



S.A.No1316 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.No1316 of 2002

P.R.Ramakkarar (Died)
2.Govindammal
3.Meenakshi
4.Devi
5.Thamarai Selvi

...Appellants

-Vs-

1.S.Arunachalam
2.Sethuraman
3.Karuppiah
4.Thatchina Moorthy

... Respondents

(Fourth respondent was impleaded as party respondent vide order of this Court, dated 13.07.2012 in M.P.(MD)No.1 of 2012)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Subordinate Court, dated 05.03.2002 made in A.S.No.5 of 2001 reversing the judgment and decree of the learned District Munsif Court, Manamadurai, Sivagangai District, dated 31.07.2000 rendered in O.S.No.17 of 1995.



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For Appellants :Mr.T.S.Mohamed Mohideen

R1 to R3 :Dismissed as abated

For R4 :Mr.I.Vel Pradeep

JUDGMENT

The plaintiff in the suit is the appellant. The suit is for declaration of title and injunction. The suit was decreed by the trial Court. On appeal filed by the defendants, the first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiff is before this Court.

2.According to the plaintiff, he entered into a sale agreement in respect of suit item No.1 with the first defendant on 18.10.1975. The agreed sale consideration was Rs.4,000/- and a sum of Rs.500/- was paid as advance. It was also claimed that the suit item No.1 was delivered to the plaintiff on the date of agreement. As such, he had been in possession and enjoyment of the same. The plaintiff contended that the suit item No.2 was orally purchased



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by him from the first defendant in the year 1969 for a sale consideration of Rs.2000/- Thereafter, he had been in possession and enjoyment of the same as an owner. The first defendant colluding with the defendants 2 and 3 attempted to interfere with the plaintiff's possession. Therefore, he was constrained to file a suit for declaration of title and injunction.

3.The first defendant filed a written statement and denied the right as well as the possession of the plaintiff over the suit property. The agreement pleaded by the plaintiff was specifically denied by the defendants. The oral sale pleaded by the plaintiff in respect of second item was also denied by the defendants. It was claimed in the written statement that both the items of the suit property were purchased by the first defendant under a registered sale deed, dated 28.09.1959 and he had been in possession and enjoyment as owner with patta in his name and therefore, the defendants sought for dismissal of the suit.

4.Before the trial Court, the plaintiff was examined as PW-1 and other witnesses were examined as PW-2 and PW-3. On behalf of the plaintiff, 17



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documents were marked as Ex-A1 to Ex-A17. The first and second defendants were examined as DW-1 and DW-2 and one independent witness was examined as DW-3. On behalf of the defendants, 15 documents were marked as Ex-B1 to Ex-B15. The forensic reports obtained from the expert were marked as Ex-C1 and Ex-C2.

5.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his title over the suit property. However, the trial Court found that the plaintiff was in possession and enjoyment of the suit property and hence, granted the decree for injunction. Aggrieved by the same, the defendants preferred an appeal in A.S.No.5 of 2001 on the file of the Subordinate Court, Sivagangai. The first appellate Court reversed the findings of the trial Court and allowed the appeal by dismissing the entire suit. Aggrieved by the same, the plaintiff is before this Court.

6.At the time of admission, this Court formulated the following substantial questions of law, by order, dated 14.08.2002:



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“Whether the first appellate Court is right in holding that the sale agreement dated 18.10.1975 is not proved only on the ground that the attesting witness is not examined?

2. Whether the plaintiff has right to take independent and alternative ground regarding possession as a cultivating tenant and under part performance of the sale agreement under Section 53A of the Transfer of Property Act?

3. Whether the first appellate Court can set at naught the judgment and decree rendered in O.S.No.128 of 1974, dated 14.06.1978 of District Munsif Court in A.S.No.260 of 1976, dated 10.02.1977 of District Court?”

7.The learned Counsel for the appellants submitted that the first appellate Court committed a grave error in rejecting the sale agreement filed by the plaintiff only on the ground that the same has not been proved by attestors to the sale agreement. The learned Counsel further submitted that the forensic report submitted by the expert was over looked by the first appellate Court. The learned Counsel further submitted that Ex-A1 and Ex-A2, judgment passed in a suit for injunction filed by the plaintiff in respect to first item of the suit property would establish the possession of the plaintiff over the first item and the same has not been taken into consideration in proper perspective by the first appellate Court. The learned Counsel further submitted that even if the plaintiff failed to prove his possession under the



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sale agreement, on the basis of his possession as a cultivating tenant, he was entitled to get the relief of injunction.

8.The learned Counsel for the appearing for the fourth respondent, by taking this Court to the findings rendered by the first appellate Court, submitted that the first appellate Court on proper appreciation of oral and documentary evidence came to the conclusion that the plaintiff was not entitled to any relief and the same requires no interference in the Second Appeal.

9.The plaintiff filed a suit for declaration of title and injunction. It is his specific case that he entered into a sale agreement with the first defendant for purchase of suit item No.1 under Ex-A4, dated 18.10.1975. It is the further case of the plaintiff that he has been in possession and enjoyment of the suit property right from the date of agreement, as agreement holder. As far as the suit second item is concerned, it is the case of the plaintiff that he purchased the same from the first defendant under an oral sale in the year 1969 for a sale consideration of Rs.2000/-. Therefore, even as per the



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pleadings of the plaintiff, the title of the first defendant is accepted.

10.As far as the oral sale is concerned, it is settled law that if a sale is in respect of the immovable property for value of Rs.100/-or more, it shall be by way of a registered document. In the case on hand, the plaintiff claims that he purchased the suit second item for a sale consideration of Rs.2000/-. Therefore, the oral sale pleaded by him is not valid and the same would not confer any title. Therefore, on the basis of the oral sale, he is not entitled to seek declaration of title in respect of suit second item. The plaintiff had also failed to prove his continuous hostile possession from 1969 and therefore, he is also not entitled to prescriptive title in respect of the suit second item.

11.As far as the suit first item is concerned, the plaintiff claims himself as a person in possession of the property under a sale agreement. It is settled law that possession of vendee under a sale agreement is a permissive one and it will never turn against the right of the vendor of the agreement. Therefore, the person in possession of the property under a sale agreement is not entitled to claim adverse title. Admittedly, in pursuance of alleged sale



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agreement, no sale deed has been executed in favour of the plaintiff in respect of the suit first item and therefore, the plaintiff is not entitled to get a declaration of title in respect of suit first item, as no sale deed is executed in his favour. The plaintiff is also not entitled to claim any adverse title, in view of the specific pleading that he was put in possession of the property under the sale agreement. Therefore, the conclusion reached by the Courts below that the plaintiff was not entitled to declaration of title is in accordance with law and the same requires no interference.

12.As far as possession is concerned, the plaintiff filed Ex-A5 and Ex-A6, patta in his name to prove his possession over the suit property. It is seen from the records that patta issued in the name of the plaintiff was cancelled subsequently by Ex-B5 and patta was transferred to the name of the first defendant and he has also produced chitta and adangal extract in his name to prove his possession. Therefore, when the patta issued in the name of the plaintiff was already cancelled by virtue of Ex-B5, the plaintiff is not entitled to rely on the same to advance his case with regard to possession.



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13.The sale agreement relied on by plaintiff was specifically denied by the defendants in their written statement. Hence, it is incumbent on the plaintiff to prove due execution of the same. For the reasons well known to him, he has not examined the attestors to the document to prove the same. The forensic report relied on by the plaintiff to establish the signature found in the sale agreement is that of the first defendant was rightly rejected by the first appellate Court, as the plaintiff failed to examine the expert, who gave the opinion. When the defendants were not given an opportunity to cross examine the expert with regard to his report, the same is not useful to come to the conclusion regarding due execution. The factual finding in this regard is not vitiated by any perversity and hence, binding on this Court.

14.The learned Counsel for the appellant relied on Ex-A1 and Ex-A2, the judgments passed in earlier litigation. A perusal of Ex-A1 and Ex-A2 would suggest that the plaintiff filed a suit for bare injunction against the first defendant and another and obtained a decree for injunction on a specific plea that he was enjoying the suit property as a cultivating tenant under the first defendant. However, in the present plant, the plaintiff has not whispered



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about the earlier litigation. There is no plea in the plaint as if the plaintiff has been in possession and enjoyment of the suit item no.1 as a cultivating tenant under the first defendant. In the present case, the plaintiff only claims possession under the alleged sale agreement entered with the first defendant.

15.It is settled law that there cannot be any evidence without pleadings. When the plaintiff failed to raise a plea that he is enjoying the suit item no.1 as cultivating tenant under the first defendant, he is not entitled to lead any evidence with regard to the alleged possession in his capacity as a tenant. Even otherwise, when the plaintiff had already obtained a decree for injunction against the first defendant under Ex-A1, absolutely there is no necessity for him to file another suit seeking injunction. On that ground also, the prayer for injunction in the present suit is liable to be negatived. It is pertinent to note that there is no evidence available on record to suggest that the earlier decree is relating to same property. Ex-A1 and Ex-A2 do not contain schedule of property. Hence, Ex-A1 and Ex-A2 would not help the plaintiff to prove his alleged possession over present suit property. Therefore, the conclusion reached by the first appellate Court negating the



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relief of injunction is also correct and the same is in accordance with law.

The substantial questions of law framed at the time of admission are accordingly answered against the appellants and the second Appeal stands dismissed. No costs.

04.07.2024

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

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To

1.The Subordinate Court, Sivagangai,
Sivagangai District.

2.The learned District Munsif,
Manamadurai, Sivagangai District.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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