

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.790 of 2009

and

M.P.No.1 of 2009

1.K.Ramaiyan
2.R.Vijayakumar
3.R.Pulavendiran

... Appellants/Defendant

Vs.

D.Chinnaiyan

... Respondent/Plaintiff

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree passed in A.S.No.2 of 2008 dated 01.07.2008 on the file of Sub Court, Mannargudi, confirming the judgment and decree passed in O.S.No.20 of 2005 dated 30.11.2007 on the file of the District Munsif Court, Thiruthuraipoondi.

For Appellants : Mr.V.Bharathidasan

For Respondent : Mr.A.Muthukumar

J U D G M E N T

This second appeal is filed by the unsuccessful defendants in a suit for bare injunction. The plaintiff has based his right on Ex.A1, dated 09.05.1997 having purchased the suit property, an extent of 0.26 cents in Survey No.73/7 and he has also obtained patta for the same. The defendants are residing on the northern side of the suit property. The plaintiff has also planted coconut trees, teak trees and portia trees and on the other Northern boundary, the defendant's house is situated i.e., behind those trees. As the defendants demanded sale of the suit property in their favour from the plaintiff and as the plaintiff refused to sell it to them, the defendants started disturbing the possession of the plaintiff. Hence, suit came to be filed by the plaintiff.

2. The suit was resisted by the defendants denying all the plaintiff averments and stated that those trees were only planted and raised by them and the plaintiff has got no right over the suit property and prayed that suit may be dismissed, as the same is based on false allegations.

3. The trial Court as well as the Appellate Court unanimously held that the plaintiff has got right over the suit property and as on date of filing of the suit, the plaintiff was in possession of the property and hence the suit was decreed.

4. The only question that has to be decided in this second appeal is as to whether the plaintiff has got right over the property and whether he is entitled to the decree for permanent injunction.

5. The suit property originally belonged to one Venkatachalam and the leasehold right of the same was given to one Subramania Konar who enjoyed the property till his death and after his death, the legal heirs of the said Subramania Konar sold the property on 09.05.1997 in favour of the plaintiff. Though the defendants claim that they have been in possession for more than two generations, excepting the thoraya patta in Ex.B1, the defendants have not produced any other document. After the date of purchase of the property by the plaintiff, the said Ex.B1 was obtained. The Courts below decreed the suit based on the admission made by DW1, wherein she has clearly and categorically admitted that Survey No.73/7 with the total extent of 23 cents, belonged to the plaintiff. She had further admitted that the plaintiff had enjoyed the same by paying tax. DW1 had further deposed that the property on the Northern side of the suit property, belonged to the defendants and they had obtained Ex.B1 for the same.

6. On a perusal of Ex.B1, it is seen that the same reveals that Survey No.73/22, had the old S.No.73/48, whereas, the suit property is S.No.73/7. Hence, the defendants have produced the document not relating to the suit property and they have got no title to the suit property in S.No.73/7. The plaintiff also has specifically stated that the entire extent available in S.No.73/7 has been purchased by him under Ex.A1 and he has been in possession of the same. Therefore, the learned counsel appearing for the appellants defendants contended that the specific boundaries having not been given the suit has to be rejected, as the plaintiff has not proved his possession on the date of plaint. However based on his purchase under Ex.A1 and based on the admission of DW1, the suit was rightly decreed by the Courts below. There is no justifiable reason, or any question of law arising for consideration in this Second Appeal to differ from the findings of the Courts below.

7. In view of the above discussion, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Nvi

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Sub Judge, Mannargudi
2. The District Munsif,
Thiruthuraipoondi.
3. The Record keeper,
V.R. Section,
High Court, Madras.

+1 C.C. To MR.A.Muthukumar, Advocate in SR.NO.50341

+1 C.C. To MR.V.Bharathidasan, Advocate in SR.NO.50547

S.A.No.790 of 2009

NM(CO)

sd : 26/10/2015

सत्यमेव जयते

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