

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.155 of 2015
and
M.P.No.1 of 2015

R.Maruthambal

...Appellant

Vs.

K.Palaniyandi

...Respondent

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree made in A.S.No.15 of 2012 dated 21.01.2013 on the file of the learned Additional District Judge, Ariyalur reversing the judgement and decree made in O.S.No.587 of 2004 dated 18.09.2006 on the file of the learned Principal District Munsif, Ariyalur.

For Appellant : Mr.A.John Britto

JUDGEMENT

The plaintiff in O.S.No.587 of 2004 on the file of the learned Principal District Munsif, Ariyalur is the appellant herein. The respondent is the defendant in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial Court by decree and judgement dated 18.09.2006, decreed the suit as prayed for. As against the same, the respondent herein filed an appeal in A.S.No.15 of 2002 on the file of the learned Additional District Judge, Ariyalur. The First Appellate Court by decree and judgement dated 21.01.2013 allowed the appeal thereby setting aside the decree and judgement of the trial Court and dismissed the suit. As against the same, the appellant/plaintiff is before this Court with this second appeal.

2.This second appeal has come up 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 is as follows:-

The suit property is a landed property comprised in S.No.553/734A wherein, the house of the plaintiff is located. According to her, the suit property originally belonged to one Mr.Krishna Konar. Mr.Krishna Konar had three sons by name Mr.Azhagupillai, the father of the plaintiff and the defendant and one Mr.Velusamy. On the demise of Mr.Krishna Konar, the suit property was inherited by his three sons. Thereafter, there was a partition among the said three sons of Mr.Krishna Konar, in which, the suit property was allotted to the father of the plaintiff. The father of the plaintiff, in turn, had executed a settlement deed on 29.08.2000 in favour of the plaintiff. Thus, the plaintiff is the absolute owner of the suit property. It is further stated that since, the plaintiff has been in possession and enjoyment of the suit property, the defendant has got no right whatsoever over the suit property.

4.The case of the defendant is that, it is true that the suit property was originally owned by one Mr.Krishna Konar. But, in the oral partition, which took place between his three sons, the Eastern portion of the suit property was allotted to Mr.Velusamy and Western portion of the suit property was allotted to the defendant in the suit. Thus, according to the defendant, he has been in possession and enjoyment of the Western portion of the suit property. It is the further case of the defendant that neither plaintiff nor her father has got any right whatsoever over the suit property.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, three witnesses were examined as P.Ws.1 to 3 and as many as 5 documents were exhibited. On the side of the defendant, two witnesses were examined as D.Ws.1 & 2 and as many as 10 documents were exhibited.

6.Having considered all the above, the trial Court decreed the suit as prayed for and the First Appellate Court has reversed the same thereby dismissing the suit. That is how the appellant/plaintiff is before this Court with this second appeal.

7.In this second appeal, the learned counsel for the appellant would submit that the First Appellate Court has reversed the decree and judgement of the trial Court erroneously by holding that when there is a dispute regarding the title, the simple suit for bare injunction is not maintainable. The learned counsel would further submit that from the oral evidence of P.Ws.1 to 3 and that of the documentary evidences of Exs.A.1 to A.5, it has been clearly established by the plaintiff that she has been in possession and enjoyment of the suit property. But, the First Appellate Court on an erroneous appreciation of the evidences, has reversed the decree and judgement of the trial Court. Thus, according to the learned counsel,

the decree and judgement of the First Appellate Court is liable to be set aside.

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 involved in this second appeal warranting admission of the same. The reasons are many. First of all, when the dispute is regarding title, it is not known as to why the plaintiff has not either amended the suit or filed a comprehensive suit for declaration of title. Ofcourse, it is true that in a suit for bare injunction, based on title, as an incidental issue, the question of title can also be gone into. That has been rightly done by the First Appellate Court also. Here, in this case, admittedly, the suit property was originally owned by one Mr.Krishna Konar. It is also admitted that there was a oral partition among the sons of Mr.Krishna Konar. The actual dispute is to whom the suit property was allotted. According to the plaintiff, the entire suit property was allotted to her father whereas, according to the, defendant, the Western portion of the suit property was allotted to him and the Eastern portion of the suit property was allotted to Mr.Velusamy. This dispute needs to be resolved first. For that, it is absolutely necessary for the plaintiff to prove that the entire suit property was allotted to her father. The First Appellate Court has appreciated the evidence both oral as well as documentary and has come to the conclusion that absolutely, there is no proof to prove the case of the plaintiff. Further, it is for the plaintiff to file a comprehensive suit so as to establish her title. The plaintiff has failed to do so.

10.Now, coming to the possession of the suit property, the First Appellate Court has considered the evidence both oral as well as documentary and on appreciating the fact, it has come to the conclusion that the plaintiff has not proved her possession. Except Exs.A.1 to A.5, the plaintiff has not produced any document to show that she is in possession of the suit property. Even these documents do not contain the door number of the suit property. On appreciating the same, the First Appellate Court reversed the decree and judgement of the trial Court, in which, I do not find any infirmity at all.

11.At any rate, in my considered opinion, as I have already concluded, there is no substantial question of law warranting admission of this second appeal. At the same time, it needs to be clarified that, it is open for the plaintiff to file an appropriate comprehensive suit for declaration of title and for necessary consequential relief. For which, this suit will not operate as res judicata.

12.In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

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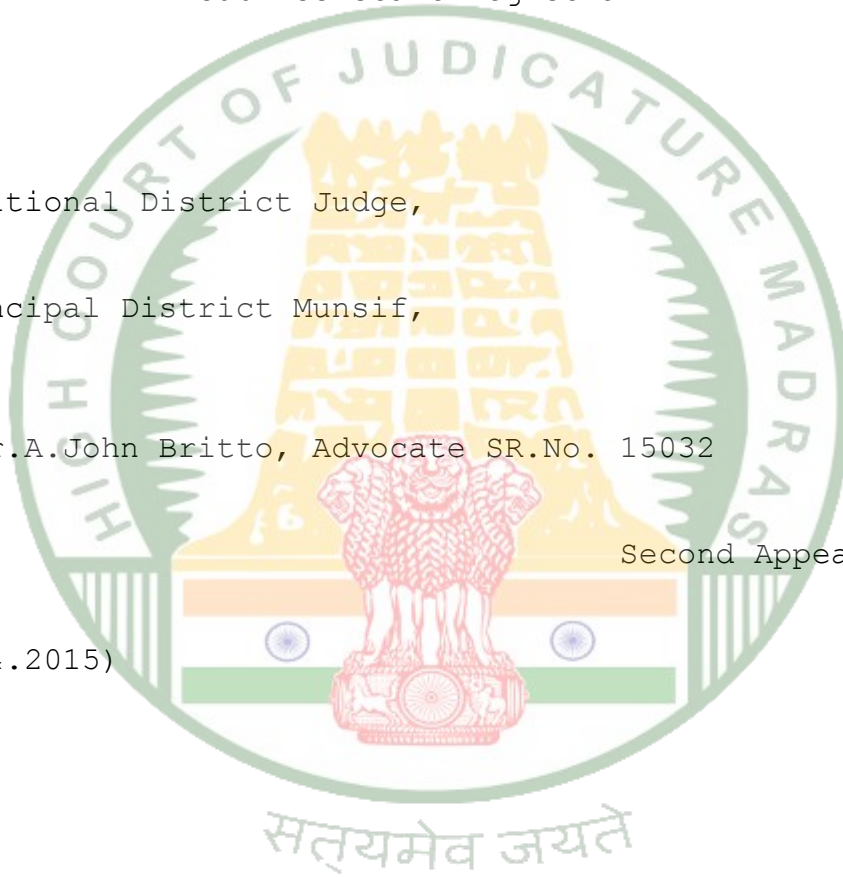
1.The Additional District Judge,
Ariyalur.

2.The Principal District Munsif,
Ariyalur.

1 CC to Mr.A.John Britto, Advocate SR.No. 15032

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CNR (CO)
PSI (15.04.2015)



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