

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.148 of 2015

1. Banumathi

2. Arumugam

.. Appellants/Defendants

Vs.

Sivasakthi Narayanan

.. Respondent/Plaintiff

Appeal under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 21.10.2013 made in A.S.No.7 of 2013 on the file of the Sub Court, Tirupattur, Vellore District, reversing the judgment and decree dated 08.4.2013 made in O.S.No.293 of 2006 on the file of the District Munsif Court, Tirupattur, Vellore District.

For Appellants : Ms.S.Uma Maheswari

For Respondent : Mr.P.Vasanth

J U D G M E N T

The defendants in O.S.No.293 of 2006 on the file of the learned District Munsif, Tirupattur, are the appellants. The respondent is the plaintiff in the suit. The said suit was filed for declaration of title of the plaintiff and to restrain the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. By decree and judgment dated 08.4.2013, the trial Court dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.7 of 2013 on the file of the Subordinate Court, Tirupattur, Vellore District. By decree and judgment dated 21.10.2013, the lower Appellate Court allowed the appeal, setting aside the decree and judgment of the trial Court and decreed the suit as prayed for. As against the same, the defendants have come up with this second appeal.

2. This second appeal has come up today for admission. Heard the learned counsel for the appellants and the learned counsel for the respondent and also perused the records carefully.

3. The case of the plaintiff is that the suit property was originally owned by one Mrs.Poongavanam. She was in possession and enjoyment of the same. It was then a vacant site. On 11.11.1981, under Ex.A1, the suit property was purchased in the name of one Siva Sakthi Narayanan, who was then a minor, for a valuable consideration. Mr.Sivaprakasam, the father of Siva Sakthi Narayanan, represented him in the said document as natural guardian. From the date of purchase, minor Siva Sakthi Narayanan was in peaceful possession and enjoyment of the property. The Tahsildar, Tirupattur also granted patta for the property under the Natham Settlement Scheme. The plaintiff started constructing a house on the suit property in the year 2006. The defendants have properties situated on the south of the suit property. They attempted to encroach upon the suit property. This was spoiled by the plaintiff. In those circumstances, the plaintiff filed the said suit for declaration of title and injunction.

4. In the written statement, it is contended that the defendants have constructed the house only on their property and they never attempted to trespass into the property belonging to the plaintiff.

5. Based on the above pleadings, the trial Court framed appropriate issues. Before the trial Court, Siva Sakthi Narayanan, who had later become major, examined himself as PW1. Mr.Sivaprakasam, his father, was examined as PW2. On the side of the defendants, they were examined as DWs 1 and 2. As many as two documents were marked on the side of the plaintiff and four documents were marked on the side of the defendants. The Advocate Commissioner's reports and sketches were marked as Exx.C1 to C4. Having considered all the above, the trial Court dismissed the suit, which was reversed by the Appellate Court. Therefore, the defendants are before this Court with this appeal.

6. In this appeal, at the outset, I should say that there is no substantial question of law warranting admission of this appeal. There is no dispute that the suit property was originally owned by Mrs.Poongavanam, from whom the plaintiff purchased the same, represented by his father. It is also not in dispute that the property of the defendants is situated on the south of the suit property. It is not the case of the defendants that they have got any right or claim over the suit property. The trial Court dismissed the suit because there is no cause of action against the defendants, as the defendants made it clear that they were not attempting to disturb the possession of the plaintiff. But, the lower Appellate Court reversed the same holding that the apprehension that the defendants would disturb the possession of the plaintiff is proved. In my considered view, these conclusions arrived at by the lower Appellate Court

are only on facts. Even before this Court, the learned counsel for the appellants is not in a position to make out any question of law much less a substantial question of law warranting admission of the second appeal. In the conclusion arrived by the lower Appellate Court, we do not find any perversity. Thus, I do not find any reason even to admit the second appeal. In the result, the appeal fails and the same is dismissed. No costs.

kpl

(Sd)

Assistant Registrar (CS-V)

True copy

Sub Assistant Registrar.

To

1. The Sub Court, Tirupattur, Vellore District.
 2. The District Munsif Court, Tirupattur, Vellore District.
- + 1 cc to M/s.P.Vasanthi, Advocate SR 61652
- + 1 cc to Mr.C.Jagadish, Advocat SR 61714

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S.A.No.148 of 2015.



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