



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.90 of 2015 and M.P.No.1 of 2015

1. Nagappa Gounder
2. N.Shamugam
3. N.Selvaraj

.. Appellants/Defendants

-Vs-

K.Selvaraj

.. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.12 of 2013 dated 25.06.2014 on the file of the Subordinate Judge, Perundurai confirming the judgment and decree passed in O.S.No.57 of 2008 dated 30.11.2011 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

For Appellants : Mr.V.Bharathidasan

J U D G M E N T

The defendants in O.S.No.57 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai are the appellants. The respondent is the plaintiff in the suit. The plaintiff filed the said suit for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial court by decree and judgment dated 30.11.2011 decreed the suit as prayed for. As against the same, the appellants filed an appeal in A.S.No.12 of 2013 on the file of the learned Subordinate Judge, Perundurai. By decree and judgment dated 25.06.2014, the lower appellate court dismissed the suit thereby confirming the decree and judgment of the trial court. As against the same, the appellants are 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 appellants and I have also perused the records carefully.



3. The case of the plaintiff is as follows:

The suit property was originally owned by one Komarasamy and Ponnusamy of Thoranavavi Village. By means of a registered Sale Deed dated 22.11.2006 (Ex.A.1), according to the plaintiff, he purchased the suit property from them and from the date of purchase, he has been in possession and enjoyment of the same. There is a house in the suit property in which there is electricity service connection given and the said electricity service connection has also been transferred in his name. The Tahsildar has transferred the patta in his name. Thus, he is in exclusive possession and enjoyment of the suit property. The defendants, who have got no right whatsoever over the suit property, tried to disturb his possession on 14.02.2008 which necessitated him to file the present suit.

4. In the written statement, the defendants disputed the title of Komarasamy and Ponnusamy. According to them, Komarasamy and Ponnusamy had no title to convey under the sale deed dated 22.11.2006 to the plaintiff. Thus, according to the defendants, the plaintiff has got no title for the suit property. It is their further case that the defendants are in possession and enjoyment of the suit property all along. It is also their case that the electricity service connection stands in their name. It is their further case that the suit property is a patta land which was allotted to the share of the 1st defendant's father in a family partition which took place on 21.04.1958 under Ex.B.1. The suit property consists of a small house and a Thondupatti (Cattle shed). According to the defendants, they are in possession and enjoyment of the same.

5. Having considered 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 14 documents have been exhibited. On the side of the defendants, the defendants 3 and 2 were examined as D.Ws.1 and 2 and two documents were exhibited on their side as Ex.B.1 and Ex.B.2. Having considered the same, the trial court decreed the suit which is confirmed by the lower appellate court. That is how the Appellants are before this Court with this Second Appeal.

6. In this Second Appeal, it is contended by the learned Counsel for the appellants that the courts below were not right in granting decree as prayed for. According to them, a reading of Ex.B.1 would go to show that the suit property forms part of the property to the share of the father of the 1st defendant in the family partition which took place on 21.04.1958. It is also contended that absolutely, there is no documentary proof to show that the alleged vendors of the plaintiff have title for the suit property. The learned Counsel for the appellants would further submit that the suit property is in possession and enjoyment of the defendants and the said fact has not been considered by the courts below.



7. I have considered the above submissions.

8. All the above grounds raised by the learned Counsel for the appellants are only on facts. In my considered opinion, there is no substantial question of law warranting admission of this Second Appeal at all. The question as to whether the father of the plaintiff had title to convey the suit property under Ex.A.1 need not be meticulously gone into by this Court. The fact remains that patta has been issued under Natham Settlement Scheme in favour of the plaintiff under Ex.A.2 on 11.04.2007. The other documents such as Chitta and Adangal, namely, Ex.A.3 and Ex.A.4 would go to show that the plaintiff is in possession of the suit property. Ex.A.5 to Ex.A.8 are the Electricity Tariff Receipts showing that the plaintiff has been paying the electricity tariff for the electricity supplied to the suit house. Ex.A.9 is the name transfer order of the Electricity Service Connection. All these documents have been duly considered by the courts below along with the oral evidence of P.W.1 to come to the conclusion that the plaintiff is in possession and enjoyment of the suit property.

9. On the side of the defendants, the defendants 2 and 3 have been examined. So far as the documentary evidence is concerned, they rely on Ex.B.1 mainly which is a partition deed dated 21.04.1958. But in the written statement, it is stated that the suit property is a patta land which forms part of the property allotted to the share of the father of the 1st defendant. But, according to the courts below, there is no evidence to correlate the property covered under Ex.B.1 with the suit property. The courts below have held that the property covered under Ex.B.1 is adjacent to the suit property and it does not cover the suit property at all. At any rate, this issue is relating to title and not with possession. The defendants have not filed any document to show that they are in possession of the property. Considering all these factual aspects, two courts below have held that the plaintiff is in possession and enjoyment of the suit property and accordingly, they have granted decree as prayed for.

10. So far as the title is concerned, as I have already pointed out, it need not be meticulously gone into in this suit, because the suit is only a simple suit for injunction. If the defendants feel that they have got absolute title for the suit property and if it is their case that the suit property is covered by Ex.B.1, the decree in this suit will not be a res judicata for them to file a fresh suit. So far as this suit is concerned, the courts below were concerned only with the possession and on facts, they have held that the plaintiff is in possession and enjoyment of the suit property and accordingly, granted decree in which I do not find any infirmity. Thus, I wish to reiterate that there is no substantial question of law at all involved warranting admission of the Second Appeal.



11. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

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Assistant Registrar

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Sub Assistant Registrar

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To

1.The District Munsif-cum-Judicial Magistrate,
Perundurai.

2.The Subordinate Judge, Perundurai.

+1 cc to Mr.V.Bharathidasan, Advocate Sr.10649

S.A.No.90 OF 2015

KU(CO)
Eu 07.04.2015