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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.289 of 2011

1.D.Venkatesan (died)
2.Vijayakumar
3.V.Gopal
4.Susila

... First Appellant / Plaintiff

... Appellants 2 to 4 /
LRs of Plaintiff

(A2 to A4 are brought on record as legal heirs of the deceased
sole appellant vide order of this Court made in
CMP.Nos.14175, 14186 & 14177 of 2021 dated 19.06.2024)

Vs.

G.Rajendran

... Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.11.2010 made in A.S.No.17 of 2010 on the file of the Subordinate Judge, Ranipet, Vellore District, reversing the judgment and decree dated 20.01.2010 made in O.S.No.1 of 2003 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.K.V.Ananthakrushnan



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For Respondent : Mr.R.P.Ruban Chakravarthy for
Mr.S.Kaithamalai Kumaran

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 22.11.2010 made in A.S.No.17 of 2010 on the file of the Subordinate Judge, Ranipet, Vellore District, reversing the judgment and decree dated 20.01.2010 made in O.S.No.1 of 2003 on the file of the District Munsif Court, Sholinghur.

2. Heard Mr.K.V.Ananthakrushnan, learned counsel for the appellants, Mr.R.P.Ruban Chakravarthy, learned counsel for the respondent and perused the materials available on record.

3. The deceased plaintiff is the first appellant. The appellants 2 to 4 are the legal heirs of the deceased plaintiff who has filed the suit for recovery of possession and for arrears of rent. The Trial Court has decreed the suit. On the First Appeal preferred by the defendant, the First Appellate Court has allowed the First Appeal by reversing the judgment and decree of the Trial Court. Hence, the deceased plaintiff has filed the present Second Appeal.



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4. The short facts pleaded in the plaint are as follows:

The suit property was originally belonged to the defendant who was in enjoyment of the same. The defendant had agreed to sell the suit property to the plaintiff and sold the same on 13.10.1986 through a registered sale deed for a sum of Rs.14,000/- and handed over the possession on the same day. At request of the defendant, the plaintiff has rented out the property for the defendant on a monthly rent basis. As per the rental agreement entered into between the plaintiff and the defendant, the defendant had agreed to pay the monthly rent of Rs.300/- and the same has been paid till 01.10.2002. When the plaintiff requested the defendant to vacate the suit property as he was going to renovate the suit property, the defendant did not vacate the suit property. The plaintiff has issued a legal notice on 06.09.2002 and thereafter also, the defendant did not vacate the suit property. Hence the plaintiff has filed the suit.

5. The averments made in the written statement filed by the defendant are as follows:



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It is false to state that the plaintiff has purchased the suit property on 13.10.1986 by virtue of the sale deed executed by the defendant. It is also equally false to state that the defendant is a tenant under the plaintiff on a monthly rent of Rs.300/-. The plaintiff has sent legal notices on 06.09.2002 and 23.11.2002 on certain imaginary grounds. The suit property belonged to defendant's paternal uncle Ethiraj Mudaliar by virtue of the sale deed dated 17.07.1961 and he has built a house therein. The defendant is in occupation of the suit property with the permission of Ethiraj Mudaliar. The defendant has also issued a reply notice to the plaintiff on 02.11.2001. The owner of the suit property viz., Ethiraj Mudaliar has also sent a reply to the plaintiff on 05.11.2001. The plaintiff had admitted the title of Ethiraj Mudaliar and hence, he is estopped from claiming the relief of recovery of possession. As the defendant is not the tenant under the plaintiff, the relief sought by the plaintiff cannot be granted.

6. On the basis of the above pleadings, the Trial Court has framed the following issues:

"1. வழக்குச்சொத்து வாதிக்கு பாத்தியப்பட்டதா? ஆம் எனில் வழக்கு சொத்தின் சுவாதீனத்தை வாதி பெற அருகரா?"



2. பிரதிவாதியானவர் வாடகைதாரர் என்ற நிலையில் வழக்கிடத்தில் உள்ளாரா?

3. வாதிக்கு கிடைக்கக் கூடிய இதர பரிகாரம் என்ன?"

7. During the course of trial, on the side of the plaintiff, one witness has been examined as P.W.1 and Exs.A1 to A5 were marked. On the side of the defendant, three witnesses have been examined as D.W.1 to D.W.3 and Exs.B1 to B10 were marked. The documents produced by the witnesses have been marked as Exs.X1 to X3.

8. At the conclusion of the trial and on considering the evidence on record, the Trial Court has decreed the suit as prayed and on the First Appeal preferred by the defendant, the First Appellate Court has allowed the First Appeal by reversing the judgment and decree of the Trial Court. Aggrieved over the same, the plaintiff has preferred this Second Appeal by raising various substantial questions of law.

9. For the sake of convenience, the first appellant is referred as plaintiff and the respondent is referred as defendant.



10. The learned counsel for the appellants submitted that no document has been produced by the defendant to show that Ethiraj Mudaliar is the owner of the suit property and the said Ethiraj Mudaliar did not challenge the sale deed in favour of the plaintiff for more than 17 years. Hence, the defendant cannot deny the execution of the sale deed dated 13.10.1986. The Trial Court has rightly framed the issue as to the title of the plaintiff and has given a finding that the plaintiff is the owner of the suit property in pursuant to the sale deed executed by the defendant on 13.10.1986. But the First Appellate Court has gone into the aspect of producing the lease deed executed between the plaintiff and the defendant and has dismissed the suit on the ground that the plaintiff has not proved the lease agreement entered into between the plaintiff and the defendant. Despite the defendant has denied the execution of the sale deed dated 13.10.1986, the plaintiff has proved it to be true. But, the same was ignored by the First Appellate Court.

10.1. The First Appellate Court has placed reliance on the evidence of D.W.2 who is the paternal uncle of the defendant. Even D.W.2 himself has stated that the defendant's father Gopal Mudaliar is his own brother and



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a family partition had been made long ago between himself and Gopal Mudaliar and that the defendant and his father Gopal Mudaliar had been in possession of the suit property for more than 40 to 50 years. But the evidence of D.W.2 was not considered by the First Appellate Court in proper perspective in order to dismiss the First Appeal filed by the defendant.

11. The learned counsel for the respondent / defendant submitted that unless the plaintiff established the jural relationship between himself and the defendant that it was a landlord - tenant relationship, he is not entitled to a decree for eviction. So far as the defendant is concerned, his specific stand on Ex.A1 sale deed is that it was a fraudulent one and he did not execute the same. The plaintiff has attempted to convert the suit filed for eviction as the suit filed for title and that has been properly distinguished by the First Appellate Court and the First Appellate Court has rightly allowed the First Appeal preferred by the defendant.

12. Basing upon the above submission and considering the materials available on record, I feel it is appropriate to deal with this Appeal by raising the following substantial questions of law:

"1. Whether in law the First Appellate Court is right in dismissing the suit though the Trial Court has rendered



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a finding as to the validity of the sale deed dated 13.10.1986 and that the defendant is no more the owner of the suit property from then onwards?

2. Whether in law the First Appellate Court is right in ignoring the evidence of D.W.2, wherein, he has stated about the long possession of the defendant and his father and the suit property was acquired by the defendant and his father through a family partition?"

13. The plaintiff's claim for eviction against the defendant is based on his alleged title to the suit property. The defendant is said to be the vendor of the sale deed dated 13.10.1986 which has been marked as Ex.A1. The defendant has denied the very execution of the sale deed and he claimed that it was a fraudulent sale deed and that in a suit for eviction the Trial Court ought not to have gone into the question of title. The Trial Court has arrived at a conclusion that the sale deed dated 13.10.1986 which was marked as Ex.A1 is proved to be true. The defendant claims that he is in permissive occupation of the suit property by getting permission from Ethiraj Mudaliar who has been examined as D.W.2.



14. The defendant is the son of Gopal Mudaliar who was the brother of Ethiraj Mudaliar. According to the evidence of Ethiraj Mudaliar, there was a family partition entered into between himself and his brother Gopal Mudaliar. Gopal Mudaliar and his son *viz.*, the defendant had been in possession and enjoyment of the suit property for more than 40 to 50 years. The Trial Court has made an observation that D.W.2 Ethiraj Mudaliar in his evidence has not stated that the suit property has been allotted to his share in the partition deed. But the fact remains that there is a sale deed dated 17.07.1961 in the name of Ethiraj Mudaliar also which was marked as Ex.B7. Unless the partition deed is produced, it cannot be presumed whether the above property has also been included in the family properties which were partitioned between D.W.2 and his brother Gopal Mudaliar and that through Gopal Mudaliar, his son who is the defendant herein has inherited title over the suit property.

15. The plaintiff who was examined as P.W.1 has not produced any partition deed of that sort in order to show that the suit property has been allotted to the share of the defendant's father and thereafter, the defendant had been in possession of the suit property as a rightful owner and that the



defendant had valid title in order to convey the same in favour of the plaintiff by executing Ex.A1 sale deed on 13.10.1986. Even if it is presumed that the defendant had the title to the suit property and he had executed a sale deed Ex.A1 and that it is a genuine one, the plaintiff is under the obligation to prove that the sale deed has been acted upon and that he has been given with the physical possession of the property and thereafter, he has entered into the lease agreement with the defendant. Only when these facts are proved, the defendant can be considered as a tenant under the plaintiff and that he has been paying rent for his occupation in the suit property. Even after the defendant has filed the written statement by causing cloud on the title of the plaintiff, the plaintiff has not chosen to amend the plaint for declaration of title.

16. However, the Trial Court has incidentally dealt about the title of the plaintiff and has held that the sale deed Ex.A1 was a genuine one. Even by going with that presumption, again it is the burden of the plaintiff to prove that the sale deed has been acted upon and that he has been put into possession in pursuant to the sale deed. Since the alleged vendor of Ex.A1 sale deed continues to be in possession of the suit property, the plaintiff



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cannot claim that he had taken possession of the suit property unless he had produced the lease agreement entered into between himself and the defendant.

17. Even though Ex.A1 sale deed might be true, if the same has not been acted upon, then the plaintiff cannot derive any right in pursuant to the same. The plaintiff has filed the suit for eviction by alleging that there is a landlord - tenant relationship between himself and the defendant. In such case also, his position as a landlord ought to have been substantiated by producing the lease agreement or by producing any rental receipts. In the absence of production of title deeds viz., any partition deed to show that the suit property has been allotted to the share of the defendant's father and that the defendant had the valid title to convey the same to the plaintiff, the Trial Court could not have gone into the issue of title and render a finding that the plaintiff has derived a valid title. In fact, in the suit for eviction though the title of the landlord can be presumed in normal circumstances. If the title is under dispute, the plaintiff is expected to file a suit to get the relief of declaration of his title along with recovery of possession.



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18. In the instant case, the plaintiff has alleged tenancy between himself and the defendant. Even while going into the issue of title, the Trial Court did not advert to look into any parent title deeds of the defendant. The plaintiff neither produced any documents to show the tenancy between himself and the defendant. So far as the oral tenancy is concerned, that cannot go beyond the period of 11 months and thereafter, the possession of the tenant in the suit property can be considered as an illegal possession. Even in that case, the plaintiff ought to have filed a suit for recovery of possession on title and not the suit for eviction on the basis of tenancy. Having got the sale deed, the plaintiff has an obligation to prove that the sale deed has been acted upon and subsequent to the date of the sale deed, the possession of the defendant over the suit property is only on the basis of tenancy agreement.

19. It is true that the defendant or his paternal uncle Ethiraj Mudaliar also did not file any counter suit to declare the title of Ethiraj Mudaliar in pursuant to Ex.B7 sale deed dated 17.07.1961 or the permissive possession



of the defendant over the suit property by getting permission from Ethiraj Mudaliar. But such weakness or inadequacy in the defence evidence of the defendant will not rectify the defective suit filed by the plaintiff or the lack of evidence to prove the alleged tenancy between himself and the defendant.

20. As the plaintiff has not produced any positive evidence to establish jural relationship between himself and the defendant as that of landlord and the tenant, the First Appellate Court has rightly allowed the First Appeal filed by the defendant by setting aside the judgment and decree passed by the Trial Court. The substantial questions of law are answered against the appellants.

21. In the result, this Second Appeal is dismissed and the judgment and decree of the First Appellate Court made in A.S.No.17 of 2010 dated 22.11.2010 is confirmed and the suit filed by the plaintiff is dismissed. However, the appellants are at liberty to file a fresh suit for declaration of title along with recovery of possession, if they are advised to do so. No costs.

29.01.2025

Speaking order



Index : Yes
Neutral Citation : Yes
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To

WEB COPY

1. The Subordinate Judge,
Ranipet, Vellore District.
2. The District Munsif Court,
Sholinghur.



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R.N.MANJULA, J.

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