

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.9.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.854 of 2015

Shanmugam

...Appellant/Plaintiff

Vs.

P.Manohar

...Respondent/Defendant

Second Appeal filed under section 100 of CPC as against the judgment and decree dated 23.02.2015 passed in A.S.No.1 of 2014 on the file of the Principal Sub Court, Mayiladuthurai, confirming the judgment and decree dated 18.11.2013 passed in O.S.No.350 of 2010 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Vinoth Kumar
For Mr.K.Govi Ganesan

J U D G M E N T

The second appeal arises out of concurrent judgments and decree passed by both the Courts below dismissing a suit for permanent injunction filed by the appellant.

2. Heard Mr.S.Vinoth Kumar, learned counsel appearing for the appellant.

3. The appellant filed a suit for permanent injunction in O.S.No.350 of 2010 on the file of the Additional District Munsif Court, Mayiladuthurai. The suit was dismissed by a judgment and decree dated 18.11.2013. The said judgment and decree were also confirmed by the first Appellate Court by a judgment dated 23.02.2015 in A.S.No.1 of 2014. Hence, the plaintiff is on second appeal.

4. Admittedly, the respondent herein (defendant in the suit) already had an agreement of sale with the original owner of the property by name V.Govindaraj. That agreement was admittedly prior in point of time to the sale deed dated 05.7.2004, by which the appellant purchased the suit property from his vendor.

5. Therefore, the respondent herein filed a suit in O.S.No.36 of 2005 on the file of the Sub Court, Mayiladuthurai, praying for specific performance of the agreement of sale. Incidentally, he not only prayed for a decree for specific performance, but also prayed for a decree of permanent injunction. It is also relevant to note that the appellant was impleaded as a party to that suit. Though the learned counsel for the appellant claims that the appellant was only a formal party, he could not be termed as formal party, since he had purchased a portion of the very same suit property much before the institution of the suit for specific performance and there was also a prayer for injunction infringing upon his rights. Whenever a person is impleaded as a party to a suit and whenever the prayer made in the suit directly infringes his rights, he cannot treat himself as a formal party, but he is obliged to defend his right in the very same suit.

6. The suit for specific performance filed by the respondent herein was decreed by the trial Court. It was also confirmed by the Appellate Court. Now, an execution petition is pending in E.P.No.55 of 2010. It is also relevant to note that the appellant has impleaded himself as a party to the execution proceedings, probably to defend his possession and to assail the decree of permanent injunction operating against him.

7. After the respondent filed the execution proceedings in 2010, the appellant herein came up with the present suit, out of which this appeal arises, only in the year 2010, seeking a permanent injunction. Therefore, both the Courts below rightly found that this suit was only an attack on the decree for specific performance obtained by the respondent and which he was seeking to execute.

8. The contention of the learned counsel for the appellant is that the suit property in the present proceedings is smaller in extent than the suit property in the specific performance suit. But, still the appellant should have worked out his remedies in the other suit, after having been party to the decree for specific performance.

9. Drawing my attention to the Advocate Commissioner's report and also to the findings of the trial Court that the appellant has been consistently in possession and enjoyment of the suit property, first as a tenant up to 05.7.2004 and then, as an owner after his purchase, it is contended by the learned counsel for the appellant that when the possession of the appellant is found to be lawful possession, a decree for permanent injunction should automatically follow.

10. On a pure and simple question of law, what the learned counsel for the appellant states is correct. If a person is found to be in actual physical possession of the property and his possession also found to be not unlawful, he is normally entitled to a decree for permanent injunction. But, the problem is that this is an issue which already remains settled by a right or wrong judgment in a suit for specific performance. Therefore, without assailing the judgment in the suit for specific performance, the appellant cannot start a fresh proceeding to protect his possession, especially when he was a party to the decree for specific performance and permanent injunction. Hence, the appeal is dismissed, leaving it open to the appellant to fight out all his rights only in the proceedings arising out of specific performance. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Principal Sub Judge,
Mayiladuthurai.

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2. The Additional District Munsif,
Mayiladuthurai.

3. The Section Officer,
V.R.Section,
High Court, Madras.

1 CC to Mr.K.Govi Ganesan, Advocate SR.No. 51414

S.A.No.854 of 2015

KJI (CO)
PSI (02.11.2015)



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