



S.A.(MD).No.686 of 2023

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.01.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.686 of 2023

and

C.M.P.(MD)No.16842 of 2023

M.Thangavel

... Appellant

/Vs./

D.Parimalam

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.19 of 2022, dated 05.09.2023, on the file of the Principal Sub-Court, Palani, confirming the judgment and decree passed in O.S.No.27 of 2019, dated 30.03.2022, on the file of the District Munsif Court, Palani.

For Appellant : Mr.S.Raja

For Respondent : Mr.K.Pragadeesh Kumar

JUDGMENT

The second appeal is preferred against the judgment and decree passed by the Trial Court and the First Appellate Court.



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2. The plaintiff is the appellant herein and the suit is filed for bare injunction. For the sake of convenience, the parties are referred as per ranking in the suit. The facts as stated in the plaint is that the plaintiff and the 2nd defendant are brother and sister. When the suit property was purchased by the 2nd defendant through sale deed dated 05.07.1989. While purchasing the said property the 2nd defendant had no enough money, hence the plaintiff had helped the 2nd defendant by paying part amount of the sale consideration. After purchase of the property the 2nd defendant had allowed the plaintiff to reside in the suit property. The family of the 2nd defendant were living elsewhere owing to their job. The contention of the plaintiff is that there was a power of attorney deed dated 01.01.2000, wherein the 2nd defendant had granted power to carry out the repair works in the suit property and based on the same the plaintiff had carried out repairs works for Rs.3,00,000/-. Thereafter the 2nd defendant had received Rs.5,00,000/- from the plaintiff and executed Othi Deed dated 11.08.2015. Subsequently the Othi was extended through Extension Deed dated 10.08.2018. Hence, the plaintiff had prayed for bare injunction restraining the defendant not to interfere in the



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peaceful possession of the suit property. Both the Courts have disbelieved the case of the plaintiff and dismissed the suit and it is concurrent finding. Aggrieved over the same the present second appeal is filed.

3. The Trial Court has categorically rendered a finding that the plaintiff is claiming that Othi agreement was executed between the parties but the plaintiff has not filed or marked the alleged Othi document. Without any documents, the plaintiff is claiming that Othi was executed between the parties and when there is no evidence it cannot be believed and dismissed the suit.

4. At the time of admission of the second appeal, the Learned Counsel appearing for the appellant / plaintiff submitted that the he is contemplating to file a miscellaneous application to accept the additional documents namely Power of Attorney, Othi Agreement and Extension of Othi Agreement. Further, the appellant has suffered a finding that he has not filed the Othi document and in such circumstances, the said petition



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to file additional documents cannot be accepted. Further the defendant had stated in the written statement such documents are false. It is seen that the said documents namely Power of Attorney, Othi Agreement and Extension of Othi Agreement were not registered, hence the same cannot be accepted. Therefore, this plea of the plaintiff / appellant cannot be entertained and the same is rejected.

5.The appellant has raised the following substantial questions of law.

- “(a) Whether the defendant has proved her possession?*
- (b) When the defendant has admitted possession of plaintiff whether the lower and appellate court rightly dismissed suit and appeal?*
- (c) When the defendant has admitted the possession of the plaintiff, whether the plaintiff has to prove the possession?”*

The contention of the plaintiff is that even an encroacher is entitled to injunction, if the possession is proved. But in the present case the plaintiff had relied on the Power of Attorney, Othi and Othi extension



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documents to prove the same, but the same had not been filed and marked. Further the plaintiff had claimed that he had incurred expenses for carrying out repairs works in the suit property but the plaintiff had not filed any evidence like bills or calculation for such expenses. Therefore, this Court is of the considered opinion that rightly both the courts had held that the plaintiff had not proved possession.

6. The plaintiff further submitted that the defendant had not disputed the plaintiff's possession of the suit property. But the defendants had stated in the writ statement that the plaintiff never ever was in possession of the property and the documents stated in the plaint are false and forged. After taking the rival claims, both the courts have held that the plaintiff is in illegal possession. Therefore, this Court is of the considered opinion that the possession of the plaintiff was never accepted by the defendant. Hence, the claim of the plaintiff that possession is accepted by defendant is false and the substantial question of law are held against the plaintiff.



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7. Moreover the question of law raised by the plaintiff are question of facts only. Hence this Court do not find any question of law muchless substantial questions of law. Therefore, the present second appeal is liable to be dismissed and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2024

Index : Yes / No

NCC : Yes / No

Tmg



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TO:

- 1.Principal Sub-Court, Palani.
- 2.District Munsif Court, Palani.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.686 of 2023

Dated:
19.01.2024