

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Second Appeal No. 884 of 2015

Mariyammal

..Appellant/Defendant

Vs.

Ganesan

..Respondent/Plaintiff

Prayer: Second Appeal as against the judgment and decree dated 16.04.2015 made in A.S. No. 2 of 2014 on the file of Sub Court, Mannargudi, confirming the judgment and decree dated 11.10.2013 made in O.S. No. 21 of 2010 on the file of District Munsif Court, Mannargudi.

For Appellant :: Mr.G.B. Sabari Das

J U D G M E N T

The appellant is the defendant in O.S. No. 21 of 2010 on the file of learned District Munsif, Mannargudi and the respondent is the plaintiff in the suit.

2. The respondent/plaintiff filed the suit for permanent injunction restraining the appellant/defendant from, in any manner, interfering with his possession and enjoyment of the suit property. By judgment and decree dated 11.10.2013, the Trial Court decreed the suit as prayed for. As against the same, the appellant filed A.S. No. 2 of 2014 before the learned Sub Judge, Mannargudi. The learned Sub Judge, Mannargudi, by judgment and decree dated 16.04.2015 dismissed the appeal, thereby confirming the judgment and decree of the Trial Court. Challenging the same, the appellant is before this Court in this second appeal.

3. This second appeal has come up for admission and I have heard the learned counsel for the appellant and also perused the records carefully.

4. The case of the plaintiff, in brief, is as follows:

The suit property was originally owned by the father of the plaintiff, namely, Uthrapathi, who had purchased the same by means of a registered sale deed dated 28.09.1965. The said

Uthrapathi died on 22.09.1997. By means of a family partition, the suit property was allotted to the plaintiff and from then onwards, the plaintiff has been in possession and enjoyment of the suit property.

5. The defendant filed written statement stating that it is true that Uthrapathi was the owner of the suit property. The said Uthrapathi's son-in-law, by name, Arulnambi, entered into a oral sale agreement in the year 1985 agreeing to sell the suit property to her. Thus, from the year 1985 onwards, the defendant has been in possession and enjoyment of the suit property and she has perfected her title by adverse possession.

6. Based on the above pleadings, the Trial Court framed appropriate issues.

7. On the side of the plaintiff, the plaintiff was examined as P.W.1 and as many as 7 documents were marked. On the side of the defendant, 5 witnesses were examined and no documents were marked.

8. Having considered all the above, the Trial Court decreed the suit, which was confirmed by the Lower Appellate Court. That is how the appellant is before this Court in this second appeal.

9. Learned counsel for the appellant would submit that from the oral evidence of D.W.s 1 to 5, the defendant has proved that she has been in possession and enjoyment of the suit property and that the plaintiff is not in possession and enjoyment of the same. According to the learned counsel, the respondent/plaintiff has failed to prove his possession and thus, the Court below erred in granting a decree as prayed for by the plaintiff.

10. I have considered the above submissions.

11. At the outset, it has to be stated that in this second appeal, there is no question of law, much less, any substantial question of law involved, warranting admission of the second appeal.

12. In order to prove his possession, the plaintiff filed Ex-A2, chitta extract for the Fasli year 1419, Ex-A3, "A" Register for the Fasli year 1418 and also Ex-A1, the sale deed in the name of his father Uthrapathi. There is no dispute that the suit property originally belonged to the father of the plaintiff. Though it is stated by the appellant/defendant that she entered into an oral sale agreement with Uthrapathi's son-in-law in the year 1985 and that pursuant to the same, she has been in possession and enjoyment of the suit property from the

year 1985, she has not filed any document to prove the same. The Courts below have appreciated the oral as well as documentary evidence and had come to the conclusion that the plaintiff is in possession and enjoyment of the suit property. This is essentially a question of fact and there is no question of law at all involved in this finding. I do not find any perversity in the said finding.

12. In such view of the matter, I do not find any merit in the second appeal. The second appeal fails and the same is dismissed. The judgment and decree of the Trial Court, as confirmed by the Lower Appellate Court, is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Sub Judge, Mannargudi.

2. The District Munsif,
Mannargudi.

1 cc to Mr.G.B. Sabaridas, Advocate Sr.64209

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RSI(CO)
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