

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16. At this juncture, it is necessary to refer the judgment of the Full Bench of the Hon'ble Supreme Court in the case of ***Rame Gowda (dead) by LRs Vs. M.Varadappa Naidu (dead) by LRs and another*** reported in ***AIR 2004 SC 4609***, wherein the Hon'ble Apex Court has laid the legal position that a person who is in a settled possession or effective possession without title is entitled to protect his possession even as against the true owner and the relevant passages are extracted hereunder:

“If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted.



WEB COPY



S.A.(MD)No.442 of 2019

The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of he cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration # (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab # (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh # (1977) 1 SCC 188. The authorities need not be

multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his



WEB COPY



S.A.(MD)No.442 of 2019

possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re- instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force.”

17. The Hon'bl Apex Court in the above judgment has explained about what is the settled possession and it is a possession extending over a sufficiently long period of time and acquiesced to by the true owner. No doubt, the casual act of possession or any stray act of trespass would not have the effect of interrupting the possession of the rightful owner. In the case on hand, as already pointed out, even according to the defendants,



S.A.(MD)No.442 of 2019

the plaintiff has been in possession for more than 20 years. As already pointed out, there is absolutely no evidence to show that the defendants have taken the possession of the suit property in the year 2007 and are in possession of the suit property.

18. Considering the above and taking note of the dictum laid down by the Hon'ble Supreme Court, this Court has no hesitation to hold that the plaintiff has been in settled possession and as such he is entitled to protect his possession. In the present case, title was not at all gone into and it is always open to the first defendant to take appropriate proceedings if she is legally entitled and in such proceedings, it is also open to the plaintiff to claim ownership through Ex.A.1 and adverse possession if any. Though the defendants have denied the cause of action alleged by the plaintiff, the claim putforth by them and the defence taken by them would go to prove that the apprehension of the plaintiff cannot be rejected as one without substance. Since the plaintiff is in settled

possession, he cannot be evicted or thrown out without due process of law. But the Courts below, as already pointed out, by observing that the plaintiff has not proved his lawful possession, he is not entitled to get the



S.A.(MD)No.442 of 2019

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relief claimed. Even assuming that the plaintiff is in unlawful possession, as per the dictum of the Hon'ble Supreme Court, the same has to be considered as settled possession and as such, he cannot be thrown away. The Courts below have miserably failed to take note of the vital admission made by the second defendant before the trial Court and without understanding the concept of settled possession, has rejected the case of the plaintiff and as such, the same are liable to be set aside. Hence the Substantial Questions of Law are answered accordingly.

19. In the result, the Second Appeal is allowed and the impugned judgment and decree, dated 30.08.2018 passed in A.S.No.144 of 2017, on the file of the Subordinate Court, Aranthangi, confirming the judgment and decree, dated 18.07.2017, passed in O.S.No.28 of 2009, on the file of the District Munsif Court, Aranthangi is set aside. The suit in O.S.No.28 of 2009 is decreed granting permanent injunction restraining the defendants and their men in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property except by due process of law. The parties are directed to bear their own costs.



S.A.(MD)No.442 of 2019

18.07.2024

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NCC : Yes:No
Index : Yes : No
Internet : Yes : No
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To

1. The Subordinate Court, Aranthangi,
2. The District Munsif Court, Aranthangi
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.442 of 2019

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.442 of 2019

18.07.2024