

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.963 of 2015

Jayaprakash @
Jayaprakash Narayanan

... Appellant/Defendant

Vs.

1.Sundaramoorthy
2.Venkataraman
3.Vanitha
4.Minor Indu
5.Minor Alankumar

(Respondents 4 and 5 are represented by
Their mother & next friend Vanitha,
the third respondent herein) ... Respondents/Plaintiffs

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 21.04.2014 made in A.S.No.6 of 2012 on the file of the learned Subordinate Judge, Arani confirming the judgment and decree dated 08.03.2011 made in O.S.No.281 of 2010 on the file of the learned District Munsif, Polur.

For Appellant : Mr.N.Suresh

JUDGEMENT

The defendant in O.S.No.281 of 2010 on the file of the learned District Munsif, Thiruvannamalai is the appellant herein. The respondents are the plaintiffs in the suit. The said suit was filed by the plaintiffs for permanent injunction to restrain the defendant from in any manner interfering with their peaceful possession and enjoyment of the suit properties. The suit was decreed and the appeal preferred by the defendant was dismissed. As against the same, the appellant/defendant is before this Court with this second appeal.

2.I have heard the learned counsel for the appellant and also perused the records carefully.

3. There are two Items of properties in the suit schedule. The second Item of the property is comprised in S.No.910/2 at Nariampettai Village in Polur Taluk measuring 450 sq.ft. Regarding this Item of the property, the defendant has got no claim and therefore, the decree and judgment of the Courts below in respect of this property, needs no interference.

4. The actual dispute is only in respect of First Item of the suit property. The first Item of suit property is comprised in S.No.876/1 measuring a total extent of 6510 sq.ft and the house measuring 558 sq.ft. The said property was purchased by Mr.Nataraja Pillai who is the father of the plaintiffs 1 and 2 from the father of the defendant. Thus, according to the plaintiffs, they are in possession and enjoyment of the said property.

5. But, the defendant contended that, what was sold by his father to the father of the plaintiffs was only a house situated on the First Item of the suit property measuring 558 sq.ft and not the entire extent of the land measuring 6510 sq.ft.

6. On considering the said sale deed and the oral evidence let in, the Courts below have concluded that what was sold by the father of the defendant to the father of the plaintiffs through the said document is the entire extent of land i.e., 6510 sq.ft and the house situated thereon measuring 558 sq.ft thereon.

7. The learned counsel for the appellant would submit that the Courts below have mis-constructed the sale deed and also have mis-interpreted the evidence let in.

8. In my considered view, the said stand taken by the appellant/defendant finds no evidential basis. There is also no substantial question of law much less a substantial question of law at all involved in this second appeal. The issue involved in this case is in respect of the extent of the land mentioned in the alleged sale deed which is only on facts, which cannot be gone into by this Court at the second appeal stage. Further, on considering the alleged sale deed and the oral evidence let in, the Courts below have concluded that what was sold under the said document is the entire extent of 6510 sq.ft of land and the house measuring 558 sq.ft situated thereon.

9. Regarding possession of the suit property, the Courts below have held that the plaintiffs are in possession and enjoyment of the second item of the suit property also and the house is situated on the said property. From the oral and documentary evidence, two Courts have found concurrently that

the entire extent of the second item of the property has been in possession and enjoyment of the plaintiffs. The learned counsel for the appellants is not able to project any infirmity or perversity in the said finding. Thus, on this finding also, I do not find any reason to interfere with.

10.In view of the foregoing discussions, I find no substantial question of law involved in this second appeal and I also do not find any merit in this second appeal.

11.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jbm/kk

To

- 1.The Subordinate Judge,
Arani.
- 2.The District Munsif,
Polur.

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NM(CO)
CA(25/01/2016)

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