



S.A.No.1069 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2024

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A.No.1069 of 2001

1.Arumugam (Died)

2.Arjunan

... Appellants/Appellants/
Defendants

3.A.Indhirani

4.A.Bharathiraja

... Proposed Appellants

(A3 & A4 are brought on record as Lrs of deceased A1 vide Court order, dated 21.04.2022 made in C.M.P(MD)Nos.2625, 2626 & 2627 of 2022)

Vs.

1.Mohd.Haniffa

2.Kaja Mohideen (Died)

... Respondents/Respondents/
Plaintiffs

3.K.Halifullah

4.K.Oleifullah

... Proposed Respondents

(R3 & R4 are brought on record as Lrs of the deceased R2 vide Court order, dated 24.01.2020 made in M.P(MD)No.1 of 2011)



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PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 08.01.2001 in A.S.No.132 of 1999 on the file of the learned Additional District Judge cum Chief Judicial Magistrate, Pudukottai confirming the judgment and decree, dated 05.03.1999 in O.S.No.172 of 1997 on the file of the Principal District Munsiff, Pudukottai and dismiss the suit.

For Appellants : Mrs.AL.Gandhimathi

For R3 : Mr.G.Sridharan

For R4 : No appearance

JUDGMENT

The defendants in the suit are the appellants herein.

2. The suit is for declaration of title and injunction. The suit was decreed by the trial Court and findings of the trial Court was affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendants have come by way of second appeal.



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3. According to the respondents / plaintiffs, the suit property originally belonged to one Packiyam Poosari and he mortgaged the property to one Sulthan Rawthar, who is the father of the plaintiffs for a sum of Rs.70/- under registered mortgage deed, dated 16.07.1945. Subsequently, he has received a further sum of Rs.25/- from the plaintiffs' father and sold the property to him with a request to adjust the mortgage debt with the sale price. Thus, the suit property has been in possession and enjoyment of the plaintiffs and his brothers as owners. In the oral partition, among the heirs of Sulthan Rawthar, the father of the plaintiffs, the suit property was allotted to the share of the 1st plaintiff. Thereafter, the suit property was mortgaged to the mother of the defendants, namely Chinnammal on 14.07.1980 under a registered simple mortgage deed. The other plaintiffs were also joined as mortgagor in the said document. The mortgage deed was discharged by the 1st plaintiff. However, the original mortgage deed was not returned to the plaintiff by Chinnammal. The defendants who are all sons of Chinnammal have no right or title over the suit property as their mother received the full amount mentioned in the mortgage deed. Without having any right, the defendants attempted to interfere with plaintiffs' possession and hence, the plaintiffs were constrained to file a suit for



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declaration of their title and for a consequential injunction.

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4. The suit was resisted by the appellants / defendants by denying the right and possession of the plaintiffs over the suit property. It was the case of the defendants that the suit property was mortgaged by the plaintiffs to defendants' mother Chinnammal on 14.07.1980 by receiving a sum of Rs.1,000/- and thereafter, the plaintiffs received a further sum of Rs.1,000/- on 28.04.1986 and handed over the possession of the suit property to her by executing a document. From that day onwards, the defendants had been in possession and enjoyment of the suit property and hence, the prayer for declaration and injunction filed by the plaintiffs was not sustainable.

5. Before the trial Court, the plaintiffs 1 and 2 were examined as P.W.1 and P.W.2 and yet another witness was examined as P.W.3. On their behalf, 4 documents were marked as Exhibits A.1 to A.4. The 2nd defendant was examined as D.W.1 and another one was examined as D.W.2. On behalf of the defendants, 7 documents were marked as Exhibits B.1 to B.7.



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6. The trial Court on appreciation of oral and documentary evidence, came to the conclusion that the appellant proved his title as well as the possession over the suit property and granted a decree as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.132 of 1999 on the file of the Additional District Court / Chief Judicial Magistrate, Pudukkottai. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the unsuccessful defendants have come by way of second appeal before this Court.

7. At the time of admission, the following substantial question of law has been framed by an order, dated 21.10.2003:

“1. Whether the Courts below have committed an error in holding Exhibit B.7 as inadmissible in evidence?

2. Whether the Courts below are right in granting the relief of injunction merely on the supposed weakness of the defendants case, without a finding of possession in favour of the plaintiffs?”

8. The learned senior counsel appearing for the appellants elaborated the substantial question of law framed at the time of admission by submitting that the Courts below have committed a serious



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error of law in holding that Exhibit B.7 is inadmissible in evidence. It is her submission that Exhibit B.7 is only a delivery note evidencing delivery of the property and the same need not be registered. She further submitted that the plaintiffs failed to produce any positive evidence to prove their possession or title over the suit property and hence, the Courts below erred in decreeing the suit based on the weakness of the defendants' case.

9. Exhibit A.2 is the certified copy of the mortgage deed executed by the plaintiffs in favour of the defendants' mother Chinnammal. The defendants' mother by admitting the title of the plaintiffs, accepted the mortgage deed executed by the plaintiffs and advanced a sum of Rs. 1,000/- in favour of the plaintiffs. In such circumstances, the Courts below rightly came to the conclusion that having admitted the title of the plaintiffs under Exhibit A.2 registered mortgage deed, the defendants who are claiming right tender mortgagee to Exhibit A.2 document are not entitled to deny the title of the mortgagor. Accordingly, based on Exhibit A.2, the Courts below found that the defendants were not entitled to deny the title of mortgagor or plaintiffs. Thus, granted a decree for declaration of plaintiffs' title.



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10. As far as the possession is concerned, Exhibit A.2 is a simple mortgage deed and a perusal of the same would suggest there is no recital in the document as if the possession was delivered to the defendants. Therefore, the possession of the suit property remained with the plaintiffs even after execution of simple mortgage deed Exhibit A.2. It is the specific case of the defendants that the possession was delivered to Chinnammal by the plaintiffs under Exhibit B.7, dated 28.04.1986. A perusal of the same would suggest that under the said document, the plaintiffs received a sum of Rs.1,000/- and allowed the defendants to enjoy the suit property for 10 years by paying kist to the Government. Therefore, the recitals found in Exhibit B.7 would suggest that it involves conveyance of a specific interest in immovable property to the defendants which is valued at Rs.1,000/-. When the document involves conveyance of interest in immovable property worth about more than Rs. 100/-, it requires registration. Therefore, Exhibit B.7 being an unregistered document, is not admissible in evidence. Both the Courts below rightly held Exhibit B.7 is inadmissible in evidence. It is the case of the defendants that the possession of the suit property was handed over in the year 1986 by the plaintiffs after receiving a further sum of Rs. 1,000/- over and above the mortgage debt under Exhibit A.2. If Exhibit



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B.7 is excluded from evidence on the ground that it is inadmissible, there is no other acceptable evidence available on record to suggest delivery of possession to the defendants by the plaintiffs. Therefore, the Courts below based on Exhibit A.2 came to the conclusion that the plaintiffs proved their title as well as the possession and the defendants failed to prove the delivery of possession pleaded by them in the year 1986. The conclusion reached by the Courts below are based on proper appreciation of evidence available on record. I do not find anything to interfere with the final conclusions of the Courts below. The substantial question of law framed at the time of admission are answered against the appellants and in favour of the respondents.

11. Accordingly, the Second Appeal stands **dismissed** by confirming the judgment and decree passed by Courts below. No costs.

13.06.2024

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

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- To
- 1.The Additional District Judge
cum Chief Judicial Magistrate,
Pudukottai.
 - 2.The Principal District Munsiff,
Pudukottai.
 - 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR,J.

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Judgment made in
S.A.No.1069 of 2001

Dated:
13.06.2024