

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02 - 06 - 2015

Coram

The Hon'ble TMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 313 of 2015

and

M.P. No. 1 of 2015

1. Mallikarujun
2. Basavaraj
3. Parvathamma .. Appellants/ Defendants

vs.

R. Shivanna .. Respondent / Plaintiff

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 22.12.2014 in A.S. No. 17 of 2014 on the file of the Additional District and Sessions Judge, Hosur, confirming the judgment and decree dated 23.4.2014 made in O.S. No. 16 of 2010 on the file of the Subordinate Judge, Hosur.

For Appellants : Mr. R. Subramanian

JUDGMENT

The defendants who had lost before the Courts below in a suit for declaration, injunction and damages, are the appellants in the instant Second Appeal.

2. The plaintiff / sole respondent herein filed O.S. No. 16 of 2010 for declaration of right, title and interest to the suit property and for permanent injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of the suit property. The plaintiff also sought for damages and cost.

3. A brief narration of facts necessary for appreciating the contentions raised herein may be set out. The plaintiff claims to be the owner of the suit property under Ex. A.1 dated 21.4.2008 having purchased the same from one Markandaiah @ Markandan and B.Murthy, who had purchased from one Basavaraj and Mariyamma under Ex. A.2 sale deed dated 30.01.1992. According to the plaintiff, there was a Will in the year 1932 under which Sonnappa, husband of Mariyamma, was one of the beneficiaries. The said property bequeathed in favour of Sonnappa is the suit property. The further case of the plaintiff is that the second defendant had played fraud upon Mariyamma and by misrepresenting to U.D.R. authorities, he obtained patta. It is also averred that in order to create litigation and problems, the defendants 2 and 3 deliberately executed a gift deed in favour of the first defendant on 21.4.2008. In

such circumstances, the plaintiff filed the suit for declaration of his right, title and interest to the suit property and permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The plaintiff also sought for direction to the defendants to pay a sum of Rs. 1 Lakh towards the damages caused to the barbed wire fence and stone pillars.

4. Resisting the suit, the defendants filed written statement denying the averments made by the plaintiff. It is the claim of the defendants that under UDR proceedings, at the request of the said Mariyamma, patta was transferred in the name of the second defendant by virtue of which he had become the absolute owner of the suit property. The defendants further contended that Mariyamma had no saleable interest in the suit property.

5. The learned Subordinate Judge, Hosur, on the basis of the above pleadings, proceeded with the trial of the suit. The plaintiff examined himself as P.W.1 besides examining three more witnesses as P.W.2 to P.W.4 and marked 16 documents, viz., Exs. A.1 to A.16. To nullify the evidence adduced on behalf of the plaintiff, the first defendant examined himself as D.W.1 besides examining one Niyazullah as D.W. 2 and marked Exs. B.1 to B.13. Exs. X.1 to X.3 were marked as Court documents.

6. The learned trial Judge, appreciating the pleadings as well as scanning the materials, found that the plaintiff has proved that he has purchased the suit property and granted the reliefs of declaration and permanent injunction and decreed the suit as prayed for by judgment and decree dated 23.4.2014. As regards the claim of damages, the trial Court dismissed the suit holding that the plaintiff is not entitled to damages as the same is not proved. Aggrieved by the grant of declaration and permanent injunction, the defendants preferred appeal being A.S. No. 17 of 2014 and the Lower Appellate Court / learned Additional District and Sessions Judge, Hosur, vide judgment and decree dated 22.12.2014, dismissed the appeal confirming the judgment and decree of the trial Court. Challenging the concurrent finding of the Courts below, the defendants have come up with the instant Second Appeal.

7. Heard Mr. R. Subramanian, learned counsel appearing for the appellants and perused the records.

8. Now, the point to be decided in this Second Appeal is whether the concurrent finding of the Courts below is vitiated.

9. It is admitted by both parties that Mariyamma was the owner of the property after the death of Sonnappa. The version of the defendants / appellants that Sonnappa himself orally settled the suit property in favour of his brother's daughters was disbelieved by both the Courts. The sale under Ex. A.1 was proved by the plaintiff / respondent as the same was executed by the purchaser from Mariyamma. In this regard, the trial Court as well as the Lower Appellate Court, being the fact finding authorities, had considered

the evidence of D.W.2, who was the Record Clerk of Hosur Taluk Office as well as Exs. X.1. And X.2, viz., chitta and agangal, and X.3 patta and rightly arrived at a finding that the entries in the revenue records do not tally with the documents produced by the defendants / appellants. As the plaintiff / respondent has proved his title to the suit property, the Courts below have concurrently held that he is entitled to decree for declaration of title.

10. Insofar as the claim of damages is concerned, the Courts below have found that the allegation of the plaintiff / respondent that the defendants / appellants have caused damage to the wire fence of the suit property, is not proved.

11. It is a settled principle that scope for interference with concurrent finding of fact while exercising jurisdiction under Section 100 CPC is very limited. As the plaintiff has established his right, title and possession to the suit property and since the Courts below, being the final fact finding Courts, have concurrently held, and 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 and as such, no interference is warranted to the concurrent finding of the Courts below. The point is answered accordingly.

For the foregoing reasons, the Second Appeal fails and the same stands dismissed confirming the judgments and decrees of the Courts below. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gri

To

1. The Additional District and Sessions Judge
Hosur

2. The Subordinate Judge
Hosur

1 cc to Mr.R. Sbramanian, Advocate, sr. 26253

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