

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.150 of 2015
and
M.P.No.1 of 2015

Pooranam

.. Appellant/Plaintiff

-Vs-

Elangeswaran

.. Respondent/Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the Principal Subordinate Judge, Mayiladuthurai dated 11.07.2014 made in A.S.No.80/2011 confirming the judgment and decree of the District Munsif, Sirkali, dated 29.11.2010 made in O.S.No.112/2007, in so far as it is against this appellant.

For Appellant : Mr.S.Sounthar

For Respondent : ...

J U D G M E N T

The plaintiff in O.S.No.112 of 2007 on the file of the learned District Munsif, Sirkali is the appellant herein. The respondent is the sole defendant in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with the alleged peaceful possession and enjoyment of the plaintiff in the suit property. The trial court by decree and judgment dated 29.11.2010 dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.80 of 2011 before the learned Principal Subordinate Judge, Mayiladuthurai. That was dismissed by decree and judgment dated 11.07.2014. As against the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me 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 was purchased in the name of the plaintiff's mother Mrs.Valambal on 29.01.1975. The original sale deed is now at the hands of Mrs.Valambal. Mrs.Valambal is the second wife of one Rasu Mudaliyar. The plaintiff is the son of Valambal. Valambal is even today alive. But, according to the plaintiff, he is in possession and enjoyment of the suit property. It is his case that the defendant has got no right whatsoever over the suit property. But the defendant is trying to interfere with the same is his allegation. Therefore, according to him, he was forced to file the present suit for permanent injunction.

4. The defendant, in his written statement, submitted that the plaintiff is not the owner of the suit property and he is not in possession and enjoyment of the suit property. According to him, on an earlier occasion, Valambal, the mother of the plaintiff filed a suit in O.S.No.54/2002 before the learned Subordinate Judge, Mayiladuthurai for declaration of title and for injunction and that suit was decreed in her favour. Thus, if at all, there is anyone, who claims title, it is only Valambal to claim. Thus, according to the defendant, the plaintiff has got nothing to do with the suit property. It is also stated that in the very suit property Survey Number, the defendant has purchased 3000 sq.ft. of lands and he is not trying to encroach upon the property owned by Valambal.

5. Based on the above pleadings, on the side of the plaintiff, two witnesses were examined and as many as 3 documents were exhibited. On the side of the defendant, one witness was examined and as many as 12 documents were exhibited. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, it is contended by the learned Counsel for the appellant that though the suit property was purchased in the name of Valambal, the fact remains that the plaintiff is in possession and enjoyment of the same. Since it is a simple suit for bare injunction, according to the learned Counsel, the title is immaterial, because there is no dispute as of now between the plaintiff and his mother Mrs.Valambal. The learned Counsel for the appellant would further submit that the courts below have failed to consider the fact that in his evidence, the defendant has admitted that he has got no objection for grant of injunction in favour of the plaintiff for the rest of the lands in the said survey number other than the 3000 sq.ft. which he has purchased.

7. I have considered the above submissions.

8. Admittedly, the suit property was purchased by Mrs.Valambal. Even according to the plaintiff's allegations, the original document is with her. She filed a suit earlier against the plaintiff

herein in O.S.No.54 of 2002 and the same was decreed. But Valambal is not a party to the present suit. Apart from that, it is not explained as to how the plaintiff has got title or possession, when there is a decree in favour of Valambal, who has purchased the property. Thus, the courts below, on appreciating the oral and documentary evidence, has come to the conclusion that the plaintiff has not proved his possession and incidentally his title also. Though it may be true that the defendant has admitted that he has got no objection for grant of injunction in favour of the plaintiff for the rest of the lands in the said survey number other than the 3000 sq.ft. he has purchased, on that score, decree cannot be granted in favour of the plaintiff, because, it is for the plaintiff to prove that he is in possession and enjoyment of the suit property, that too, based on his title. Since the plaintiff has failed to do so, two courts below have dismissed the suit. In view of all the above, in this Second Appeal, I do not find any substantial question of law involved warranting admission of the same. All the questions raised are only on facts which have been resolved by the courts below concurrently. Thus, I do not find any merit in the Second Appeal.

9. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

tsi

-s/d-

Assistant Registrar(V)

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Sub-Assistant Registrar

To

1.The Principal Subordinate Judge, Mayiladuthurai.

2. The District Munsif, Sirkali.

+ 1 cc to Mr.S.Sounthar, Advocate SR 17505.

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& M.P. No. 1 of 2015