

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03 - 08 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal Nos. 98 and 99 of 2015

and

M.P. No. 1 of 2015

S.A.98/2015

Arun Kumar Nagappan .. Appellant/Defendant

vs.

1. Mr. K. Pon Irulandi @ Suresh

2. E.Viswanathan

.. Respondents/Plaintiff

S.A.99/2015

Arun Kumar Nagappan

.. Appellant/Plaintiff

..vs..

1. K.Suresh

2. E.Viswanathan

.. Respondents/Defendants

S.A. No. 98 of 2015 filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 10.11.2014 in A.S. No. 500 of 2011 on the file of the XV Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 10.06.2011 made in O.S. No. 6480 of 2007 on the file of the VI Assistant Judge, City Civil Court, Chennai.

S.A. No. 99 of 2015 filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 10.11.2014 in A.S. No. 506 of 2011 on the file of the XV Additional City Civil Court, Chennai, reversing the judgment and decree dated 10.06.2011 made in O.S. No. 4408 of 2007 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Appellant in both S.As. : Mr. R. Thiagarajan
Senior Counsel
for Mr. A.S. Narasimhan

Respondents : E.Viswanathan
Partie in person

COMMON JUDGMENT

Since the issue involves in these appeals is one and the same, they are disposed of by this common judgment.

2. These appeals arise out of the common judgment and decree dated 10.11.2014 passed by the XV Additional Judge, City Civil Court, Chennai, in A.S. Nos. 500 of 2011 and 506 of 2011 respectively wherein and by which the common judgment and decree dated 10.6.2011 passed by the VI Assistant judge, City Civil Court, Chennai, in O.S. Nos. 6480 of 2007 and 4408 of 2007 respectively, were reversed.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the trial Court in O.S. No. 4408 of 2007.

4. The appellant herein / plaintiff in O.S. No. 4408 of 2007 filed the suit for permanent injunction against the defendants / respondents herein restraining them from interfering or disturbing the peaceful possession and enjoyment of the suit vacant site.

5. The respondents herein / plaintiffs in O.S. No. 6480 of 2007 filed the suit for permanent injunction against the defendant / appellant herein, restraining him from interfering with the peaceful possession and enjoyment of the suit property.

6. The case of the plaintiff is that he had purchased the suit property from one P. Govindasamy on 09.5.2002 under Ex. A.14 and as such, he claims to be in absolute possession and enjoyment of the suit schedule property which is a plot measuring an extent of 3000 Sq.ft. in Velachery. The plaintiff's vendor - the said Govindasamy had executed a registered Power of Attorney dated 23.4.1991 as per Ex. A.3 in favour of the second defendant. On the strength of the said Power of Attorney, the second defendant had executed a registered sale deed in favour of the first defendant on behalf of P.Govindasamy as power agent under Ex. A.4. Dated 18.8.1992. From the date of sale, the first defendant has been in possession of the property which was purchased as a vacant site and he has put up a small house. The mutation in the revenue records also have been effected in favour of the first defendant. The first defendant also had produced the documents Exs. A.5 to A.42 in support of his case. As both the suits are filed by the parties only for permanent injunction claiming to be in possession of the property, the factum of possession has to be gone into in the suit before grant of the relief of injunction.

7. The first defendant had produced Ex. A.6 copy of the gas connection and Exs. A.8 and A.11, Telephone Bills in the name of the second defendant who is presently living in the suit property as a lessee and the lease deed is also exhibited as Ex. A.5. Ex. A.9

is a letter sent by the BSNL to the second defendant to the suit address. On the other hand, the plaintiff, who is the appellant herein, has not produced any document to show his possession pursuant to the alleged purchase by him on 09.5.2002.

8. Originally, the trial Court, before which the parties examined themselves and marked documents, decided the suits in favour of the plaintiff by common judgment and decree dated 10.6.2011. On appeal, the Lower Appellate Court, on appreciation of the facts and law, reversed the common judgment and decree holding that the documents that are marked by the plaintiff particularly, to show his possession are created for the purpose of the suit. Accordingly, the Lower Appellate Court, while decreeing the suit O.S. No. 6480 of 2007 filed by the defendants, dismissed the suit O.S. No. 4408 of 2007 filed by the plaintiff. Feeling aggrieved, the plaintiff is before this Court with the present Appeals.

9. Heard Mr. R. Thiagarajan, learned Senior Counsel appearing for the plaintiff and the second defendant appeared in person. The first defendant filed a memo of adoption adopting the contentions made by the second defendant.

10. The main contention of the learned Senior Counsel appearing for the plaintiff / appellant is that the defendants / respondents did not have title to the suit property as the Power of Attorney executed by Govindasamy on 23.04.1991 was cancelled by him on 02.9.1992 and that thereafter, the plaintiff had purchased the property under Ex.A.14. Hence, according to the learned Senior Counsel, the defendants cannot have any title over the suit property.

11. Per contra, it is the case of the first defendant that the sale was originally executed on 18.8.1992. However, it was assigned as pending document No. 973/1992 for undervaluation and thereafter, it was registered as document No. 534/1996 on payment of deficit stamp duty.

12. The Courts below have categorically found that the Power of Attorney was cancelled on 02.9.1992 as per Ex. B.10 whereas the sale deed in favour of the first defendant executed by the second defendant as Power of Attorney under Ex. A.4, was on 18.8.1992 during the subsistence of the Power of Attorney. Therefore, it is clear that the sale executed by the said Govindasamy through his Power of Attorney, in favour of the first defendant was much prior to the cancellation of the Power of Attorney. In view of the said fact, the claim of the plaintiff that he got the sale executed directly from the said Govindasamy on 09.5.2002 will not convey any title as on the date of the alleged sale, the said Govindasamy did not have any saleable or marketable right or title in the suit property. Hence, the claim of the plaintiff even on the question of title,

which had been independently gone into by the Lower Appellate Court, is correct.

13. The plaintiff having filed only a suit for permanent injunction, though the title has been denied by the defendants, had not sought for the relief of declaration of title. Mutually, the defendants who had also filed the suit only for permanent injunction, had not asked for declaration of title. However, the defendants have categorically established their possession of the suit property and also proved their title to the same by document which was executed much prior to the sale in favour of the plaintiff. The Lower Appellate Court had analysed the evidence properly and dismissed the suit filed by the plaintiff by giving cogent reasons. In such circumstance, this Court is of the view that no question of law, much less, substantial question of law would arise for consideration in these appeals and as such, the finding of the Lower Appellate Court, final fact finding authority, reversing the decision of the trial Court, thereby dismissing O.S. 4408 of 2007 filed by the plaintiff and decreeing the suit O.S. 6480 of 2007 filed by the defendants, is to be upheld.

For the foregoing reasons, both the Second Appeals fail and the same stand dismissed confirming the common judgment and decree of the Lower Appellate Court. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gri
To

1. XV Additional Judge
City Civil Court
Chennai

2. VI Assistant Judge
City Civil Court
Chennai

+1 cc to Mr.A.S.Narasingan, Advocate, sr.39523

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