

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1049 of 2015

R.Karunakaran .. Appellant/Plaintiff
-Vs-
1. Kuppammal
2. Renuga
3. Mohan .. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed by the Subordinate Judge, Mannargudi dated 26.11.2013 in A.S.No.32 of 2012, reversing the judgment and decree of the District Munsif, Mannargudi dated 10.01.2012 passed in O.S.No.45 of 2010.

For Appellant : Ms.K.Radika

For Respondents : ...

J U D G M E N T

The plaintiff in O.S.No.45 of 2010 on the file of the learned District Munsif, Mannargudi is the appellant herein. The respondents are the defendants in the suit. The said suit was filed by the plaintiff for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial court by decree and judgment dated 10.01.2012 decreed the suit as prayed for. As against the same, the defendants 1 and 2 filed an appeal in A.S.No.32 of 2012 on the file of the learned Subordinate Judge, Mannargudi. By decree and judgment dated 26.11.2013, the lower appellate court allowed the appeal, set aside the decree and judgment of the trial court and dismissed the suit. As against the same, the appellant is before this Court with this Second Appeal.

2. The 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:

There are two items of suit properties. The first item is comprised in Survey No.38/1B and the second item is comprised in S.No.64/1A at Neduvbakkottai Village in Mannargudi Taluk at Nagapattinam District. According to the plaintiff, both items of the suit properties were originally owned by his father Ramaiyan. The first defendant is the mother of the plaintiff, the 2nd defendant is the sister and the 3rd defendant is the brother of the plaintiff. According to the plaintiff, by means of a registered sale deed dated 17.07.2007, the plaintiff purchased the suit properties from the defendants and the other legal heirs of Ramaiyan. Thus, from the date of purchase, according to the plaintiff, he has been in possession and enjoyment of the same. The patta for the first item of the suit property has been transferred against him and the proceedings were pending before the Revenue Authorities for transfer of patta in respect of the second item of the suit property. The defendants have got no right whatsoever over the two items of the suit properties. Since they attempted to trespass into the suit properties, the plaintiff has forced to file the present suit.

4. The defendants 1 and 2 filed a written statement wherein they disputed the validity of the sale deed dated 17.07.2007. According to them, there was no power at all given by the 2nd defendant either in favour of the 3rd defendant or in favour of one Selva Jothi. It is disputed that the sale deed was executed by the defendants and others in favour of the plaintiff. According to these defendants, there is a house and a shop in the suit properties which are in their possession after the demise of Ramaiyan. Thus, according to the defendants 1 and 2, the plaintiff has got no independent title for the suit properties and he is not in the possession of the suit properties.

5. The 3rd defendant remained ex-parte before the trial court.

6. Based on the above pleadings, the trial court framed appropriate issues. In order to prove his case, on the side of the plaintiff, he was examined as P.W.1 and as many as 8 documents have been marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and only one document has been marked as Ex.D.1. Having considered all the above, the trial court decreed the suit and the same was reversed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

7. The learned Counsel for the appellant would submit that the defendants 1 and 2 have not challenged the validity of the sale deed dated 17.07.2007 by filing any suit. This, according to the learned Counsel, would amount to admission of

the title of the plaintiff. He would further submit that there is enormous evidence to show that the plaintiff is in possession and enjoyment of the suit properties. He would also submit that the Patta Transfer Order and Kist Receipts would go a long way to prove the same. The learned Counsel for the appellant would further submit that the lower appellate court has not appreciated these evidence in their proper prospective.

8. I have considered the above submissions.

9. At the outset I should say that there is no question of law much less a substantial question of law at all involved in this Second Appeal. The lower appellate court has considered the admissions made by the plaintiff during cross-examination. He has admitted that Ramaiyan had only three properties, namely, suit property which are two items and one property in Mannargudi Town. He has further admitted that the property at Mannargudi was sold away. Therefore what remained with the family was only these two items of suit properties. He has further admitted during his cross-examination that the entire family was residing in a thatched shed in one of the suit properties. He has also admitted that around the year 1976, Ramaiyan constructed a pacca terraced house on one item of the suit properties whereas he was residing in the first floor and the ground floor was used as a shop. The plaintiff has tacitly admitted further that the defendants 1 and 2 are residing in the said Thatched shed. This has been rightly appreciated by the lower appellate court and has come to the conclusion that the possession of the suit properties is only with the defendants 1 and 2. Therefore, the lower appellate court was right in dismissing the suit. But the trial court had failed to appreciate these admissions made by the plaintiff. In such view of the matter, I find no perversity in the findings of the lower appellate court. Further, as I have already pointed out, there is no substantial question of law involved in this Second Appeal warranting admission of the same.

10. In the result, the Second Appeal fails and the same is according dismissed. The decree and judgment of the lower appellate court is confirmed. It is for the appellant to work out his other remedies available in the manner known to law. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

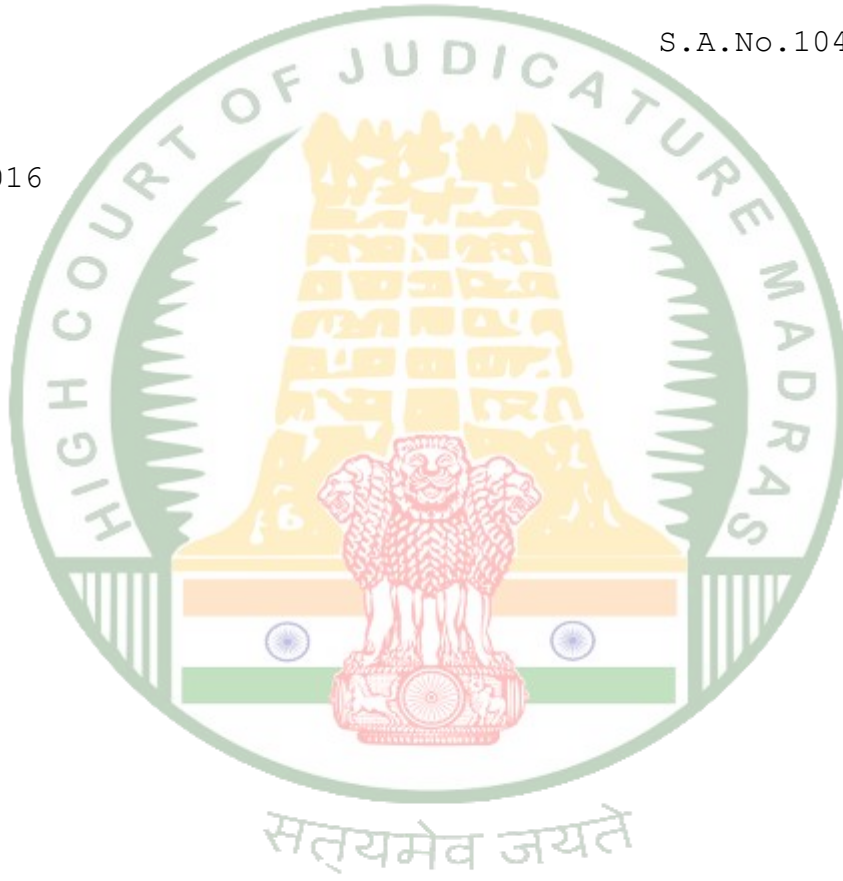
To

1.The Subordinate Judge, Mannargudi.

2.The District Munsif, Mannargudi.

S.A.No.1049 OF 2015

sal(co)
aa29/01/2016



WEB COPY