



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.36 of 2015

N.Shanmugam

.. Appellant/ Plaintiff

-Vs-

1.Mohanlal

2.Rangappa Reddy

.. Respondents/ Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 31.07.2014 and made in A.S.No.22 of 2012 on the file of the learned Subordinate Judge, Tiruvallur confirming the decree and judgement dated 10.04.2012 and made in O.S.No.137 of 2007 on the file of the learned District Munsif cum Judicial Magistrate Court, Uthukkottai.

For Appellant

: Mr.P.Chandrasekar

J U D G M E N T

The plaintiff in O.S.No.137 of 2007 on the file of the learned District Munsif cum Judicial Magistrate, Uthukkottai is the appellant herein. The respondents are the defendants in the suit. By decree and judgement dated 10.04.2012, the trial Court dismissed the suit. As against the same, the appellant herein filed an appeal in A.S.No.22 of 2012 on the file of the learned Subordinate Judge, Tiruvallur. The First Appellate Court by decree and judgement dated 31.07.2014 dismissed the appeal thereby confirming the decree and judgement of the trial Court. Aggrieved over the same, the appellant 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 plaintiff claims that he has purchased the suit property under the sale deed dated 02.04.1988 (Ex.A.1). He further claims that, by virtue of the said sale deed dated 02.04.1988, he has become absolute owner and he is in possession and enjoyment of the same. According to the him, the properties of the defendants are situated on the immediate South of the suit property and now, the defendants are trying to encroach upon his property namely the suit



property. That is how the plaintiff has filed the present suit for permanent injunction.

4. In the written statement filed by the defendants, it is stated that the plaintiff has not purchased 12 cents of property under Ex.A.1. He has purchased only a lesser extent. On the south of the suit property, the defendants have purchased the property measuring 12 cents by means of a sale deed dated 12.12.1987 (Ex.B.1). Thus, they are in possession and enjoyment of 12 cents of property. Now, by claiming more extent than the extent covered under Ex.A.1, according to the defendants, the plaintiff is claiming possession.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and five documents were exhibited. On the side of the defendants, the second defendant was examined as D.W.1 and three documents were exhibited. An Advocate Commissioner was appointed to note down the physical features of the suit property and he has filed a report under Ex.C.1 along with a sketch under Ex.C.2. Having considered the above, the trial Court dismissed the suit and the First Appellate Court has also confirmed the same. That is how the appellant/plaintiff is before this Court with this second appeal.

6. The suit has been filed in respect of the land measuring 7313 sq.ft. The plaintiff claims title under Ex.A.1. Under Ex.A.1, the plaintiff has purchased only 5232 sq.ft. It is not explained to the Court as to how the plaintiff could claim title as well as possession for 7313 sq.ft. The Courts below have found that the plaintiff has not proved his possession in respect of 7313 sq.ft which has been described as suit schedule property in the present suit.

7. In this second appeal, the learned counsel for the appellant would submit that under Ex.A.1, the plaintiff has purchased only 5232 sq.ft. The learned counsel would further submit that the properties of the defendants are situated on immediate South of the suit property. But, the plaintiff has been in possession and enjoyment of a portion of the property of the defendants and he has perfected title by way of adverse possession. Thus, he has been in possession and enjoyment of 7313 sq.ft of land, he contended.

8. This argument made by the learned counsel for the appellant cannot be accepted at all. Nowhere in the plaint, it is stated that the plaintiff has perfected his title on the property belonging to the defendants by way of adverse possession. Further, nowhere in the plaint it is stated that on the properties of the defendants, the plaintiff had encroached upon and he has been in continuous possession to the knowledge of the defendants.



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9. According to the plaintiff, he is the owner of the suit property only by virtue of Ex.A.1. As held by the Courts below, Ex.A.1 would have conveyed title only for an extent of 5232 sq.ft. Whereas, the suit property has been described as 7313 sq.ft. Absolutely, there is no case for the plaintiff in respect of 2081 sq.ft of land. Thus, the Courts below were right in dismissing the suit as the plaintiff has not proved his possession for the entire extent of 7313 sq.ft. The plaintiff can very well establish his possession in respect of 5232 sq.ft alone and he can also establish his title elsewhere by filing a fresh suit.

10. In my considered opinion, the Courts below were right in declining to grant decree as prayed for by the plaintiff. Apart from that, I do not find any substantial question of law at all involved in this matter. All the questions raised and argued by the learned counsel for the appellant are only on facts. Thus, this second appeal does not deserve even for admission.

11. In the result, the second appeal fails and accordingly, the same is dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jbm
To

1. The Subordinate Judge,
Thiruvallur.

2. The District Munsif cum Judicial Magistrate
Uthukkottai.

1 cc to Mr.P. Chandrasekaran, Advocate, Sr. 9575

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