

Selvaraj ... Vs. Balaji ...

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Court : Chennai

Decided On : Jun-11-2010

Judge : P.R.Shivakumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 100

Appeal No. : S.A.Nos.1095 and 1138 of 2007 and M.P.Nos.1,2 of 2007

Appellant : Selvaraj ...

Respondent : Balaji ...

Advocate for Def. : Mr.V.Ragavachari, Adv.

Advocate for Pet/Ap. : Mr.T.P.Manoharan, Adv.

Judgement :

1. Second Appeal No.1095/2007 has been preferred against the decree passed by the learned Principal District Judge, Pondicherry dated 18.04.2007 in A.S.No.14/2005 confirming the decree passed by the trial court, namely the Additional Subordinate Judge, Pondicherry dated 16.12.2004 in O.S.No.199/1999.
2. Second Appeal No.1138/2007 has been preferred against the decree passed by the learned Principal District Judge, Pondicherry dated 18.04.2007 in A.S.No.26/2005 confirming the decree passed by the trial court, namely the Additional Subordinate Judge, Pondicherry dated 16.12.2004 in O.S.No.287/1998.

3. O.S.No.199/1999 had been filed by Selvaraj, the appellant in S.A.No.1095/2007 against Balaji, the sole respondent/defendant for a permanent injunction. O.S.No.287/1998 had been filed by Sengeniammal, Dhanalakshmi and Amsavalli (at present no more). Amsavalli's legal representative is Karpagam, the second appellant in S.A.No.1138/2007. Sengeniammal also died and her legal representative is Porkilai @ Poorani, the third appellant in S.A.No.1138/2007. The said suit was filed for a declaration that the sale deed executed by them in favour of Karuppiah, the first respondent in the second appeal/first defendant was null and void, as the same was obtained by fraud and misrepresentation. Balaji, the sole respondent in S.A.No.1095/2007 (sole defendant in O.S.No.199/1999), who figures as the second respondent in S.A.No.1138/2007 had been shown to be the second defendant in the said suit O.S.No.287/1998.

4. The first suit, namely O.S.No.199/1999 filed by Selvaraj was initially filed before the Principal District Munsif, Pondicherry as O.S.No.628/1998. Since both the suits were filed in respect of one and the same property, the said suit filed by Selvaraj, namely O.S.No.628/1998 on the file of the Principal District Munsif, Pondicherry was transferred to the file of the Additional Sub Judge, Pondicherry by an order of the High Court and re-numbered as O.S.No.199/1999 on the file of the Additional Sub Judge, Pondicherry. The learned trial judge viz. the Additional Sub Judge, Pondicherry, dismissed both the suits by separate judgments dated 16.12.2004.

5. As against the judgment dismissing O.S.No.199/1999, Selvaraj, the plaintiff in the said suit preferred A.S.No.14/2005 on the file of the Principal District Judge, Pondicherry. As against the dismissal of O.S.No.287/1998, A.S.No.26/2005 was preferred on the file of the Principal District Judge. During the pendency of the suit, the third plaintiff Amsavalli died and hence the fourth plaintiff Karpagam was impleaded as her LR. The plaintiffs 1 and 2 and the fourth plaintiff representing the deceased third plaintiff in O.S.No.287/1998 had preferred the appeal A.S.No.26/2005 on the file of the Principal District Judge, Pondicherry. Though the suits were disposed of by two separate judgments, since simultaneous trial was conducted in both the cases and they were disposed of at one and the same time and since both the cases were filed in respect of one and the same property, the learned lower appellate judge, namely Principal District Judge, chose to hear the

appeals jointly and dispose of the same by a common judgment. The learned lower appellate judge by the said common judgment dated 18.04.2007 dismissed both the appeals confirming the dismissal of both the suits by the trial court. Thus, the surviving plaintiffs in the respective suits and the L.Rs. of the deceased plaintiffs are before this court as appellants in S.A.No.1095/2007 and S.A.No.1138/2007.

6. At the time of admission, the following questions were framed as the substantial questions of law in S.A.No.1095/2007:

1. When the sale deed dated 29.08.1984 in favour of Karupiah was void and he had not acquired any right, title or possession over the suit property from the lessors of the appellant, can the respondent claim any valid right or possession over the suit property through him and raise a defence to the suit and such defence, that too, without any supporting oral or documentary evidence can be accepted and the suit dismissed?

2. Whether in view of the provisions contained under the Pondicherry Cultivating Tenants Protection Act, the findings of the court below that only Causarina and Cashew trees are in the suit property and the appellant is not contributing his physical labour and hence, he is not a cultivating tenant in possession of the suit property, are correct and sustainable?

3. Whether in view of the failure of the respondent to enter into the witness box and prove the defence pleaded by him in his written statement and make him available for cross-examination by the appellant, the principle laid down in the decision reported in AIR 1999 SC 1441 was not applied, an adverse inference cannot be drawn against him for such failure, his defence to the suit rejected and the suit decreed as prayed for?

7. The following were the questions framed as substantial questions of law in S.A.No.1138/2007 at the time of admission:-

1. Whether the courts below was right in treating the void transaction made under Ex.B2 as valid and dismissing the suit and the said mistake had not vitiated its

findings and judgment and made them perverse?

2. Whether Ex.B3 to B12 created/produced by the first respondent and came into existence only in the year 1996/1997 can prove his possession of the suit property from 29.08.1984 viz. the date of Ex.B2 and consequently, was the court below right in relying on those documents and hold that Ex.B2 was known the appellants as sale deed, acted upon and the first respondent was in possession of the suit property from the date of such sale viz. 29.08.1984 till the date of the suit?

3. Whether inspite of the failure of the respondents to prove the truthfulness, correctness and validity of Ex.B3 to B11 came into existence from 1996/1997 by examining the persons who issued the same, any reliance can be placed upon those documents and hold that the respondents are in possession of the suit property, much less, from 29.08.1984?

8. The arguments advanced by Mr.T.P.Manoharan, learned counsel for the appellants in both the appeals and by Mr.V.Ragavachari, learned counsel representing the counsel on record for the respondents in both the appeals were heard. Records, including the judgments of the courts below, were perused.

S.A.No.1138/2007:-

9. Selvaraj, appellant in S.A.No.1095/2007 (plaintiff in O.S.No.199/1999) is none other than the son-in-law of Sengeniammal, the first plaintiff in O.S.No.287/1998. The suit property along with a larger extent originally belonged to one Poongavanam, who got it as his share under a registered partition deed dated 23.09.1919. The said Poongavanam had got two daughters, namely Janakiammal and Chinnaponnu @ Anandayee. Chinnaponnu @ Anandayee died long back leaving behind her, her only daughter Meenakshi. The other daughter of Poongavanam, namely Janakiammal died leaving behind her Sengeniammal, Amsavalli and Dhanalakshmi, the daughter of her pre-deceased daughter Chinnaponnu, as her legal heirs. Sengeniammal, Dhanalakshmi and Amsavalli executed a registered sale deed dated 29.08.1984 in favour of Karuppiyah, the second respondent in S.A.No.1138/2007. The above said facts are admitted.

10. Though the execution of the sale deed by the plaintiffs 1 to 3 in O.S.No.287/1998 was admitted by them, they chose to impugn the said sale deed as void and invalid on the basis of their contention that the said sale deed was obtained by fraud and misrepresentation. On the other hand, the respondents in S.A.No.1138/2007 (defendants in O.S.No.287/1998), namely Karupiah and Balaji, have contended that the sale was genuine and the same was supported by consideration and acted upon and that the same was not obtained by fraud or misrepresentation, as claimed by the appellants in S.A.No.1138/2007. Selvaraj, the appellant in S.A.No.1095/2007 / the sole plaintiff in O.S.No.199/1999, who is none other than the son-in-law of Sengeniammal, the first appellant in S.A.No.1138/2007, has come forward with a plea that he is a statutory tenant under the plaintiffs in O.S.No.287/1998 and that his possession and enjoyment was sought to be disturbed by Balaji, the sole respondent in S.A.No.1095/2007 / sole defendant in O.S.No.199/1999, who also figures as the second respondent in S.A.No.1138/2007 / second defendant in O.S.No.287/1998.

11. The plaintiffs in O.S.No.287/1998 having admitted the execution of the registered sale deed in favour of Karupiah, the first defendant therein, and having chosen to impugn the sale deed as null and void on the ground that the same was obtained by fraud and misrepresentation, have to prove their case by reliable evidence as the said contention of the plaintiffs therein has been stoutly denied by the defendants therein. Unless they are able to prove that the sale deed was obtained by fraud and misrepresentation, they cannot get a declaration declaring the said sale deed null and void. In this regard, the plaintiffs in O.S.No.287/1998 have chosen to examine the first plaintiff as P.W.1 and one Subramani as P.W.2. A copy of general Power of Attorney allegedly executed by the plaintiffs in O.S.No.287/1998 in favour of Selvaraj, the first plaintiff in O.S.No.199/1999 and a copy of the lease deed allegedly executed by the plaintiffs in O.S.No.287/1998 in favour of the above said Selvaraj dated 10.12.1981, have been produced as Ex.A1 and A2 respectively. A certified copy of the impugned sale deed dated 29.08.1984 executed by the plaintiffs in O.S.No.287/1998 in favour of Karupiah, the first defendant in the said suit has been produced as Ex.A3.

12. The defendants in the said suit have contended that the impugned sale deed was preceded by an agreement for sale dated 22.03.1984 and they have produced the said agreement and the impugned sale deed dated 29.08.1984 as Exs.B1 and B2 respectively. Exs.B3 to B12 are the documents produced by Karuppiah, the first defendant in O.S.No.287/1998 to prove his possession of the suit property subsequent to the purchase made under Ex.B2. The question of possession is immaterial. Only if the plaintiffs in O.S.No.287/1998 were able to prove fraud and misrepresentation in getting Ex.B2-sale deed executed, they could get the declaration as prayed for by them. At the same time, the question of possession can also be considered incidentally for arriving at a correct conclusion regarding the plea of fraud and misrepresentation made by the plaintiffs.

13. According to the appellants in S.A.No.1138/2007, Karuppiah, the first respondent in the said appeal wanted to quarry red sand and pebbles from the suit property and in the guise of getting a deed of license for the same from the appellants he fraudulently obtained the impugned sale deed marked as Ex.B2. It is their contention that all the three persons, who executed the sale deed and Meenakshi, who figured as one of the attestors, were illiterates and their illiteracy was exploited by Karuppiah, the first respondent to get the sale deed executed by playing fraud and misrepresentation. In this regard, they have chosen to examine the first plaintiff Sengeniammal as P.W.1 and one Subramani as P.W.2. Having taken such a stand peculiarly, P.W.1, in her evidence in cross-examination, chose to state that she did not know the defendants in the case filed by her and had never seen them. But, subsequently, realising the folly committed by her, she changed her version and stated that she knew the first defendant Karuppiah, who approached for license to take mud (meaning red sand and pebbles) from the suit property on lease basis for a sum of Rs.600/- per year. If at all such a document for granting the lease or license for quarrying red sand and pebbles from the property was intended to be executed by the plaintiffs for a sum of Rs.600/- per annum, on the expiry of the period of one year for which alone the lease amount was paid at the time of execution of the document, they would have chosen to get either a surrender deed or a deed of cancellation of lease/license to quarry red sand.

14. It is pertinent to note that the appellants in S.A.No.1138/2007 have chosen to contend that the property had already been given on lease for cultivation to the son-in-law of P.W.1, namely Selvaraj who is the appellant in S.A.No.1095/2007 / plaintiff in O.S.No.199/1999. A copy of the said lease deed has been produced as Ex.A2. The said lease deed is dated 20.12.1981. The said Selvaraj, appellant in the other appeal has claimed that ever since the execution of the lease deed, he was in possession and enjoyment of the suit property as a statutory tenant and no one ever enjoyed the said property after the date of the said lease deed. Ex.B2-sale deed is dated 29.08.1984. If at all the suit property had been given on lease to Selvaraj, the son-in-law of P.W.1 in 1981 itself under the original of Ex.A2, the plaintiffs in O.S.No.287/1998 would not have chosen to execute further lease or license deed in favour of Karuppiyah, the first respondent in S.A.No.1138/2007 for quarrying red sand, without the consent of the said Selvaraj or without making him a party to such a deed. From the facts that the execution of Ex.B2-sale deed has been admitted, but the same was not done either with the consent of Selvaraj or making him a party to the deed, it has to be inferred that the original of Ex.A2 lease deed should have been prepared only for the purpose of defeating the right of the purchaser under Ex.B2.

15. The courts below have also rightly arrived at a conclusion that the original of Ex.A2-lease deed could not be a genuine one and should have been created only for the purpose of the case. The reasons assigned by the courts below in this regard are sound. The original of Ex.A2-lease deed was executed using a 2 x 1 Re. Non-Judicial stamp papers. One was purchased in the name of Raju and another was purchased in the name of some one else. The first stamp paper is dated 25.08.1981, but the stamp seal of the general stamp department contains the month and year as "August 1984". Similarly, the other stamp paper used as the second page of the lease deed is purported to have been dated 26.10.1980. But, it can be seen that in the seal of the general stamp department, the last column of the year has been erased to hide the numerical "8". In the date written by the stamp vendor also it was originally written as 88 in the year column, but the upper part of the "8" has been mechanically erased to make it appear "80". Why there was a gap of eleven months between the purchase of the stamp paper used as the first page and the stamp paper used as the second page has not been

explained. As pointed out supra, if at all the original of Ex.A2-lease deed was genuine and was in existence as on the date of Ex.B2-sale deed, admittedly executed by the plaintiffs in O.S.No.287/1998 thinking it to be a lease deed or a deed of license for quarrying red sand from the suit property, the said Selvaraj would have been added as a party to or at least as an attesor of Ex.B2, executed on 29.08.1984, namely three years after 20.12.1981 on which date the original of Ex.A2 was allegedly executed. Furthermore, if at all the said Selvaraj was a tenant having possession of the suit property from 1981 in accordance with Ex.A2-lease deed, there would not be any necessity for executing a general Power of Attorney dated 24.06.1996 in his favour, a copy of which has been produced as Ex.A1 in O.S.No.199/1999 and the original has been produced as Ex.A1 in O.S.No.287/1998. Therefore, the contention of the learned counsel for the respondents that the appellants have preferred to create the said documents in order to defeat the right of Karuppiah, the first defendant in O.S.No.287/1998, who purchased the suit property under Ex.B2-sale deed, has got to be countenanced.

16. Moreover, the appellants in S.A.No.1138/2007 / plaintiffs in O.S.No.287/1998 have not chosen to examine any one of the attestors of Ex.B2 in support of their case that there was fraud and misrepresentation in getting the said document executed. One of the attestors of Ex.B1, namely Meenakshi is one other than a niece of Sengeniammal, the first plaintiff in O.S.No.287/1998. The said Meenakshi, though closely related to the appellants, has not been examined to prove the appellants' case that the original of Ex.B2-sale deed was obtained by playing a fraud and misrepresentation. On the other hand, the other attestor Devaraj has been examined on the side of the defendants as D.W.2. He has stated in clear terms that there was no fraud or misrepresentation as claimed by the plaintiffs. The particular suggestion put to him to the effect that the sale deed was obtained by making a payment of Rs.600/- and making the executants believe that the document was a lease deed for quarrying red sand, was specifically denied by D.W.2. Therefore, this court comes to the conclusion that the concurrent finding of the courts below that the appellants in S.A.No.1138/2007 / plaintiffs in O.S.No.287/1998 were not able to prove that the sale deed dated 29.08.1984 executed by them in favour of Karuppiah, the first defendant in the said suit (a copy of which is marked as Ex.B2) was obtained by playing fraud or

misrepresentation. The said finding cannot be said to be either defective or inform, much less perverse. There is no reason, whatsoever, to interfere with the said finding in exercise of the appellate powers of this court under Section 100 of Civil Procedure code in the second appeal. The said finding of the courts below deserves to be confirmed. The substantial question of law No.1 formulated by this court in S.A.No.1138/2007 at the time of admission of the second appeal is answered accordingly against the appellants and in favour of the respondents.

17. In view of the finding that the appellants/plaintiffs had not proved that the impugned document, namely Ex.B2-sale deed dated 29.08.1984, was vitiated by fraud and misrepresentation, the other two substantial questions, namely substantial questions of law 2 and 3 framed by this court at the time of admission lose importance, as the same shall not be having any bearing on the final outcome of the appeal. Even otherwise, the documents produced by the defendants under Exs.B3 to B12 have been considered in proper perspective and the courts below have arrived at a correct conclusion that the same, coupled with the oral testimonies of D.Ws.1 and 2, would be enough to hold that Ex.B2-sale deed was genuine and was acted upon and that the first respondent in S.A.No.1138/2007 was in possession of the suit property from the date of Ex.B2, namely 29.08.1984. These documents would show that at least from 1995, the first defendant was taking steps to level the land using bulldozers hired from the Agricultural Department and that he paid a sum of Rs.9,600/- in advance as hire charges. The said evidence in comparison with the absence of any such document produced on the side of the plaintiffs shall be enough to hold that the second and third substantial questions of law also should be decided against the appellants and in favour of the respondents.

18. Admittedly, the suit property and the adjoining lands were un-irrigated, barren and uneven lands unfit for cultivation of agricultural crops. It is also an admitted fact that the suit property at present is situated very near the Pondicherry Airport, which was formed recently. Because of the creation of Pondicherry Airport near the suit property and the resultant appreciation of the value of the suit property, the plaintiffs seem to have chosen to file the suit as a gambling to impugn the sale deed Ex.B2 as one vitiated by fraud and misrepresentation. Though the plaintiffs

might have stated that only when they were enquired by the police after a dispute arose over the attempt made by the defendants to level the suit land using bulldozers they came to know that the first defendant Karuppiah had, by playing fraud and misrepresentation, got a sale deed in the guise of getting a lease deed for quarrying the red sand, they have failed to state the date on which they got such knowledge. They have not made clear averments regarding the date of knowledge of fraud and misrepresentation to enable the court to decide whether the suit was filed within time or not. For that reason also, the plaintiffs have got to be non-suited for the relief of declaration sought for by them.

19. For all the reasons stated above, this court comes to the conclusion that there is no merit in the second appeal No.1138/2007 and the same deserves to be dismissed.

S.A.No.1095/2007:-

20. So far as S.A.No.1095/2007 is concerned, it is the case of the appellant therein that he was in possession of the suit property from 20.12.1981 as a statutory cultivating tenant. In support of his contention, he relies on Ex.A2-lease deed dated 20.12.1981 and Ex.A1-general Power of Attorney dated 24.06.1996. Besides examining himself as P.W.1, he has examined Sithanandam and Samikannu as P.Ws.2 and 3 respectively. Of course, it is true that the respondent in the second appeal / defendant in O.S.No.199/1999 has not chosen to adduce any oral or documentary evidence. But the same does not mean that the appellant's evidence should be believed as it is, without considering its reliability. As it is pointed out in the connected S.A.No.1138/2007 that the alleged Lessors of the appellant (lessors of Selvaraj) had taken a stand in the other case that the property was leased out to Karuppiah, the first defendant in the connected suit O.S.No.287/1998 for a period of one year and that he was quarrying red sand for a period of one year from August 1984. In the discussions made relating to the question whether the sale deed executed by those persons in favour of Karuppiah, the first defendant in the connected suit was vitiated by fraud and misrepresentation, this court has held supra that the lease deed dated 20.12.1981 could not be genuine and should have been created for the purpose of staking

claim to the suit property in order to defeat the rights of the purchaser under the sale deed dated 29.08.1984. The reasons assigned therein for holding that the lease deed could not be genuine, are re-stated herein at the cost of repetition. The lease deed marked as Ex.A2 has been prepared on 2 x 1 Re. Stamp paper. The stamp paper used as page 1 was purchased in the name of one Raju and the other stamp paper used as page 2 was purchased in the name of another person. The dates in the stamp papers seem to have been altered. Especially in the stamp paper used as the second page, in the year column of the date of purchase of stamp, upper part of '8' has been erased to make it appear as '80'. Similarly, the stamp paper used as the first page of document was issued by the general stamps department, Puducherry in August 1984, whereas the stamp paper was stated to be purchased in the name of Raju on 25.09.1981. Therefore, the courts below have rightly come to the conclusion that the document was prepared antedating and using stamp papers purchased on two different dates in the name of two different persons. If at all the appellant (Selvaraj) became a cultivating tenant from 1981, thereafter there was no necessity to get a general power of attorney under Ex.A1. Furthermore, the appellant (Selvaraj), who claims to be a statutory tenant having inducted as a tenant under the lease deed, has not chosen to get his name entered in the revenue records as a statutory tenant. There is no evidence to show that he applied to the Tahsildar for getting his name registered as a cultivating tenant. Excepting Ex.A2, no document has been produced by the appellant to prove his possession and enjoyment of the suit property as a tenant from 1981. He has not produced chitta, adangal etc. to show that he paid the land tax to the government as a cultivating tenant in possession.

21. On the other hand, one Siddhanantham examined as P.W.2 to support the interested testimony of P.W.1 in O.S.No.199/1999, has stated that it was Selvaraj, who was collecting the pebbles from the suit property and to his knowledge, except Selvaraj no one was ever in possession and enjoyment of the suit property. He was examined on 12.10.1998. The sale deed in favour of Karuppiyah was executed in August 1984. Within fourteen years thereafter, P.W.2 was deposing to the effect that for more than 16 to 17 years plaintiff Selvaraj alone was enjoying the suit property. The contention of the alleged lessors of Selvaraj, namely the plaintiffs in the connected suit, that from August 1984 for about one year

Karuppiah was quarrying red sand from the suit property would make the above said evidence of P.W.2 unreliable and unbelievable. One Samikannu deposed as P.W.3. It is his evidence that, to his knowledge the appellant Selvaraj alone was enjoying and maintaining the property. How long was he enjoying? In what pretext and in what right he was enjoying? - was not elaborated by P.W.3. Moreover, the appellant/plaintiff Selvaraj has not produced any document to show his possession and enjoyment of the suit property, especially for any period after his alleged lessors executed the sale deed dated 29.08.1984 in favour of Karuppiah.

22. It is the contention of the appellant/plaintiff that the suit property is a cashew grove and apart from cashew trees, there are 30 casuarina trees in the suit property. It is the contention of the respondent/defendant that the suit property is a barren land and there is no cashew or casuarina tree. In order to show that it is a cashew grove or that there are casuarina trees 30 in number in the suit property, the appellant/plaintiff has not produced adangal. Appointment of Advocate-Commissioner was also not sought. The respondent in S.A.No.1095/2007 / defendant in O.S.No.199/1999 does not claim any title to the suit property. On the other hand, he has stated that the suit property was purchased by Karuppiah and after selling a portion to third parties, the remaining portion was agreed to be sold to the wife of the respondent under an agreement for sale and a Power of Attorney pursuant to the said agreement for sale was executed in his favour and that by virtue of the agreement and Power of Attorney he was in possession and enjoyment of the suit property. But, it is true that Balaji, the respondent/defendant has not adduced any evidence in proof of his contention that there was an agreement for sale in favour of his wife and a Power of Attorney in his favour were executed by Karuppiah and that possession was delivered to him pursuant to the said agreement. In fact no evidence was adduced on the side of the respondent/defendant. However, in the light of the contention of the respondent/defendant that the suit has been filed with malafide intention against him without impleading Karuppiah, who had purchased it from the alleged lessors of the appellant/plaintiff, the appellant/plaintiff should have chosen to implead Karuppiah also. As he has not done so, the contention raised by the respondent in the written statement that the appellant's intention was to get an order behind the back of the real owner, has got to be accepted.

23. Be that as it may, when a person comes forward with a suit for injunction based on his contention that he is in possession and enjoyment of the suit property and that the defendant, who has no title or interest in the suit property is trying to interfere with his possession and enjoyment of the suit property, he shall succeed in the suit provided he is able to prove his possession and enjoyment and show that the person who attempts to interfere with his possession does not have a better right than that of the plaintiff. In this case, though the respondent has not proved to have a better title than that of the appellant (Selvaraj), since the appellant has not proved to be in possession of the suit property and since it has been held that the document under which he claims to have got possession, namely Ex.A2-Lease deed, is not a genuine one and was one created antedating the same for the purpose of the suit, the courts below have arrived at a correct conclusion that the appellant/plaintiff shall not be entitled to the relief of permanent injunction as prayed for. The findings arrived at by the courts below - that Ex.A2-lease deed is not a genuine one and was created for the purpose of the suit, that the appellant has not proved to be a tenant by virtue of the said Lease Deed and that the appellant has not proved to have possession of the suit property - are based on proper appreciation of evidence and the same cannot be termed either defective or infirm, much less perverse. There is no reason, whatsoever, to interfere with the said finding of the courts below. The effect of failure to cross-examine the witnesses examined on the side of the plaintiff and failure to adduce any evidence shall be different, had the suit been tried in isolation without trying the same with the other suit, namely O.S.No.287/1998. The trial of both the suits simultaneously by virtue of the order of the High Court transferring the suit, namely O.S.No.199/1999 to be tried along with the other suit, namely O.S.No.287/1998, gives justification for relying on the evidence adduced and the decision arrived in the connected case also for making an effective decision in this case. Therefore, all the three questions framed as substantial questions of law in this second appeal need no elaboration and are to be answered against the appellant and in favour of the respondent. As such this court comes to the conclusion that there is no scope and there cannot be any justification in interfering with the concurrent judgments of the courts below non-suited the appellant herein/plaintiff for the relief of injunction as prayed for by him in the plaint. There is no merit in the second

appeal and the same deserves to be dismissed.

24. In the result, S.A.No.1095/2007 and S.A.No.1138/2007 are dismissed with cost. Consequently, connected miscellaneous petitions are closed.

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