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S.A. No.83



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2025

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 835 of 2019

Kodakaran

... Appellant

Vs.

Kuppuraj

... Respondent

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 29.04.2019 passed by the learned Subordinate Court, Dharmapuri, in A.S. No.8 of 2017 reversing the judgment and Decree dated 08.12.2016 passed by the District Munsiff Court, Dharmapuri, in O.S. No.151 of 2009.

For Appellant : Ms. V. Srimathi

For Respondent : Mr. J. Shakul Hameed
For C. Prabakaran



JUDGMENT

This second appeal has been filed by the defendant against the Judgment and Decree dated 29.04.2019 passed by the Subordinate Court, Dharmapuri, in A.S. No.8 of 2017 reversing the judgment and Decree dated 08.12.2016 passed by the District Munsiff Court, Dharmapuri, in O.S. No.151 of 2009, and decree for the suit for permanent injunction is granted in favour of the plaintiff.

2.The appellant herein is the defendant and the respondent herein is the plaintiff in the suit. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court.

3.The brief facts leading to filing of this appeal are as follows:

2.1.The suit property belongs to the plaintiffs and they were in enjoyment of the suit property by way of succession. The defendant has sent a letter dated 01.08.2009 calling upon the plaintiffs to execute the sale deed as per the sale agreement dated 09.08.2000 entered between the plaintiffs and defendant. The Plaintiffs have sent a reply letter dated 22.08.2009. However, the defendant has tried to trespass into the suit property which was successfully restrained by the plaintiffs. In these circumstances, the plaintiffs filed the suit in O.S. No.151 of 2009 before the District Munsif Court, Dharmapuri, seeking for permanent injunction against the defendant.



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2.2. The defendant has filed written statement in the suit stating that the defendant was cultivating the land for the past 35 years and sharing 1/3rd of the produce to the plaintiffs. In the meanwhile, the plaintiffs have come forward to sell the suit property to the defendant by entering into sale agreement dated 09.08.2000 for a sum of Rs.1,00,000/- and they have obtained an advance of Rs.75,000/- from the defendant with the sale to be completed within three years. The defendant was always ready and willing to perform his part of the contract by paying the balance sale consideration of Rs.25,000/- and to get the sale deed registered. However, at the time of completion of sale agreement, the plaintiffs demanded the defendant to pay an additional amount to execute the sale deed and accordingly, once again, another sale agreement dated 09.08.2003 was executed by enhancing the additional sum of Rs.10,000/- and fixed sale consideration as Rs.1,10,000/-. Apart from the advance amount of Rs.75,000/- received earlier, the plaintiffs have also received an additional amount of Rs. 12,300/-, being the total advance amount to Rs. 87,300/- (Rs. 75,000 + Rs. 12,300) with the sale to be completed within three years. On requesting the plaintiffs to perform their part of contract, they have not come forward to sell the suit property and delayed to perform their part of contract stating flimsy reasons till the completion of sale agreement dated 09.08.2003. Further, they have stated not to give 1/3rd share of produce from the cultivating land and executed another sale agreement dated



09.11.2006 by extending further period of three years. At this juncture, wh

defendant requested the plaintiffs to execute the sale deed as per the sale agreement dated 09.11.2006, they refused to perform their part of contract and demanded an additional amount stating that the value of the suit property has been enhanced and tried to sell the suit property to third person. By suppressing the entire facts, they sent a legal notice dated 22.08.2009 to the defendant and filed the suit.

2.3. Based on the pleadings, the Trial Court had framed the following issues:

- 1. Whether the plaintiffs are in the possession and enjoyment of the suit schedule property?*
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction?*
- 3. To what other reliefs?*

2.4. Before the Trial Court, on the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and one Kothandan was examined as P.W.2, and Documents as Ex.A1 to Ex.A7 were marked and during the trial, the 2nd plaintiff died. On the side of the defendant, the defendant was examined as D.W.1 and one Kandasamy as D.W.2, one Chinnasamy as D.W.3, and one Sekar as D.W.4 were examined and the documents as Ex.B.1 to Ex.B8 were marked. After hearing both sides, the Trial Court dismissed the suit in O.S. No.151 of 2009, by



Judgment and decree dated 08.12.2016 holding that the plaintiffs have not

the cause of action raised based on Ex.A2 and the suit property is not in the possession of the plaintiffs. Being aggrieved by the said Judgment and decree, the plaintiff has filed A.S. No.8 of 2017 before the Sub-ordinate Court, Dharmapuri.

The Lower Appellate Court, after considering the submissions and evidence placed on record, has reversed the findings of the Trial Court holding that the appellant/plaintiff has established the fact by way of oral and documentary evidence that the suit property is in the possession of the plaintiff and decreed the suit as prayed for.

2.5. Aggrieved over the judgment and decree of the lower Appellate Court, the defendant has filed the present Second appeal.

3. At the time of admission, the following substantial questions of law have been framed.

1) Whether the lower appellate court is justified in granting a decree when the plaintiff had suppressed material facts including the agreement of sale and the bogium entered into with the defendant?

2) On the facts and circumstances of the case, whether the non disclosure of exhibit B2-B4 and B8 are not fatal to case of the plaintiff?



3) Whether the documents under exhibit B8 establishes the defendant's possession to the property whether the lower appellate court is justified in relying upon the revenue records that arose subsequent to the suit?

4. The learned counsel appearing for the appellant/ defendant submits that the plaintiff has suppressed all the facts that the defendant is in possession of the suit property by cultivating the land for 35 years and 1/3rd share has been given in the produce of cultivating the land to the plaintiff. Further, the plaintiff has executed various sale agreements dated 09.08.2000, 09.08.2003 and 09.11.2006 for sale of the suit schedule property and further, the plaintiff has executed a lease deed dated 10.08.2000. In order to prove the same, the defendant has marked the Ex.B2 to Ex.B4 and Ex.B8 before the Trial Court. Through under Ex.B8- Agreement for Sale, the plaintiff has surrendered the possession of the suit property to the defendant and have disentitled themselves from the suit property. Further, they have also failed to perform their part of contract in accordance with Ex.B2 to Ex.B4. The Trial Court has properly considered the aforesaid facts and dismissed the suit filed by the plaintiff. However, the lower appellate Court has not properly appreciated the same and reversed the findings of the Trial Court based on Ex.A2, Ex.A5 and Ex.A6 holding that the suit schedule property is in the possession of the plaintiff.



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5.It has been further submitted that despite the plaintiffs have received the sale consideration according to the sale agreements, they have not come forward to perform their part of contract. Further, through Ex.B8-Lease Agreement, the appellant/defendant has taken possession from the plaintiffs. Without considering the aforesaid facts, the Lower appellate Court has reversed the well considered Judgment and decree of the Trial Court which is contrary to law and unjust. Thus, he seeks to set aside the Judgment and decree of the Lower Appellate Court.

6.Per contra, the learned Counsel for the respondent/plaintiff submits that the suit property belongs to the respondent/plaintiff by way of succession and in order to prove the same, the respondent/plaintiff has marked Ex.A1, Ex.A5 and Ex.A6 before the Trial Court. Further, O.S. No.126 of 2009 filed by the appellant/defendant seeking for specific performance against the plaintiff/respondent dismissed for default since he has not proceeded the said case further. There is no cultivation made by the appellant/defendant in the suit schedule property. The Trial Court without considering the entire oral and documentary evidence dismissed the suit holding that the plaintiff is not in the possession of the suit property whereas the First appellate Court after considering the oral and documentary evidence and facts and circumstances of the case in the



proper manner, held that the plaintiffs are in the possession of the suit pr

and Ex.B8 was executed for the purpose of collateral, accordingly, set aside the Judgment and decree of the Trial Court and granted the relief sought by the plaintiff, hence prays to dismiss the second appeal.

7.I have considered the submissions made on both sides and perused the entire materials available on record.

8.Admittedly, the respondent/plaintiff is the owner of the land by way of succession. It is the contention of the appellant/defendant that the defendant was cultivating the land for the past 35 years and sharing 1/3rd produce by cultivating land which belongs to the plaintiff. Further, the plaintiffs have executed the sale agreements dated 09.08.2000, 09.08.2003 and 09.11.2006 respectively with the defendant to execute the sale deed for the suit schedule property. Vide Ex.B2, Ex.B3 and Ex.B4. However, the plaintiffs refused to perform their part of contract. Further, the appellant relying upon Ex.B8, contends that the defendant is in the possession of the suit schedule property.

9.On perusal of the records, it is seen that the defendant has not disputed the title of the plaintiff and contends that possession was handed over to him after execution of agreement for sale between them. This agreement for sale was not



admitted by the plaintiff. Ex.B2 is the first agreement entered between the]

on 09.08.2000. Admittedly, there is no averment regarding handing over of possession to the defendant. But, Ex.B8 is the Tenancy document alleged to have been executed on the same day of execution of agreement for sale and Ex.B8 is not registered document. This document falsifies the case of the defendant that he is in possession of property for the past 35 years. The Adangal register has been marked by the plaintiff as Ex.A5 and Kist receipts-Ex.A6 shows that, the plaintiff was cultivating the lands. It was observed by the Trial Court that these documents were obtained one year prior to filing of suit. Hence refused to accept the possession of the plaintiff.

10. The defendant has marked Ex.B1- copy of the plaint filed before the Sub-Court, Dharmapuri, in O.S. No.126 of 2009 seeking relief of specific performance based on the agreements entered with the plaintiff from 3 different period vide sale agreements dated 09.08.2000, 09.08.2003 and 09.11.2006, respectively vide Ex.B2 to Ex.B4. Further, he relied on other documents, Ex.B5- legal notice and Ex.B8- lease agreement dated 10.08.2000, which has been disputed by the plaintiff stating that these documents have been executed for the purpose of collateral for receiving the loan from the defendant. On perusal of Ex.B8, it shows that it has been executed in the manner of mortgage wherein it is specifically, stated that the plaintiff has borrowed a sum of Rs.8,500/- from the



defendant and interest to be paid by them, they had handed over the possession

the suit property to the appellant/defendant. On repayment of the loan amount

within a period of 3 years, the plaintiff is entitled to get back the said land.

Further, on perusal of the cross examination of DW1, it was categorically admitted that these documents were executed for the purpose of ensuring the repayment of interest and he has also stated that he was not aware about the contents written in the document. Though the document Ex.B8 was relied on by DW1, it was a collateral document for borrowing a sum of Rs.8,500/- by the plaintiff. Ex.B8, shows that at the time of executing Ex.B8, the plaintiff was in possession. However, no witnesses, who signed the Ex.B8 was examined to prove the possession given to the defendant through Ex.B8. Execution of Ex.B8 reveals that the defendant has made contrary pleadings in this regard. The evidence adduced by the defendant is only in favour of the plaintiff which was not properly appreciated by the Trial Court. DW2 to DW4 admitted that the suit property belongs to the plaintiff and they were not aware about the details of the suit schedule property which is said to have been cultivated by the defendant for the past 35 years.

11.As admitted by the defendant that the suit property belongs to the plaintiffs and he has entered various agreements with the plaintiffs, this Court is not inclined to accept the case of the defendant that he was in the possession of



the suit schedule property for 35 years and prior to execution of Ex.B8. T

the plaintiff is expected to state true facts to get a decree in his favour, according to him, the defendant is interfering with his possession by fabricating documents.

He has not admitted execution of earlier agreement for sale and other documents.

Not mentioning the details of documents alleged to have been executed by the plaintiff shall not create any adverse inference and I am of the view that, since it is specific case of the defendant that there is agreement for sale and prior to agreement for sale, the defendant was in possession of suit property and also denied and more particularly, when there is specific averments that the defendant is intermeddler by making false claim, there is no suppression of facts. Similarly, since the defendant is seeking protection of possession is based on unregistered document, and the same is also not proved and there are agreement for sale claimed by the defendant and the same is not established by him. Thus, the defendant has failed to prove the possession of the suit property. Hence, he is not entitled to interfere with the possession of the plaintiff. The lower appellate court taking note of revenue records, Ex.A1-Computer Patta, Ex.A5-Adangal, and Ex.A6 Kist receipts from the year 1998 received in favour of the plaintiff, has rightly allowed A.S. No.08 of 2017 filed by the plaintiff.

12. Having taken into consideration the documents marked as Ex.A1-Computer Patta, Ex.A5-Adangal, and Ex.A6 Kist receipts from the year 1998 and



the defendant has entered into the agreements Ex.B2 to Ex.B4 for the purpose of mortgage from the year 2000 and Ex.B8 has been executed for the purpose of collateral, and also the defendant failed to establish that he was in possession in the suit property for the past 35 years while the suit in O.S. No.126 of 2009 initiated by him for specific performance, was dismissed for default, the Judgment and decree dated 29.04.2019 passed by the Lower appellate Court is hereby confirmed and the substantial question of law framed herein is answered accordingly.

13. Accordingly, this second appeal is dismissed. Consequently, connected civil miscellaneous petition stands closed. No costs.

10.09.2025

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Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



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To:

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1. The Section Officer,
VR Section, High Court, Madras.
2. The learned Subordinate Court,
Dharmapuri.
3. The District Munsiff Court,
Dharmapuri.



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K. RAJASEKAR, J.

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