

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21 - 04 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 200 of 2015

1. B. Ravichandran
2. Thilaga

.. Appellants /Defendant

Vs.

C. Manoj babu

.. Respondent/Plaintiff

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 21.03.2014 passed by the Subordinate Judge, Dharmapuri, in A.S. No. 22 of 2012 confirming the judgment and decree passed by the District Munsif, Dharmapuri, in O.S. No. 257 of 2010 on 28.01.2012.

For Appellants : Mr. C. Munusamy

JUDGMENT

Defendants, who suffered a decree in a suit for permanent injunction, have projected the instant Appeal against the judgment and decree dated 21.03.2014 passed by the learned Subordinate Judge, Dharmapuri, in A.S. No. 22 of 2012 confirming the judgment and decree dated 28.01.2012 passed by the learned District Munsif, Dharmapuri, in O.S. No. 257 of 2010.

2. The plaintiff, claiming to have purchased the suit property from the second defendant as a vacant house site, claims title to the same on the basis of a sale deed dated 22.6.2009. According to the plaintiff, on 17.6.2009, a construction agreement was entered into with the defendants for putting up construction on the suit property for which the cost of construction was arrived and it was agreed between the parties. However, the defendants claimed more amount than agreed on the basis of additional work for the building and since the same was refused by the plaintiff, the defendants prevented him to take possession of the property. Hence, the plaintiff filed the suit for permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the suit property and for further construction in the suit property.

3. Resisting the suit, the first defendant, who is the husband of the second defendant, filed written statement denying the allegations made by the plaintiff and sought for dismissal of the suit.

4. Before the trial Court, the plaintiff examined himself as P.W. 1 and marked Exs. A.1 and A.2. On behalf of the defendants, the first defendant examined himself as D.W.1 and marked documents Exs. B.1 to B.4.

5. The trial Court, on consideration of the evidence adduced by the parties and the submissions made by the learned counsels, by judgment dated 28.01.2012, having found that the plaintiff has established right and title over the suit property, decreed the suit for permanent injunction. Aggrieved by the same, the defendants preferred appeal in A.S. No. 22 of 2012 before the First Appellate Court / Subordinate Judge, Dharmapuri, and the same was dismissed confirming the judgment and decree of the trial Court. Feeling aggrieved, the defendants are before this Court with the present Second Appeal.

6. The point that arises for consideration in this Second Appeal is whether on the facts, the plaintiff ought to have filed a suit for declaration of title and injunction?

7. Heard the learned counsel appearing for the appellants and perused the records.

8. Learned counsel appearing for the appellants / defendants contended that the second appellant, being registered owner of the plot, executed the sale deed in favour of the respondent / plaintiff only for the purpose of obtaining loan from the Bank for the proposed construction of the house and that the respondent / plaintiff cannot have absolute right over the suit property. He further submitted that the respondent violated the terms of agreement by not paying the amount in time and hence, he is not entitled to seek the ownership of the house constructed by the appellants. According to him, the suit for permanent injunction without seeking declaration of title, was not maintainable on the facts of the case.

Contending that both the Courts below failed to consider Exs. B.3 and B.4, the learned counsel appearing for the appellants / defendants sought for the interference of this Court.

9. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, the plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees / licensees. Even in

respect of an agricultural land, possession may be established with reference to the actual use and cultivation. But in cases where the property is a vacant site, the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto, will be considered to be in possession, as against the person who is not able to establish title.

10. In the instant case, from the materials available on record, it is seen that the respondent / plaintiff claimed title under Ex. A.1 which was executed by the second defendant and it also confirms that possession was handed over to him. Admittedly, the title in respect of the house site was transferred from the second defendant to the plaintiff. It is not in dispute that the appellants / defendants and the respondent / plaintiff entered into an agreement for the purpose of putting up construction even prior to execution of Ex. A.1 as per which the suit property was in possession of the plaintiff / respondent and that pursuant to the said agreement of construction, he had permitted the appellants / defendants to be in possession of the suit property only for the purpose of construction of building in the same. As such, the capacity of the appellants / defendants is clear that it is nothing but building contractors. This would not entitle the appellants / defendants to prevent the real owner, viz., the plaintiff / respondent, who is the title holder, from entering into his property.

11. It is also seen that taking advantage of the jural relationship, the defendants prevented the plaintiff from entering the premises as there was an additional sum payable by the plaintiff. At this juncture, it is pertinent to point out that even if there is any outstanding amount recoverable from the plaintiff that may be due to the defendants, it is open to them to recover the same in the manner known to law and they cannot disturb the peaceful possession of the real owner or by preventing him from entering into his premises. On the above principle, the trial Court has granted the decree in favour of the plaintiff and the same was confirmed by the First Appellate Court.

12. In my opinion, the courts below have clearly recorded a finding on the claim of title to the suit property. This being a Second Appeal filed under Sec.100, C.P.C. against the concurrent judgments, no substantial question of law would arise for consideration. There are no error of jurisdiction or law or perversity on the face of the records. Hence, a re-appraisal of the evidence to arrive at a different conclusion than the one concurrently arrived at by the Courts below, is not warranted. This Court is also not expected to embark upon such re-appraisal of evidence in the Second Appeal. I do not find any reason to differ from the concurrent finding rendered by the Courts below.

In fine, the Second Appeal fails and the same is dismissed confirming the concurrent finding of the Courts below. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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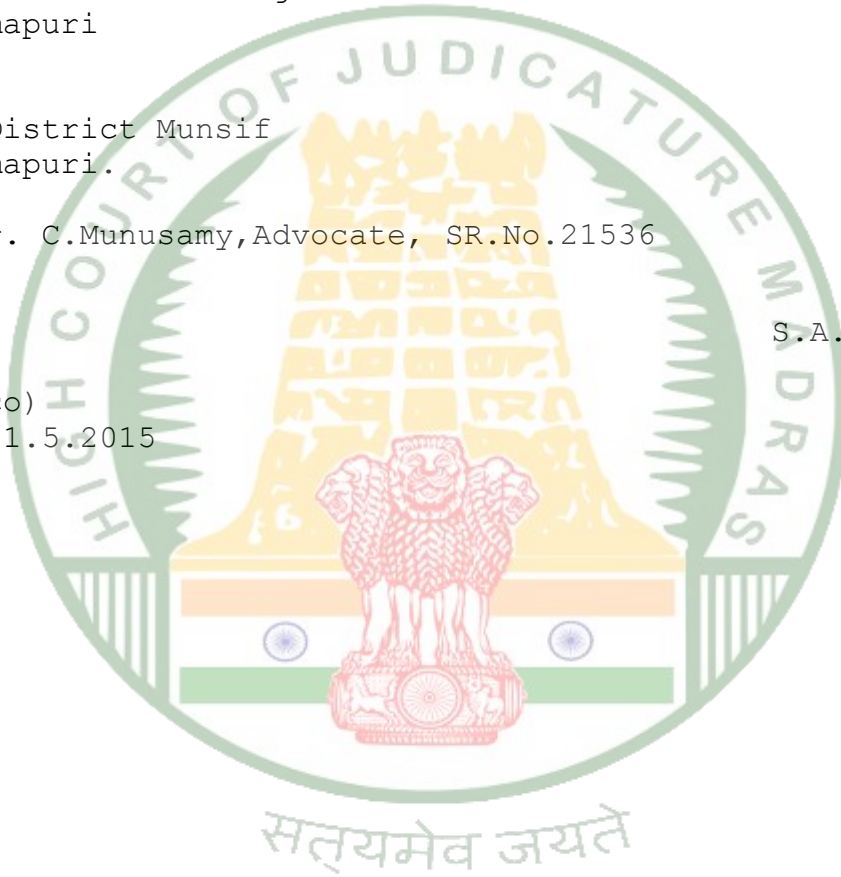
1. The Subordinate Judge
Dharmapuri

2. The District Munsif
Dharmapuri.

1 cc to Mr. C.Munusamy, Advocate, SR.No.21536

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