

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.957 of 2015

Kabali

..Appellant/1st Defendant

vs.

1.G.Rajalakshmi

..1st Respondent/Plaintiff

2.The Sub Inspector of Police,
Thirukkalukundram

..2nd Respondents/2nd Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the decree and judgment dated 03.03.2015 passed in A.S.No.9 of 2012 on the file of the learned Additional Subordinate Judge, Chengalput, confirming the judgment and decree dated 26.06.2012 passed in O.S.No.42 of 2008, on the file of the learned District Munsif cum Judicial Magistrate, Thirukkalukundram.

For Appellant : Ms.G.Surayana, for
Mr.P.B.Ramanujam

JUDGMENT

The first defendant in O.S.No.42 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Thirukazhukundram is the appellant herein. The first respondent is the plaintiff in the suit. The second respondent is the second defendant in the suit and he is only a formal party. The first respondent filed the said suit for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property. The trial Court by decree and judgment dated 26.06.2012 decreed the suit as prayed for. As against the same, the appellant/first defendant filed an appeal in A.S.No.9 of 2012 on the file of the learned Additional Subordinate Judge, Chengalpattu. By decree and judgment dated 03.03.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant/first defendant is before this Court with this second appeal.

2.This second appeal has come up 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 in brief is as follows:-

The suit property was originally owned by one Mr.Chinnakannu, son of Mr.Arunachala Naicker. Patta stands in his name. He has constructed a thatched house and he has been in possession and enjoyment of the suit property. The said house was assessed by the local panchayat and there was also electricity service connection given by the Tamil Nadu Electricity Board. The plaintiff purchased the said property on 10.05.2007 by means of registered sale deed. He has been in possession and enjoyment of the same and he has been paying the house tax regularly to the local panchayat and the electricity service connection was also transferred in his name. The first defendant has got no right whatsoever in respect of the suit property but still, he is interfering with the possession of the plaintiff. Therefore, the plaintiff has filed the present suit for permanent injunction and for other reliefs.

4.The first defendant contested the suit. According to the first defendant, the suit property was not owned by Mr.Chinnakannu at all. The suit property was originally assigned by the Government to the first defendant by means of an order dated 30.04.1974. The house was constructed only by the first defendant. Since it was in Chennai, he allowed Mr.Chinnakannu to occupy the said house. Mr.Chinnakannu thereafter, vacated the house. Therefore, according to the first defendant, the plaintiff has got no right whatsoever over the suit property and he is not even in possession of the suit property.

5.Based on the above pleadings, appropriate issues were framed by the trial Court. In order to prove the case, on the side of the plaintiff, three witnesses including the plaintiff were examined and as many as 9 documents were exhibited. On the side of the defendants, four witnesses including the first defendant were examined and as many as 22 documents were exhibited. Having considered all the above, the trial Court decreed the suit as prayed for which was confirmed by the First Appellate Court. Challenging the same, the first defendant/appellant is before this Court with this second appeal.

6.In this second appeal, the learned counsel for the appellant would submit that Mr.Chinnakannu had no title for the suit property and therefore, the trial Court ought not to have

granted the decree as prayed for by the plaintiff. She would further submit that so far as the appellant is concerned, originally, the land was assigned to him by the Government in the year 1974 and thus, the title for the suit property still remains in the name of the first defendant. She would further submit that Mr.Chinnakannu was allowed by the first defendant to occupy the said house only for a short period and thereafter, he vacated the premises and handed over vacant possession to the first defendant. Thus, according to the first defendant/appellant, the plaintiff is not entitled for the decree as prayed for.

7.I have considered the above submissions made by the learned counsel for the appellant.

8.At the outset, I should say that in this second appeal, I do not find any question of law much less a substantial question of law warranting admission of this second appeal. The Courts below have appreciated both oral as well as documents evidences and have come to the conclusion that the plaintiff has been in possession and enjoyment of the suit property. Even the first defendant in his written statement has stated that he allowed the plaintiff to occupy the suit house but, there is no evidence under what circumstances, Mr.Chinnakannu vacated the house and handed over the vacant possession to the first defendant as claimed by him. The documents such as house tax receipts, electricity service connection stands in the name of the plaintiff. Considering all these evidences, the Courts below have come to the conclusion that the plaintiff has proved his possession and therefore, he is entitled for decree for injunction. So far as the first defendant is concerned, though, he claims title, he has not proved possession. The title is under dispute. It is always open for the first defendant to work out his remedies by way of filing a separate suit for declaration of title and for recovery of possession. Since, on facts, the Courts below have come to the conclusion that the plaintiff is in possession and enjoyment of the suit property, I do not find any perversity in the same and further, I do not find any question of law much less a substantial question of law to admit this second appeal.

9. In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment passed by the First Appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

jbm

Note:- Registry is directed to send back the original records to the First Appellate Court forthwith.

Index: Yes/No

To

1. The Additional Subordinate Judge,
Chengalpet,
2. The District Munsif Cum
Judicial Magistrate,
Thirukkalukundram

+1 cc to M/s.P.B.Ramanujam Advocate sr.62685

S.A.No.957 of 2015

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