IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.678 of 2009

1.S.Shanmugam
2.Karunakaran
3.Pandian
4.Ganesan
5.Palanivel

... Appellants/Defendants

-Versus-

Chandrasekaran

... Respondent/Plaintiff

This second appeal is filed against the judgment and decree dated 06.11.2008 made in A.S.No.70 of 2008 by the learned Additional Subordinate Judge, Mayiladuthurai, confirming the decree and judgement dated 16.06.2008 made in O.S.No.321 of 2004 by the learned District Munsif, Sirkali.

For Appellants : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

JUDGMENT

The defendants in O.S.No.321 of 2004 on the file of the learned District Munsif, Sirkali, are the appellants herein. The sole respondent herein is the plaintiff in the suit. The said suit was filed by the respondent for permanent injunction restraining the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The suit property is admittedly, a vacant site measuring a total extent of 11 cents comprised in S.No.63/7 at Allivillagam Village, Sirkali Taluk, Nagapattinam District. The trial court decreed the suit by decree and judgement dated 16.06.2008. As against the same, the appellants herein filed an appeal suit in A.S.No.70 of 2008 before the learned Additional Sub Judge, Mayiladuthurai. By decree and judgement dated 06.11.2008, the first appellate court dismissed the appeal thereby confirming the decree and judgement of the trial court. As against the same, the appellants herein have come up with the present second appeal.

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2. This second appeal has come up today for admission. The respondent has made appearance through his counsel
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3. The case of the plaintiff is that the suit property measuring 11 cents comprised in S.No.63/7 at Allivillagam Village, Sirkali Taluk, Nagapattinam District, is the ancestral property of his vendor. The plaintiff purchased the same by means of a registered sale deed dated 06.06.2000 (Ex.A1). The title deed of his vendor is dated 04.04.1953 (Ex.A2). In Ex.A.1 since four boundaries were not properly mentioned, the same was amended by means of a rectification deed dated 16.09.2004 (Ex.A.3). According to the plaintiff, patta was issued for the suit property in the name of his vendor (Ex.A.4). According to him, the defendants have got no right whatsoever, but they are trying to disturb his possession and enjoyment in the suit property.

4. Per contra, it is the case of the defendants that in S.No.63/7, the defendants have got 4 cents. In order to prove the same, he has filed a partition deed dated 27.11.1947 and many other documents including the patta issued on 23.08.2004. According to him, the boundaries will prevail over the extent of the property mentioned in the documents. Thus, according to him, though in the defendants' documents, the extent of the property has been mentioned as 4 (four) cents, as a matter of fact, they are in possession and enjoyment of the entire extent of 11 (eleven) cents. Thus, according to the defendants, the plaintiff has got no right and he is not in possession of 11 (eleven) cents.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case on the side of the plaintiff three witnesses were examined and 15 documents were marked. On the side of the defendants also, three witnesses were examined and thirteen documents were marked. Having considered all the above, the trial court decreed the suit and the first appellate court also confirmed the same. That is how, the defendants are now before this court Court with the present second appeal.

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

7. The learned counsel for the appellants would submit that the title for the property is under serious dispute. When that be so, mere suit for bare injunction is not maintainable.

8. In view of the said submission and after having gone through the records, the following substantial question of law is framed in this second appeal for consideration:-

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Whether the suit for bare injunction is maintainable without there being a prayer for a decree for declaration of title when the title of the property is disputed by the defendants by producing a number of documents?

9. The learned counsel for the appellants would submit that the suit is not maintainable since there is a dispute regarding title. The learned counsel for the respondents would, however, oppose the second appeal. According to him, the documents of title produced by the plaintiff were earlier than the documents produced by the defendants.

10. I have considered the above submissions and also perused the records carefully.

11. As rightly contended by the learned counsel on either side, the documents produced by the plaintiff make out a prima facie case that the plaintiff has got title for 11 cents in S.No.63/7. Similarly, the documents produced by the defendants would go to show that they relate to the title for the property comprised in the very same survey number to an extent of 4 cents. But, there is a plea taken by the defendants that four boundaries will prevail over the extent and, therefore, according to the defendants, the entire extent of 11 cents of land belongs to them. Thus, it is crystal clear that in respect of 11 cents comprised in S.No.63/7 both parties have got documents and they are making rival claims. When that be so, it would have been appropriate for the plaintiff to amend the suit so as to include the prayer for a decree for declaration of title also. But, the plaintiff has failed to do so. In such view of the matter, I have to necessarily answer the substantial question of law only in favour of the defendants. But, at the same time, in order to avoid multiplicity of litigations, I deem it appropriate to remit the matter back to the trial court to enable the plaintiff to amend the suit appropriately and to try the same in accordance with law. Thus, I am inclined to set aside the decree and judgement passed by the courts below.

12. In the result, this second appeal is allowed, the judgment and decree of the courts below are hereby set aside. The suit in O.S.No.321 of 2004 is hereby remitted back to the file of the learned District Munsif, Sirkali, for fresh disposal. The trial court shall permit the plaintiff to amend the suit so as to include the prayer for a decree for declaration of title also and thereafter the trial court shall afford sufficient opportunity to the defendants to file additional written statement, if any. Thereafter, the trial court shall frame additional issues, permit both the parties to let in additional evidence, if any, and then dispose of the suit

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on merits. At any rate, the trial court shall dispose of the suit within a period of six months from the date of receipt of a copy of this judgement. No costs.

Sd/-
Assistant Registrar(CO)

True Copy

Sub Assistant Registrar

To

1.The Additional Subordinate Judge,
Mayiladuthurai,
Nagapattinam District.

2.The District Munsif,
Sirkali,
Nagapattinam District.

+1cc to M/S.A.Muthukumar, Advocate sr.60534
+1cc to Mr.S.Sounthar, Advocate Sr.60220

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