

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1021 of 2015 and M.P.No.1 of 2015

Vanaja

.. Appellant/Plaintiff

-Vs-

1. Mohan

2. Senthil

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of Principal Subordinate Court, Mayiladuthurai dated 24.06.2015 made in A.S.No.1 of 2015 reversing the judgment and decree of District Munsif, Sirkali dated 26.11.2014 made in O.S.No.263 of 2008.

For Appellant : Mr.S.Sounthar

For Respondents : ...

J U D G M E N T

The plaintiff in O.S.No.263 of 2008 on the file of the learned District Munsif, Sirkali is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the alleged peaceful possession and enjoyment of the plaintiff in the suit property. The learned District Munsif by decree and judgment dated 26.11.2014 decreed the suit as prayed for. As against the same, the defendants filed an appeal in A.S.No.1 of 2015 before the learned Principal Subordinate Judge, Mayiladuthurai. By decree and judgment dated 24.06.2015, the lower appellate court allowed the appeal thereby setting aside the decree and judgment of the trial court. As against the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

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

The suit property which is an agricultural land was originally owned by one Kaliyaperumal. Kaliyaperumal died intestate leaving behind his son one Ramalingam. From Ramalingam under Ex.A.1, it is alleged that the plaintiff purchased the suit property on 21.10.2008. It is the case of the plaintiff that from the said date, she has been in possession and enjoyment of the same. While so, since the defendants attempted to disturb her possession, she filed the suit for permanent injunction.

4. The case of the defendants is as follows:

The defendants and the husband of the plaintiff are brothers. Their father was one Natesan. It is true that the suit property was originally owned by Kaliyaperumal. But during his life time, Mr.Kaliyaperumal, under Ex.B.5, a sale agreement was entered into between Kaliyaperumal and Natesan by which Natesan agreed to purchase the suit property and a major portion of the sale consideration was also paid. Possession of the suit property was delivered to Natesan by Kaliyaperumal. Thus, Natesan was enjoying the suit property all along. After the demise of Natesan, the plaintiff's husband and the defendants have been enjoying the suit property. Thus, according to the defendants, the plaintiff has got no right whatsoever over the suit property.

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 one document was exhibited that is Ex.A.1 Sale Deed dated 21.10.2008 executed by Ramalingam in favour of the plaintiff. On the side of the defendants, five witnesses were examined including the 1st defendant. Ex.B.1 is the patta issued in the name of Kaliyaperumal dated 19.11.2012. Ex.B.2 to Ex.B.4 are receipts for payment of Kist by Natesan for the Kaliyaperumal's Fasli years 1401, 1404 and 1408. Ex.B.5 is the sale deed executed by Kaliyaperumal in favour of Natesan.

6. Thus, according to the defendants, the plaintiff is not entitled to a decree for permanent injunction. Having considered all the above, the trial court decreed the suit which was reversed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

7. In this Second Appeal, the learned Counsel for the appellant would submit that in Ex.B.5, there is no indication that possession was handed over by Kaliyaperumal to Natesan.

There was no sale made by Kaliyaperumal to Natesan. Thus, according to the learned Counsel for the appellant, the title for the said property remained with Kaliyaperumal which was inherited by his son Ramalingam. Since from Ramalingam, the plaintiff has purchased the suit property, the plaintiff has become the absolute owner and she is in possession and enjoyment of the suit property. The learned Counsel for the appellant would further submit that the lower appellate court has not considered all these facts.

8. In my considered opinion, there is no substantial question of law at all involved warranting admission of the Second Appeal.

9. The lower appellate court has held that from Ex.B.2 to Ex.B.4 as well as Ex.B.5, the defendants have proved that Natesan was in possession all along. Though it is claimed by the plaintiff that Ramalingam was in possession of the suit property, no document such as Adangal etc. have been produced before this Court. Thus, the plaintiff has failed to prove the possession of Ramalingam until Ex.A.1 was executed on 21.10.2008. Hardly within one month, the suit was filed by the plaintiff. Thus, according to the lower appellate court, absolutely, there is no evidence to prove that the plaintiff has been in possession and enjoyment of the same. In this factual finding, I do not find any infirmity. Apart from that, when the title for the property is disputed, it is not known as to why the plaintiff had not included the prayer for title also in the suit prayer by appropriately amending the suit.

10. In view of all the above facts and circumstances, I find that the lower appellate court was right in dismissing the suit. Apart from that, as I have already pointed out there is no question of law much less a substantial question of law involved warranting admission of the Second Appeal. Therefore, this Second Appeal deserves only to be dismissed.

11. In the result, the Second Appeal is dismissed. The decree and judgment of the lower appellate court reversing the decree and judgment of the trial court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/
ASSISTANT REGISTRAR (CS-VI)

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SUB-ASSISTANT REGISTRAR

tsi

To

1.The Principal Subordinate Judge, Mayiladuthurai.

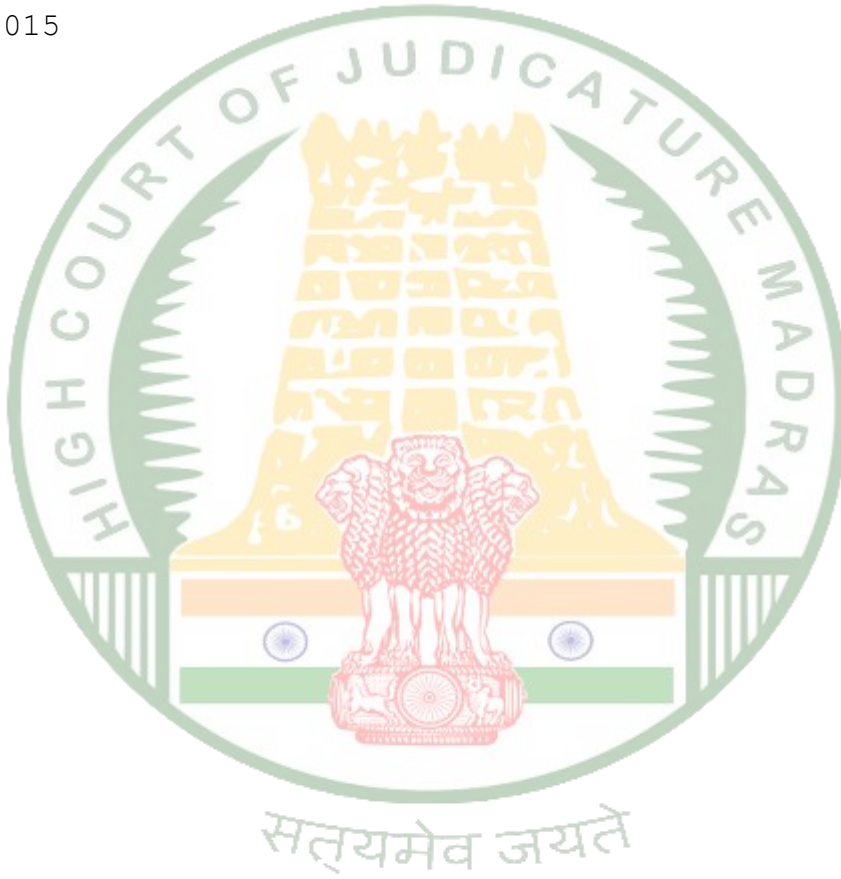
2.The District Munsif, Sirkali.

+1 CC to MR.S.Sounthar Advocate. SR.NO. 62481

S.A.No.1021 OF 2015

CO-VD

JD 30/12/2015



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