

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.994 of 2015

Navaneetharathai rep. by Power of Agent
Gopalakrishnan. ..Appellant/Plaintiff.

Vs.

Gopalakrishnan Reddiar (died)]
Rajasekaran (died)] ..Respondents 1 and 2/Defenants 1 and 2

Santha ..3rd Respondent/3rd Respondent in A.S.

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code,1908 against the judgment and decree in A.S.No.24 of 2013 on the file of the learned Principal District Judge, Ariyalur, dated 27.01.2015 in confirming the judgment and decree in O.S.No.261 of 2003 on the file of the learned Principal District Munsif, Ariyalur dated 17.04.2008.

For Appellant : Mr.V.Ragavachari

JUDGMENT

The plaintiff in O.S.No.261 of 2003 on the file of the learned District Munsif, Ariyalur is the appellant herein and the respondents are the defendants in the suit. The plaintiff has filed the said suit for permanent injunction to restrain the defendants from in any manner interfering with this peaceful possession and enjoyment of the suit property. By decree and judgment dated 17.04.2008, the trial Court dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.24 of 2013 on the file of the learned Principal District Judge, Ariyalur. By decree and judgment dated 27.01.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant/plaintiff 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 also perused the records carefully.

3.The case of the plaintiff in brief is as follows:-

The suit property is 17 cents comprised in S.No.316/33 at Muthukulam Village, Sendurai Taluk. This property was originally owned by the mother of the defendants 1 and 2. By means of a registered sale deed dated 21.08.1982, according to the plaintiff, he purchased the suit property. From the said date onwards, he has been in possession and enjoyment of the entire extent of property i.e., 17 cents. According to the plaintiff, the defendants have got no right whatsoever over the suit property. But, the defendants tried to disturb the possession of the plaintiff. Therefore, according to the plaintiff, he is entitled for permanent injunction.

4.The defendants took up the plea that what was sold to the plaintiff by the mother of the defendants 1 and 2 was only 15 cents and hence, the plaintiff was never in possession of 17 cents. However, the plaintiff managed to secure patta for 17 cents. The defendants were taking steps to rectify the said defect. Thus, according to the defendants, the plaintiff is not entitled for permanent injunction.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined including the plaintiff and six documents were exhibited. On the side of the defendants, the first defendant was examined as D.W.1 and one document was marked as Ex.B.1. Ex.B.1 is nothing but the general power of attorney executed by the second defendant in favour of the first defendant. During trial, an Advocate Commissioner was appointed and whose report was marked as Ex.C.1 and his plan was marked as Ex.C.2.

6.Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how, the appellant/ plaintiff is before this Court with this second appeal.

7.In this second appeal, it is submitted by the learned counsel for the appellant that though it is true that under the sale deed dated 21.08.1982, an extent of 15 cents have been purchased by the plaintiff, he is actually in possession of 17 cents and the same has been proved by means of the report of the Advocate Commissioner. He would further submit that four boundaries will prevail upon the extent of the land mentioned in the sale deed and hence, the trial Court ought to have decreed the suit as prayed for.

8. In my considered view, there is no substantial question of law at all involved in this second appeal warranting admission. It is true that, in general, the four boundaries of the property will prevail upon the extent of the property mentioned in the sale deed. But, in this case, the said principle cannot be applied, for the simple reason that, the defendants owned property on one of the four boundaries. The defendant's mother while selling the property comprised in Suit Survey Number, shall be retained two cents of property so as to enjoy the same along with her rest of the properties. This has been duly considered by the Courts below and they have come to the conclusion that the plaintiff is entitled only for 15 cents and not for 17 cents.

9. Above all, the defendants have not disputed the possession of the plaintiff in respect of 15 cents. So far as the excess of two cents is concerned, since, the defendants are the owners of the suit property, the plaintiff cannot have an order of interim injunction against the true owners. In such view of the matter, the Courts below were right in dismissing the suit as well as the appeal preferred by the plaintiff. Thus, I do not find any perversity in the judgments of the Courts below and as I have already stated, there is no substantial question of law at all involved in this second appeal warranting admission.

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

jbm

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge,
Ariyalur.

2. The Principal District Munsif,
Ariyalur.

+ 1 cc to Mr. V. Raghavachari, Advocate SR 60841

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