



REV APL(MD).No.110 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

REV.APL(MD)No.110 of 2024

in

S.A(MD)No.913 of 2024

and

C.M.P(MD)No.12414 of 2024

Subbiah

... Petitioner /
Respondent

v.

Ganesan

... Respondent/
Appellant

PRAYER: Review Application filed under Order XLVII read with Section 114 of Civil Procedure Code to review the order made in S.A(MD)No.913 of 2014 on the file of this Court dated 06.10.2021 and allow this review application.

For Petitioner : Ms.M.Kamalini

For Respondent : Mr.Paranjothi
for M/s.KBS Law Office



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ORDER

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The review applicant wants this Court to review the judgment and decree dated 06.10.2021 made in S.A(MD)No.913 of 2014. The respondent herein filed O.S.No.211 of 2010 on the file of the District Munsif Court, Pudukottai seeking permanent injunction against the review applicant. The suit was dismissed vide judgment and decree dated 20.12.2012. Aggrieved by the same, the plaintiff filed A.S.No.81 of 2013 before the Sub Court, Pudukottai. The first appellate Court dismissed the appeal vide judgment and decreed dated 16.06.2014. Challenging the same, the plaintiff filed S.A(MD)No.913 of 2014. The second appeal was allowed on 06.10.2021. Aggrieved by the same, this review application has been filed.

2.The learned counsel for the review applicant reiterated all the contentions set out in the grounds of review. She contended that the defendant has been in uninterrupted possession and enjoyment of the suit property and that the Court below rightly found against the plaintiff. The learned counsel also submitted that without a prayer for declaration, a suit for injunction simpliciter could not have been laid. She also tried to



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highlight several other discrepancies in the judgment rendered by this Court.

3.I am not swayed by the submissions of the learned counsel for the review applicant. It is true that the suit has been filed only for permanent injunction. The plaintiff ought to have sought relief of declaration if cloud had been cast on the plaintiff's title.

4.In this case, except pleading possession, the defendant had not been able to challenge the plaintiff's title at all. On the side of the defendant, no documentary evidence was adduced. Only two witnesses apart from the defendant were examined as witnesses. On the other hand, the plaintiff examined himself as P.W.1, and one Arumugam as P.W.2. As many as 9 documents were marked. Sale deed dated 16.11.1970 was marked as A.1. A.5 is the sale deed dated 10.06.2010 executed in favour of the plaintiff. That apart, plaintiff had also marked the original patta. In these circumstances, the following substantial questions of law were framed:

“i) Whether the Courts below are right in law in non-suiting the plaintiff, having held that the plaintiff is the



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absolute owner of the suit property and whether this approach of the Courts below is not perverse?

ii) Whether the failure of the Courts below in applying the principle “possession follows title” to the instant case is not substantially erroneous in law calling for interference?

iii) Whether the failure of the Courts below to read the evidence of P.W.1 as a whole is right in law especially when the plaintiff has proved his title over the suit property?”

In paragraph 8 to 10, the factual and legal aspects were discussed. It read as follows:

“8.I carefully considered the said contentions. There is no dispute that the suit property originally belonged to Kulliyammal. The case of the appellant is that Kulliyammal sold the suit property in favour of Palani @ Palaniyandi vide sale deed dated 16.11.1970(Ex.A.1). It is true that the original sale deed was not produced. The appellant in response to a specific question in this regard had replied that the original document was missing and therefore, he could mark only a certified copy. From this, one cannot doubt the version of the plaintiff that Kulliyammal had sold the property in favour of Palani @ Palaniyandi. As rightly pointed out by the learned counsel appearing for the



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appellant, Ex.A.1 is a registered document. Therefore Section 60 of the Registration Act, 1908 can be invoked. The said provision reads as follows :

“Certificate of registration.—(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.”

In the decisions reported in (1972) 2 MLJ 508 (Irudayam Ammal and Ors. V. Salayath Mary) and (1999) 3 MLJ 577 (Dr.Kumari Shantha Arogyadoss and Ors. V. Tmt.G.C.Kamala Sri Hari and Ors.), it was held that though registration by itself, in all cases, is not proof of execution, if no other evidence is available, the certificate of registration is prime facie evidence of its execution.

9.It is relevant to note here that except a plea of formal denial, the defendant has not adduced any rebuttal evidence. Ex.A.1 was executed and registered on 16.11.1970. The suit in question was filed in the year 2010. The Court below have given a categorical finding that the plaintiff has established his title over the suit property. Having correctly given such a finding, the Courts below erred in denying the



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*relief of permanent injunction. Apart from marking the sale deed executed in his favour (Ex.A.5), the plaintiff had also marked Ex.A.2, Ex.A.3, Ex.A.4, Ex.A.6 to Ex.A.9. These documents are revenue documents. In fact the original patta standing in the name of Palani @ Palaniyandi had also been marked. On the other hand, the defendant examined two witnesses to show that the he is in possession of the suit property. The documentary evidence adduced by the plaintiff cannot be displaced by the oral evidence. In the decision reported in **2012 (6) CTC 303 (Kesavan V. Muthu)**, it was held that when a property is transferred by parties inter vivos, then the registered document evidencing the transfer of title will be the main document of title and the patta issued, based upon the transfer of title will become the supporting document to the title of the party. Normally, possession of patta signifies lawful possession of the property by person in possession of patta.*

10.It is true that in the suit property, R.S.Pathy trees are standing. In the chitta document filed by the plaintiff, it was erroneously mentioned that Paddy is being grown. This is certainly a discrepancy. But this erroneous entry in the chitta document cannot disprove the claim of the plaintiff that he is in possession of the suit property. The plaintiff's title has been established. He has also filed a host of revenue documents indicating that the revenue department has



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recognised the possession of his vendor. By virtue of Ex.A.5 sale deed dated 10.06.2010, the plaintiff stepped into the shoes of his vendor Palani @ Palaniyandi. Therefore, the substantial questions of law are answered in the favour of the appellant and the judgment and decree impugned passed by the first appellate Court are set aside and the suit is decreed as prayed for.”

Substantial questions of law were answered in favour of the appellant and the judgment and decree of the Court below was reversed. The second appeal itself was allowed.

5.If the review applicant is of the view that the second appeal ought not have been allowed, the remedy open to the review applicant was to file SLP before the Hon'ble Supreme Court. It is well settled that the review application is not an appeal in disguise. I am satisfied that the judgment under review does not suffer from any error apparent on the face of the record. The parameters set out in Order 47 of CPC are not fulfilled in this case. I do not find any ground to review the judgment dated 06.10.2021 made in S.A(MD)No.913 of 2014.



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6.This Review application stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.09.2024

Index :Yes/No
Internet:Yes/No
NCC :Yes/No
MGA

To

1.The District Munsif Court,
Pudukottai.

2.The Sub Court,
Pudukottai.



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G.R.SWAMINATHAN, J.

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