



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.53 of 2015 and M.P.No.1 of 2015

T.Mani

.. Appellant/ Defendant

-Vs-

N.Ganesan

.. Respondent/ Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.07.2014 and made in A.S.No.115 of 2012 on the file of the Subordinate Judge, Poonamallee reversing the judgment and decree dated 30.07.2012 made in O.S.No.617 of 2006 on the file of the District Munsif, Poonamallee.

For Appellant : Mr.A.S.Narasimhan

J U D G M E N T

The defendant in O.S.No.617 of 2006 on the file of the learned District Munsif, Poonamallee is the appellant herein and the plaintiff in the suit is the respondent. The respondent filed the said suit for declaration of title and for recovery of possession of the suit property and also for mesne profits for use and occupation. The learned District Munsif by decree and judgment dated 30.07.2012 dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.115 of 2012 before the learned Subordinate Judge, Poonamallee. By decree and judgment dated 23.07.2014, the lower appellate court set aside the decree of the trial court and decreed the suit thereby declaring the possessory title to the suit property measuring East to West 1.7 feet on the northern side and 1.4. feet on the southern side and North to South 26.2. feet on both sides as mentioned in the Advocate Commissioner's Report Ex.C.2. The lower appellate court has also granted a decree for recovery of possession. So far as the claim for damages is concerned, the lower appellate court has held that a separate enquiry would be held. Challenging the same, the appellant is before this Court with this Second Appeal.



2. The Second Appeal has come up before me 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 that from one Lakshmiammal by means of an unregistered sale letter dated 29.09.1989, the plaintiff purchased a house site measuring East West 20 feet and North South 30 feet. The suit is in respect of the western portion of the said property measuring East West 2 feet and North south 30 feet. According to the plaintiff, this western portion measuring 2 x 30 feet has been encroached upon by the defendant when the defendant demolished his property which is situated on the west of the suit property.

4. The case of the defendant is that the suit property is the poromboke land over which the plaintiff has got no title. The plaintiff has got a house on the poromboke land which he claims to have purchased from Lakshmiammal.

5. From the very same Lakshmiammal, the defendant purchased a land measuring East West 32 feet and north south 34 feet. In between the properties purchased by the plaintiff from Lakshmiammal and the property purchased by the defendant from Lakshmiammal, the disputed property lies. According to the defendant, Lakshmiammal permitted the defendant to use the disputed property for the sake of convenience to have air and light to his house. Thus, according to the defendant, the plaintiff has got no right whatsoever over the disputed property, namely, East West 2 feet and North South 30 feet.

6. Based on the above pleadings, the trial court framed appropriate issues. An Advocate Commissioner was appointed who made inspection of the suit property and submitted a report along with a Sketch. On the side of the plaintiff, he was examined as P.W.1 and as many as 3 documents were exhibited as Ex.A.1 to Ex.A.3. Ex.A.1 is an Unregistered Sale Letter executed by Lakshmiammal to the plaintiff. Ex.A.2 is the Legal Notice issued to the defendant and Ex.A.3 is the Returned Postal Cover with Endorsement. On the side of the defendant, 3 witnesses were examined and Ex.B.1 alone was marked which is a copy of the complaint made to the police by the plaintiff. The Advocate Commissioner's Report was marked as Ex.C.1 and his Plan was marked as Ex.C.2. Having considered all the above, the trial court dismissed the suit which was reversed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

7. In this appeal, it is contended by the learned Counsel for the appellant that the suit property is a poromboke land over which the plaintiff cannot have title. He would further submit



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that the suit property is a vacant place which is used only by the defendant which is evident from his evidence. Therefore, according to the learned Counsel for the appellant, the lower appellate court ought not to have reversed the decree and judgment of the trial court.

8. I have considered the above submissions.

9. Admittedly, the property purchased by the plaintiff as well as the property purchased by the defendant are Government Poromboke lands. Admittedly, both the properties were however in the occupation of one Lakshmiammal. Thus, Lakshmiammal had long possession of both the properties. There were also houses on the said properties. The plaintiff purchased the eastern portion of the property measuring East West 20 feet and North South 30 feet. It is in evidence and it is also not disputed that the house of the plaintiff is in the said property. On the west of the house of the plaintiff, the vacant space lies. The defendant has also purchased the poromboke land from Lakshmiammal. He is in occupation of the same. It is not the case of the defendant that the vacant space which lies between the house of the plaintiff and the defendant was purchased by him from Lakshmiammal. In paragraph 4 of the written statement, the defendant has clearly stated that he had purchased the property which is situated only on the west of the vacant space which is the disputed property. So far as the disputed property is concerned, the defendant would claim that Lakshmiammal permitted him to use the same for the sake of convenience to have air and light to his house. The question is as to whether Lakshmi Ammal had any right over this disputed portion of the property to permit the defendant to use the same.

10. A perusal of Ex.A.1, an Unregistered Sale Letter by which possession was handed over to the plaintiff by Lakshmiammal would go to show that the western boundary of the property has been shown that of the property which has been now purchased by the defendant. There is no vacant space. The Commissioner's Report Ex.C.1 would go to show that the defendant is in possession of the vacant space which is covered under Ex.A.1. The plaintiff does not claim any eastmentary right also to the property. Though the suit is for declaration of title, the lower appellate court very carefully confined the decree only in respect of possessory title. The lower Appellate court has not declared that the plaintiff has got title over the suit property.

11. Therefore, in my considered opinion, the lower appellate court was right in holding that so far as the vacant space which is in issue as mentioned in the Commissioner's Report is concerned, it is admittedly now in possession of the defendant. Therefore, the defendant is liable to vacate and hand over the same to the plaintiff.



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12. The learned Counsel for the appellant is not able to raise any question of law much less a substantial question of law warranting admission of this Second Appeal. The discussions which I have made herein above would also go to show that the questions involved are only on facts and the lower appellate court has considered all the facts in their proper prospective and has decreed the suit to a limited extent. Since there is no substantial question of law involved in this matter, it is not permissible for this Court even to admit the Second Appeal. The Second Appeal, therefore, is liable to be dismissed.

13. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The District Munsif, Poonmallee.
2. The Subordinate Judge, Poonamallee.

S.A.No.53 OF 2015

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