



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.77 of 2015 & M.P.No. 1 of 2015

M.P.Rajagopal

.. Appellant/ Plaintiff

-Vs-

1. D.Ravikumar
2. R.Thayapathi
3. R.Jayavelu

.. Respondents/ Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 16.10.2008 in A.S.No.500 of 2004 on the file of the Additional District-cum-Sessions Judge, Fast Track Court No.4, Chennai, confirming the judgment and decree dated 06.02.2004 in O.S.No.4219 of 1999 on the file of the III Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.P.Jagadeesan

For Respondents : Mr.S.Rajendrakumar
(Vaklath filed in SR stage)

J U D G M E N T

The plaintiff in O.S.No.4219 of 1999 on the file of the learned III Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondents are the defendants in the suit. The plaintiff filed the said suit for declaration of title and for recovery of possession in respect of the front portion of Door No.29, Grama Street, Nungambakkam, Chennai-34. The suit was dismissed by the trial court by decree and judgment dated 06.02.2004 and on appeal by the appellant herein, the learned Additional District-cum-Sessions judge, Fast Track Court No.IV, Chennai, dismissed the said appeal in A.S.No.500 of 2004 by decree and judgment dated 16.10.2008. Challenging the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and the learned Counsel for the respondents. I have also perused the records carefully.



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3. The case of the appellant is as follows:

The property comprised in Door No.29, Grama Street, Nungambakkam, Chennai-34 absolutely belongs to him. The extent of the same is 891 sq.ft. According to him, in a family partition, this property was allotted to him. The 1st defendant is the plaintiff's sister's son. The 2nd defendant is the wife of the 1st defendant and the 3rd defendant is the son of the 1st defendant. According to the plaintiff, the defendants were permitted to occupy a portion of the house bearing Door No.29 in the year 1996. But subsequently, they have converted the said portion in their occupation as Door No.31 and they have refused to vacate the same and they have also disputed the title of the plaintiff. Therefore, the plaintiff filed the present suit for declaration of title and for recovery of possession of the front portion of Door No.29 which has been renumbered as Door No.31 measuring East West 18 feet and North South 22 feet.

4. The defendants disputed the said claim of the plaintiff. According to the defendants, the premises originally bearing Door No.24/2, Grama Street, Nungambakkam, Chennai-34 measuring 1460 sq.ft. was owned by one Mr.Karikan. On his death, the property was succeeded by his only daughter Chinnammal. Chinnammal and her husband Ponnann had 5 sons and 5 daughters. One son and a daughter died at their early age. Chinnammal died in the year 1974 and Ponnann died in the year 1979. The surviving legal heirs of them, namely, Ponnambalam, Adimoolam, Ganapathy, Rajagopal and 4 daughters, namely, Kamatchi Ammal, Nagabooshanam, Gangai Ammal and Murugambal succeeded in the family partition. Subsequently, the different portions of the property were renumbered. During the life time of Chinnammal, a Settlement Deed was executed by her in favour of her daughter Nagabooshanam, who was the mother of the 1st defendant. As per the settlement deed, the 1st defendant is the owner of Door No.31 and accordingly, he has been in possession. The alleged partition between the 1st defendant and his brothers is disputed. It is also stated that the building bearing Door No.29 has nothing to do with the building bearing Door No.31. Thus, the plaintiff has got no title for Door No.31 and therefore, he is not entitled for any relief, it is contended.

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 as many as 18 documents were exhibited. On the side of the defendants, the 1st defendant was examined as D.W.1 and as many as 71 documents were exhibited on their side. Having considered all the above, the trial court dismissed the suit and the same was confirmed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

6. The learned Counsel for the appellant would submit that the courts below were not right in dismissing the suit because as per the



partition, the plaintiff is entitled for 891 sq.ft. which is comprised in Door No.29.

7. When a specific query was made to the learned Counsel for the appellant as to what is the document to make out at least a prima facie case that the extent of the property comprised in Door No.29 is 891 sq.ft., the learned Counsel for the appellant would submit that except the oral evidence of P.W.1, there is no evidence. The learned counsel would further submit that two courts below have rejected the oral evidence of P.W.1 which in my considered opinion is right.

8. Secondly, it is the case of the plaintiff that the defendants were inducted into possession of a portion of the property, namely, Door No.29 during the year 1996. It is the further case of the plaintiff that the portion forming part of Door No.29 which is in occupation of the defendants has been renumbered as Door No.31. But the documents filed by the defendants would clearly go to show that the defendants have been in possession even before the year 1996. Ex.B.10, Ex.B.28, Ex.B.29, Ex.B.31, Ex.B.33, Ex.B.34 to Ex.B.43 and Ex.B.46 to Ex.B.65 would all go to show that the defendants have been in occupation of Door No.31 for a long period and not only from the year 1996.

9. Apart from that, when it is the specific case of the defendants that they are in the occupation of Door No.31 which has got nothing to do with Door No.29, the burden is upon the plaintiff to prove that the portion in the occupation of the defendants will form part of Door No.29. The plaintiff has failed to discharge the said burden. However, the courts below have held that Door No.31 would not have been assigned by the defendants and the Municipal authorities would have alone given the said number. This has also been proved by producing necessary documents. Thus, on appreciating the entire facts and circumstances, the two courts below have held that the portion in the occupation of the defendants does not form part of Door No.29. This is essentially a finding on fact in which I do not find any substantial question of law warranting admission of the Second Appeal.

10. 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 IV)

/true copy/

Sub Asst. Registrar

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To

- 1.The III Assistant Judge, City Civil Court, Chennai.
- 2.The Additional District-cum-Sessions Judge, Fast Track Court No.4, Chennai.

1 cc to Mr.P. Jagadeesan, Advocate, sr. 11598

1 cc to Mr.S. Rajendrakumar, Advocate, sR 11646

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