

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.7 of 2014 and
M.P.No.1 of 2014

1.Y.S.Kothandaraman

2.Y.K.Gurunathan

3.Y.K.Sankaran

4.Rama ... Appellants/Defendant

vs.

S.Suganthi ... Respondent/Plaintiff

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., to set aside the decree and judgment of the First Appellate Court dated 21.08.2013 made in A.S.No.69 of 2010 on the file of the learned Subordinate Judge, Tambaram reversing the decree and judgment of the trial Court dated 11.06.2010 made in O.S.No.1109 of 1997 on the file of the learned Principal District Judge Munsif, Alandur and allow this appeal.

For Appellants : Mr.K.N.Nataraj

For Respondent : Mr.S.Balasubramanian

JUDGMENT

The defendants in O.S.No.1109 of 1997 on the file of the learned Principal District Munsif, Alandur, Chennai are the appellants herein. The respondent is the plaintiff in the suit. The said suit was originally filed by the plaintiff against the first defendant for permanent injunction to restrain him from in any manner interfering with her peaceful possession and enjoyment of the suit property. During the pendency of the suit, the first defendant died and therefore, the defendants 2 to 4 were brought on record as his legal representatives. The trial Court by decree and judgment dated 11.06.2010, dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.69 of 2010 on the file of the learned Subordinate Judge, Tambaram, Chennai. By decree and judgment dated 21.08.2013, the First Appellate Court allowed the appeal, set aside the decree and judgment of the trial Court and decreed the suit as prayed for. As against the same, the defendants are before this Court

with this second appeal.

2.The case of the plaintiff in brief is as follows:-

The suit property is plot No.39 comprised in S.Nos.524, 525, 526 and 527 in Mumorthy Nagar, No.158, Zamin Pallavaram, Saidapet Taluk, Chengalpet District. One Mr.Venkatarama Iyer was the owner of the entire extent of the land before it was plotted out. He was given power of attorney to one Mr.Shanmugam to plot out the property and to sell the same. Accordingly, a lay out was formed, on the above lands mentioned in the survey numbers, in which, according to the plaintiff, she purchased Plot No.39. According to the further case of the plaintiff, the first defendant purchased Plot Nos.38 & 39 under Ex.B.1 in the name of his wife. But according to the plaintiff, the first defendant never entered into possession of the Plot No.39. She was in possession of the suit property all along. It is her further case that she has constructed a building on the suit property and which has been assessed to house tax by the local body.

3.The first defendant in his written statement, contended that, he has purchased Plot Nos.38 & 39 and from the date of purchase, he was in possession and enjoyment of the same. It is further stated that the plaintiff, occupied a portion of the suit property and when she was asked to vacate, she obtained an agreement from the first defendant, by force, on 17.07.1985, by playing fraud upon him. It is further stated that though, the plaintiff had put up a construction in a portion of the suit property, she has got no title for the suit property. The first defendant filed yet another suit for recovery of possession of the said occupied portion from the plaintiff.

4.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, three witnesses were examined and twenty documents were exhibited. On the side of the defendants, one witness was examined and three documents were exhibited.

5.Having considered all the above, the trial Court dismissed the suit which was reversed by the First Appellate Court. That is how the appellants/ defendants are before this Court with this second appeal.

6.When this second appeal was admitted, this Court has framed the following substantial questions of law:-

"(i) Whether the agreement of sale executed by non-title holder has any validity in the eyes of law in the absence of any general power of attorney in his favour?

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) Whether can an encroacher without

title is entitled for permanent injunction in accordance with law?

(iii) Whether an agreement of sale said to have been executed on a date prior to a date of purchase such non-judicial paper is valid in the eyes of law?"

7. I have heard the learned counsel for the appellants and the learned counsel for the respondent and I have also perused the records carefully.

8. The dispute in this case is only in respect of Plot No.39. This is a simple suit for injunction. In this case, we are concerned only with the possession of the property. In the written statement, the first defendant has tacitly admitted that, in the year 1985, the plaintiff, by force, occupied a portion of the suit property and constructed a building on the same. It is also admitted in the written statement that the first defendant filed another suit for recovery of possession of the present suit property from the plaintiff. But, it is brought to my notice that the said suit was allowed to be dismissed for default by the first defendant and the same has not been so far restored. Thus, it is the admitted case of the first defendant himself that the plaintiff has been in possession and enjoyment of a portion of the suit property right from the year 1985. The rest of the portion is a vacant site. When the plaintiff claims that she is in possession of the entire extent of the suit property namely Plot No.39, when it is the admitted case of the defendants itself that the plaintiff is in possession of the suit property, unless and until, the plaintiff is evicted from the suit property by lawful means, the plaintiff is entitled for protection to her possession over the suit property.

9. But, the learned counsel for the appellants would submit that when the title is under dispute, more particularly, when the plaintiff has got no title, legal protection cannot be given to her by granting a decree of permanent injunction in her favour. This argument does not persuade me at all. It is not as though the plaintiff has trespassed into the suit property recently. The trespass took place prior to the year 1985. Though, the first defendant filed a suit for recovery of possession, for the reasons best known to him, he had abandoned the suit. Thus, the plaintiff has been in possession of the suit property from the year 1985 onwards. The present suit was filed only in the year 2001. Thus, it appears that for more than 15 years, to the knowledge of the first defendant and the other defendants, the plaintiff had been in possession and enjoyment of the suit property. Thus, it is crystal clear that the plaintiff has been in settled possession of the suit property and therefore, her possession needs to be protected.

10.Though, in this case, there is a very serious dispute regarding the title for the suit property, I need not go into the same. It is for the parties to work out their remedies in respect of title. Similarly, if the defendants are entitled to recover possession of the suit property from the plaintiff, they can very well work out their remedies, in the manner known to law. Regarding the remedies available to the defendants, I don't want to express any opinion.

11.Now, turning to the questions of law framed, so far as the first substantial question of law is concerned, in my considered view, since, it is the admitted case of the defendants that the plaintiff has been in possession of the suit property from the year 1985 onwards, I need not answer the question.

12.So far as the second substantial question of law is concerned, I have already answered that though, the title is under dispute, since, the plaintiff is in settled possession of the suit property, she is entitled for injunction.

13.So far as the third substantial question of law is concerned, it relates to the validity of Ex.A.8 - agreement entered into between the plaintiff and the first defendant. Regarding the validity of the same, I need not go into, in this case, as that will not in any manner affect the final conclusion arrived at by the First Appellate Court that the plaintiff is in settled possession of the suit property. In view of all the above, I do not find any merit at all in this second appeal.

14.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Tambaram.

2.The Principal District Munsif,
Alandur.

2 ccs to Mr.S.Balasubramanian, Advocate, sr.67528

2 ccs to Mr.K.N.Nataraj, Advocate, sr.67706