



S.A.No.436 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.436 of 2019
and C.M.P.Nos.16019 of 2021, 10004 of 2022
and 19387 of 2024

1.Ponnudurai
2.Alice Mary
3.Nalla Thambi

... Appellants

Vs.

Mozhi Selvi

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 18.01.2019 passed in A.S. No.3 of 2016 on the file of the Sub Court, Tambaram, upholding the decree and judgment dated 03.11.2015 passed in O.S.No.162 of 2009, on the file of the District Munsif Court, Tambaram.

For Appellants : Mr.K.Chandrasekaran
For Respondent : Mr.S.Thiru Saravanan



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JUDGMENT

The appellants are the defendants in O.S.No.162 of 2009, on the file of the District Munsif Court, Tambaram. The respondent / plaintiff filed the suit for the following reliefs :

- i. declaration to declare the possessory title of the plaintiff in respect of the 'B' schedule property and for recovery of possession.
- ii. permanent injunction restraining the defendants, their men and agents from alienating the suit property to the third parties and for costs.

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The plaintiff purchased the suit property through an unregistered sale deed dated 08.06.1984 (Ex.A1). She had put up a tiled



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house and has been in possession and enjoyment of the suit property. The first defendant is the brother of the plaintiff. The third defendant is the father of the plaintiff and the second defendant is the wife of the first defendant. The first defendant requested the plaintiff to let out a portion of 'A' schedule property as he did not have sufficient income. Therefore, the plaintiff permitted him to occupy the eastern portion of 'A' schedule property on a monthly rent of Rs.300/- and this is shown as 'B' schedule property. The plaintiff had clearly informed the first defendant that he should vacate the 'B' schedule property as and when the plaintiff requires him to do so. During 2005, the plaintiff informed the first defendant that she is in need of the portion occupied by the defendants. Since the first defendant did not vacate the 'B' schedule property, the plaintiff issued a legal notice dated 11.10.2007 (Ex.A17) to the first defendant. The third defendant is claiming ownership in respect of the 'B' schedule property and also filed a suit in O.S.No.452/2007. However, the said suit was dismissed for default. Subsequently, the plaintiff filed a suit in O.S.No.536/2007 for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the



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entire 'A' and 'B' schedule properties. The plaintiff has possessory title over the suit property and the defendants have no right over the 'B' schedule property. Hence the suit.

4. The suit was resisted by the defendants on the following grounds:

- i. The suit 'A' schedule property is a gramanatham land and has been occupied by both the plaintiff and the defendants for the past 20 years.
- ii. Both the plaintiff and the defendants jointly constructed a house in the suit property.
- iii. The defendants are residing on the eastern portion while the plaintiff is residing on the western portion of the suit property.
- iv. The third defendant had obtained a separate electricity service connection for his portion.
- v. The plaintiff cannot claim any right over the 'B' schedule property and therefore, the suit filed by the plaintiff is liable to be dismissed.



5. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether the plaintiff has purchased the property along with possessory rights ?*
- ii. Whether the plaintiff is entitled for a declaration as prayed for ?*
- iii. Whether the plaintiff is entitled for a permanent injunction as prayed for ?*
- iv. To what relief the plaintiff is entitled ?"*

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A17. The first defendant examined himself and marked Ex.B1 to Ex.B6.

7. The learned trial court judge, on considering the evidence on record, decreed the suit in favour of the plaintiff vide his decree and judgment dated 03.11.2015, on the following grounds :

- i. The plaintiff claims possessory right through an unregistered sale



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WEB COPY deed of the year 1984 and this document shows her possession over the entire suit property.

- ii. The government had also issued SLR patta in her favour.
- iii. Though the defendants in the suit in O.S.No.452/2007 had filed a photostat copy of the sale deed allegedly executed by the plaintiff in favour of the third defendant, the said document was not proved. The plaintiff had not also admitted her signature on the said sale deed.
- iv. In any event, the suit in O.S.No.452/2007 was dismissed for default. The evidence on record shows that both the plaintiff and the defendants had obtained separate electricity service connection and are paying separate electricity consumption charges.
- v. The plaintiff had proved possessory title over the suit property and therefore, she is entitled for all the reliefs as prayed for by her.

8. Aggrieved over the decree and judgment passed by the trial court judge, the defendants filed an appeal in A.S. No.3 of 2016 before the Sub Court, Tambaram. The learned Subordinate Judge, Tambaram



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after analysing the oral and documentary evidence on record, upheld the findings recorded by the trial court judge, vide her decree and judgment, dated 18.01.2019 as against which, the present second appeal is filed by the defendants.

9. At the time of admission the following substantial questions of law were framed by my learned predecessor :

"a) Whether the Courts below are correct in passing the order of eviction, without framing and deciding the specific issue regarding the tenancy relationship between the plaintiff and the defendants when pleadings constituted such issue ?

b) Whether the declaration of possessory title in favour of the plaintiff alone which cannot be relied on for the eviction of the defendants as alleged tenants, when especially the tenancy relationship is denied and in the absence of the findings upon the specific issue regarding the tenancy relationship?



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c) Whether the conclusions arrived at by the trial Court and the first Appellate Court in passing the order of eviction against the defendants on the strength of the declaration of possessory title of the plaintiff under Ex.A1 unregistered Sale Deed ddated 08.06.1984 when especially tenancy relationship denied and no one proof is available for the tenancy relationship are contrary to the legal presumption under Section 110 of the Evidence Act.?

d) Whether both the courts below have failed to appreciate that the possessory title under Section 110 of Evidence Act can be invoked for the evictio of the tresspassers alone and Courts below did not properly appreciate the well laid principles of law in this regard?"

10.Heard Mr.K.Chandrasekaran, learned counsel for the appellants and Mr.S.Thiru Saravanan, learned counsel for the respondent.



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11. At the outset it may be observed that the plaintiff filed the present suit seeking possessory title over the suit 'B' schedule property. According to the plaintiff, she purchased the entire 'A' and 'B' schedule properties through an unregistered sale deed dated 08.06.1984 (Ex.A1). It is admitted that the suit property is a gramamatham land. The plaintiff contends that she has been in possession and enjoyment of the suit property for more than 20 years and SLR patta was also issued in her favour. The plaintiff has constructed a house in the suit property and according to her, she permitted the defendants to occupy 'B' schedule property. While so, the third defendant had filed the suit in O.S.No.452/2007 before the District Munsif Court, Tambaram, seeking title and possession over the 'B' schedule property. However, the said suit was dismissed for default as the third defendant did not pursue the suit. In the said suit, the third defendant had filed the photostat copy of the unregistered sale deed dated 12.11.1985 (Ex.B8) allegedly executed by the plaintiff in favour of the third defendant. However, in the present suit there is no whisper about the said sale deed. Subsequently, in the first



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appellate court the said document was once again introduced along with a petition under Order 41 Rule 27 CPC. The first appellate court though marked the said document as Ex.B8 has given a definite finding that the said sale deed is a forged and fabricated document. The contention of the plaintiff is that the defendants were permitted to occupy a portion of the suit property and that they have been giving trouble and in fact trying to alienate the suit property in favour of the third parties. Both the Courts below after analysing the evidence on record had concurrently held that the plaintiff has possessory title over the suit property (both 'A' and 'B' schedule property) and that the defendants are in unauthorized occupation of the 'B' schedule property.

12. It is pertinent to point out that the defendants were not able to adduce any acceptable evidence to show that they are also entitled to the suit property. On the other hand, they have filed the suit in O.S.No.452/2007 stating that the plaintiff had sold the 'B' schedule property in their favour. However, the said suit was dismissed for default.

As already observed the first appellate court had also found that the sale



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WEB COPY deed dated 12.11.1985 (Ex.B8) is a forged document.

13. It is seen from the records that the plaintiff also filed the suit in O.S.No.536/2007 before the District Munsif Court, Tambaram, for a relief of permanent injunction restraining the defendants from putting up any construction in the suit property and for a mandatory injunction directing the defendants to demolish the unauthorized construction put up by them. In the said suit, an Advocate Commissioner was appointed and he filed his report and plan which were marked as Ex.C1 and Ex.C2. Subsequently, the defendants remained absent and the suit was decreed *ex parte* on 29.06.2009. The present defendants did not take steps to set aside the *ex parte* decree passed in O.S.No.536/2007 or to restore the suit to file in O.S.No.452 of 2007 filed by them.

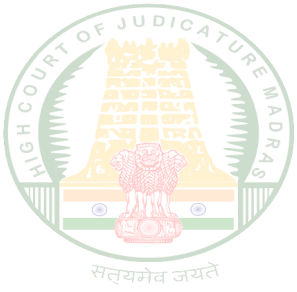
14. Though the defendants claimed that they also contributed for constructing the house in the 'A' and 'B' schedule properties, the same has not been established by adducing acceptable evidence. However, they have admitted that the possessory right of 'B' schedule property



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WEB COPY belongs to the plaintiff by pressing into service an unregistered sale deed dated 12.11.1985 (Ex.B8). Though the defendants have produced electricity consumption charges and other documents (Ex.B1 to Ex.B6) to show that that they are also in possession of the suit property, their possession cannot be said to be lawful. These aspects have been dealt with by both the courts below. In fact, the first appellate court in its judgment has observed thus :

"19. The documents received in the said petition are marked as Ex.B7 and Ex.B8 on the side of the appellants herein. Ex.B7 is the xerox copy of the plaint in O.S.No.536/2007 on the file of the District Munsif Court, Tambaram. Ex.B8 is the unregistered sale deed dated 11.10.1987 which was allegedly executed by the plaintiff herein in favour of the third defendant to an extent of 440 sq.ft. in No.166, Tambaram Village Ranganathapuram, 4th Cross Street, The said document was witnessed by one T.Purushothaman and one T.Thangappan. In the said document it has been mentioned that one K.A.Mohamed Yusuff was written the same on 11.10.1987. The fiduciary name 'J.Mozhi Selvi' was seen in Tamil and it was written on the place where the place already there was one signature



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WEB COPY put thereon and removed with remover. From the above it can be seen that the Ex.B8 is not related to the petition mentioned averments and the said document's contents are entirely different one and the said document is to be taken as a fabricated document which will not help the case of the appellants. Further for the above document the appellant failed to pay the stamp duty penalty and the said document cannot be taken into consideration as a valid document on this aspect also.

20. Further when the defendants claimed that the suit 'A' schedule property is Gramanatham land and was occupied by both the plaintiff and the defendants for the past 20 years and they had put up a house jointly out of their own funds and from the beginning on the eastern side the defendants are residing on the western side and the plaintiff is residing and they are still in joint possession and enjoyment of the suit property, there is no possibilities to purchase the suit 'B' schedule property from the plaintiff herein. Though the defendants denied the ownership along with possessory right of the plaintiff over the entire suit 'A' schedule property, they themselves admitted the ownership along with possessory right of the plaintiff over the suit 'A'



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WEB COPY *schedule property in their forged and fabricated document*

Ex.B8 as the plaintiff herein is the original owner of the suit 'B' schedule property which was under the possession and enjoyment of the defendants herein.

21. Further the main suit filed based upon the fact that the plaintiff is the owner of the property and defendant has been in permissive occupation. The ownership of property is two fold in nature. One is transfer of title and other the transfer of possession. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the Title Holder. Therefore the section 110 of Evidence Act will not attract this present facts of the case on hand.

22. Further it is contention of the defendants that the E.B. connection has been obtained in the name of the third defendant and he has been paying the taxes till this date in his name by producing Ex.B1 to Ex.B6. The above said documents proved the fact that the defendants are in possession not established the defendants title and possessory right over the suit 'B' schedule property and the trial court has also rightly appreciated the documentary and



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WEB COPY *oral evidence as to their possession over the suit 'B' schedule*

property put forth by the appellants."

All the observations of the first appellate court cannot be said to be perverse and therefore, the substantial questions of law are answered against the appellant.

15. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.
- ii. the decree and judgment dated 18.01.2019 passed in A.S. No.3 of 2016 on the file of the Sub Court, Tambaram, and the decree and judgment dated 03.11.2015 passed in O.S.No.162 of 2009, on the file of the District Munsif Court, Tambaram, are upheld.
- iii. the suit in O.S.No.162 of 2009, on the file of the District Munsif Court, Tambaram, is decreed with costs.

26.02.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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To

1. The Sub Court, Tambaram.
2. The District Munsif Court, Tambaram.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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