

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1159 of 2014 and

M.P.No.1 of 2014

K.Mani ... Appellant/Appellant/D1

Vs.

G.Devarajan ... Respondent/Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 16.09.2014 in A.S.No.68 of 2011 passed by the learned Subordinate Judge, Ponneri dismissing the appeal and confirming the judgement and decree dated 01.04.2010 in O.S.No.112 of 2005 passed by the learned District Munsif, Ponneri.

For Appellant : Mr.S.V.Jayaraman, Senor Counsel
for Mr.J.Kannan

For Respondent : Mr.N.Anand Venkatesh

JUDGEMENT

The first defendant in O.S.No.112 of 2005 on the file of the learned District Munsif, Ponneri, is the appellant herein. The respondent is the plaintiff in the suit. The above suit was filed by the plaintiff in respect of five Items of properties. He filed the said suit for recovery of possession and for mesne profits. The suit was decreed by the trial Court by decree and judgement dated 01.04.2010 in respect of all the five Items of suit properties. As against the same, the appellant herein filed an appeal in A.S.No.68 of 2011 on the file of the learned Subordinate Judge, Ponneri. By decree and judgement dated 16.09.2014, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant/first defendant is before this Court with this second appeal. The other defendants in the suit have been given up by the learned counsel for the appellant in this second appeal.

2.This second appeal has come up today for admission. On service of notice, the learned counsel for the respondent has entered appearance.

3.When the matter was came up for hearing on 23.02.2015, the matter was argued in part by the learned Senior Counsel appearing for the appellant and the learned counsel for the respondent.

4.Today, I have heard the learned Senior Counsel for the appellant and the learned counsel for the respondent and I have also perused the records carefully.

5.The case of the plaintiff is that, he purchased the suit Item Nos.3 to 5 properties under Ex.A.1 sale deed dated 25.06.1982 from one Mr.Kasi who is none else than the father of the first defendant. Item Nos.1 and 2 of the suit properties were purchased by the plaintiff under Ex.A.2 sale deed dated 20.07.1982. According to the plaintiff, from the date of purchase, he was in possession and enjoyment of the suit properties. It is the further case that the plaintiff has engaged a farm servant to do cultivation in all the suit properties. Later on, the suit properties became unsuitable for cultivation, due to the fact that well water has become drought. Therefore, he had no frequent occasion to visit the suit properties. While so, on 12.02.2005, when the plaintiff had gone to the suit properties, he came to know that the first defendant had trespassed into the suit properties. The first defendant declined to vacate. Therefore, the plaintiff filed the present suit for recovery of possession and for other reliefs.

6.The first defendant in his written statement has stated that, he did not contest the suit in respect of suit item Nos.1 and 2 at all. He contested the suit only in respect of suit Item Nos.3 to 5 alone. According to him, Ex.A.1 sale deed dated 25.06.1982 was not executed by his father Mr.Kasi at all in favour of the plaintiff. His alternative plea is that, assuming that the said sale deed (Ex.A.1) was executed by Mr.Kasi, Mr.Kasi himself had no absolute title for the entire extent of the suit properties, because, it is the ancestral properties of Mr.Kasi and the first defendant.

7.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and 9 documents were exhibited. on the side of the defendants, the first defendant was examined as D.W.1 and one Mr.Gunasekaran was examined as D.W.2 and the Adangal Extract was marked on their side as Ex.B.1. An Advocate Commissioner was appointed to note down the physical features of the suit properties. Rough sketch prepared by the Commissioner was marked as Ex.C.1 and his report was marked as Ex.C.2.

8.Having considered the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

9.In this second appeal, the learned Senior Counsel appearing for the appellant would submit that Ex.A.1 was not executed by Mr.Kasi at all and there is no proof for the same. He would further submit that the First Appellate Court has referred to the decree and judgement passed by the learned District Munsif in O.S.No.245 of 2006. According to him, that was a suit filed by the appellant herein and his sister against the respondent herein seeking a declaration that the sale deed namely Ex.A.1 is null and void and for a consequential relief. That suit was dismissed. There has been no appeal filed against the same.

10.The learned Senior Counsel appearing for the appellant would submit that though neither the judgement nor the decree made in O.S.No.245 of 2006 was challenged before the First Appellate Court, the First Appellate Court has extensively referred the same and has held that the plaintiff is entitled for the suit Item Nos.3 to 5 and therefore, he is entitled for recovery of possession. The learned Senior Counsel appearing for the appellant would submit that in Ex.A.1, there is a signature of one Mr.Mani. The First Appellate Court has assumed that it is the signature of the appellant herein and has held that the appellant is estopped from taking the plea that the sale is not valid. It is the further contention of the learned Senior Counsel that the First Appellate Court was not right in holding that the plea of estoppel is to be pleaded and proved. He would further submit that the signature found as a witness in Ex.A.1 was not at all made by the appellant herein. Therefore, according to him, the decree and judgement of the Courts below are liable to be set aside.

11.The learned counsel for the respondent would vehemently oppose this appeal. According to him, absolutely, there is no question of law much less a substantial question of law warranting admission of this second appeal at all. He would further submit that O.S.No.245 was filed by the appellant and his sister seeking declaration that Ex.A.1 in the present suit, under which, the respondent has purchased the suit property from Mr.Kasi, is null and void. He would further submit that the fact remains that the said suit has been dismissed. When there is no denial of the said fact, non production of the decree and judgement in O.S.No.245 is immaterial. The learned counsel would further submit that in Ex.A.1, the signature found as that of a witness is that of the appellant herein alone. When the document was marked in evidence and when the signature was also brought to the notice of the appellant herein, he has not denied the same. The learned counsel would further submit that the appellant had knowledge of the execution of Ex.A.1 and still, he did not come forward to file the suit to avoid the sale, within three years of his attaining majority, even assuming that the suit items 3 to 5 are the ancestral properties. The learned counsel would further submit that, absolutely, there is no evidence that the suit Item Nos. 3 to 5 are ancestral properties of Mr.Kasi. He would further submit that for the sale made in the year 1982, the litigation was initiated only in the year 2005 i.e., after 23 years. For these reasons, according to the learned counsel, this second appeal deserves to be dismissed.

12.I have considered the above submissions.

13.So far as the suit Item Nos.1 and 2 are concerned, there was no dispute and therefore, the decree passed by the Courts below in respect of suit Item Nos.1 and 2 deserves to be simply confirmed. So far as suit Item Nos.3 to 5 are concerned, the plaintiff claims that he has purchased the same from the father of the appellant herein under Ex.A.1 dated 25.06.1982. Let me first consider the plea of the appellant that the suit Item Nos.3 to 5 are the ancestral properties of Mr.Kasi. Absolutely, there is no evidence that there was any joint

family nucleus from out of which suit Item Nos.3 to 5 were purchased by Mr.Kasi. The two Courts below have held that the suit Item Nos.3 to 5 are self acquired properties of Mr.Kasi. I do not find any perversity in the said finding. Assuming that the suit Item Nos. 3 to 5 are the ancestral properties, the recitals of Ex.A.1 would go to show that the sale was made to meet out the family expenses. If at all the appellant had wanted to challenge the alleged sale, that should have been done within three years of his attaining majority. Only in the year 2005, i.e., long after his attaining majority, he has filed the present suit. Therefore, the plea that the suit properties are ancestral properties of Mr.Kasi and that Mr.Kasi had no absolute title to transfer the entire extent of suit Item Nos.3 to 5 to the plaintiff is to be simply rejected. Rightly the Courts below have done so. I want to repeat that, this is essentially a question of fact, which has been rightly held by the Courts below.

14.Now, coming to O.S.No.245 of 2006, admittedly, this was a suit filed by the appellant and his sister for declaration that the sale deed namely Ex.A.1 is null and void and for a consequential relief. Admittedly, the said suit was dismissed. Across the bar, when a specific query was made to the learned Senior Counsel for the appellant, as to whether it is true that the said suit was dismissed, the learned Senior Counsel tacitly and very fairly admitted that it was so dismissed. He also fairly admitted that there was no appeal filed so far by the appellant as against the said decree and judgement in O.S.No.245 of 2006.

15.In my considered opinion, though the decree and judgement in O.S.No.245 of 2006 has been neither produced before the First Appellate Court nor before this Court, that is im-material, because, it is an admitted fact that the suit in O.S.No.245 of 2006 was dismissed. Thus, it is not open for the plaintiff now to contend that the sale deed under Ex.A.1 is void. That has been rightly concluded by the First Appellate Court.

16.Now, coming to the signature found on Ex.A.1, the learned Senior Counsel for the appellant would submit that there was no plea that the appellant made his signature as a witness in Ex.A.1. In my considered view, such plea need not be taken. The appellant had enough opportunity to deny the signature made in Ex.A.1 as witness when the same was proved in evidence. Assuming that the plea of estoppel is made and proved, legal presumption is a matter of evidence which need not be pleaded and proved. Since, the signature found in Ex.A.1 as a witness has not been denied by the appellant, this Court may raise a presumption under Section 114 of the Evidence Act that the appellant had knowledge of execution of Ex.A.1 and he also had knowledge that the property was sold by Mr.Kasi to the plaintiff on 25.06.1982. Having been a witness to the said document and having had knowledge about the execution of the sale deed dated 25.06.1982 (Ex.A.1), in my considered opinion, it is not open for the appellant now to contend that he was not aware of the alleged sale. At any rate, since, O.S.No.245 of 2006 was dismissed holding that Ex.A.1 in the present suit is a valid document, the appellant herein has got no case at all before this Court. Further, as rightly contended by the respondent, there is no question of law involved in this matter much less a substantial question of law warranting

admission of this second appeal. All the questions raised and argued before this Court by the learned Senior Counsel appearing for the appellant are only on facts which have been concurrently answered by the Courts below in favour of the plaintiff. Thus, I do not find any merit at all in this second appeal warranting admission.

17. In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

Dated: 13.3.15

True Copy

Sub Assistant Registrar

To

1. The Subordinate Judge,
Ponneri.

2. The District Musnif,
Ponneri.

+1 cc to Mr. N. Anand Venkatesh, Advocate, SR.10145

+1 cc to Mr. J. Kannan, Advocate, SR.9933.

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Second Appeal No.1159 of 2014

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