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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

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THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.40 of 2011 and
M.P.No.1 of 2011

Ethiraj ... Appellant/Plaintiff
Vs.

Chellammal ... Respondent/Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 23.04.2010 and made in A.S.No.22 of 2009 on the file of the learned Subordinate Judge, Kancheepuram reversing the judgement and decree dated 03.11.2008 and made in O.S.No.28 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Uthiramerur and prays to set aside the same.

For Appellant : Mr.G.Arul Murugan

For Respondent : Mr.Y.Jyothishchander

JUDGEMENT

The plaintiff in O.S.No.28 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Uthiramerur, Kancheepuram District, is the appellant herein. The respondent is the sole defendant in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with the alleged peaceful possession and enjoyment of the plaintiff. The trial Court by decree and judgement dated 03.11.2008 decreed the suit as prayed for. As against the same, the respondent herein filed an appeal in A.S.No.22 of 2009 on the file of the learned Subordinate Judge, Kancheepuram District. By decree and judgement dated 23.04.2010, the First Appellate Court allowed the appeal and set aside the decree and judgement of the trial Court. Aggrieved over the same, the 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 the learned counsel for the respondent and I have also perused the records carefully.

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

The suit property is a land measuring 3 cents, upon which, there is a thatched shed. According to the plaintiff, the suit property was originally owned by one Mr.K.Varadhan, from whom, the plaintiff purchased the suit property orally, on 04.01.1980 for Rs.850/-. In acknowledgment of the said amount, Mr.K.Varadhan had issued a receipt dated 04.01.1990 (Ex.A.1). The plaintiff has been in possession and enjoyment of the suit property from the date of purchase. The defendant who is none else than the sister of the plaintiff has got



no right whatsoever over the suit property. According to him, since, the defendant attempted to disturb his possession, he was forced to file the present suit.

4. The case of the defendant is that, it is true that the suit property was originally owned by one Mr.K.Varadhan. But, being a widow, with the help of his brother namely, the plaintiff, the defendant purchased the property on 09.11.1992. In acknowledgment of the sale consideration and handing over possession, Mr.K.Varadhan, issued Ex.B.4 letter dated 09.11.1992 to the defendant. Since, the plaintiff, due to personal animosity, attempted to disturb the peaceful possession and enjoyment of the suit property, she made a complaint to the Police on 15.02.2006 (Ex.B.6). Police issued receipt on 18.06.2006 (Ex.B.7). According to her, she alone is in possession and enjoyment of the suit property.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, four witnesses were examined and as many as three documents were exhibited. On the side of the defendant, two witnesses were examined and as many as seven documents were exhibited. Exs.C.1 to C.8 were marked as Court exhibits.

6. Having considered the above, the trial Court decreed the suit which was set aside by the First Appellate Court. That is how the plaintiff is before this Court with this second appeal.

7. In this second appeal, it is contended by the learned counsel for the appellant that Ex.A.1 coupled with Ex.A.2 and the oral evidences of P.Ws.1 to 4 would clearly go to show that the plaintiff is in possession and enjoyment of the suit property. But, the First Appellate Court has reversed the same without even considering the above evidences.

8. But, the learned counsel for the respondent would submit that there is enormous evidence to show that it is only the defendant who is in possession and not the plaintiff. According to him, Exs.A.1 and A.2 would go to show that they were typed in the very same Typewriter Machine within a short span of interval. The learned counsel would further submit that P.W.3, the Panchayat Board President is also the relative of both of them and he joined hands with the plaintiff to create Exs.A.1 and A.2. The learned counsel would further submit that even a simple reading of the above documents viz., Exs.A.1 and A.2, with naked eyes would go to show that both the documents were typed out in a very same Typewriting Machine. The learned counsel would further submit that, Mr.Varadhan who has been examined as P.W.2 has stated that Ex.A.1 was issued by him but, Ex.B.4 was not issued by him. He has further stated that in Ex.A.1, he has signed as Ka.Varadhan whereas, the signature found in Ex.B.4 shows his signature as K.Varadhan. According to him, he signs only as Ka.Varadhan and not as K.Varadhan. Exs.X.1 to X.8 which are admitted documents would go to show that he is in the habit of signing his name only as K.Varadhan. In the proof affidavit filed before the trial Court also, he has signed only as K.Varadhan. Therefore, P.W.2 has deposited an utter lie before the trial Court. Therefore, the First Appellate Court, according to the learned counsel, was right in disbelieving the evidence of P.Ws.2 & 3.



9.The learned counsel for the respondent would further submit that Ex.B.4 would go to show that possession was handed over by P.W.2 to the defendant since, it is a natham land. She has got title and possession over the suit property. At any rate, according to the learned counsel, there is no substantial question of law involved in this second appeal warranting admission of the same.

10.I have considered the above submissions.

11.At the outset, I should say that, there is no question of law much less a substantial question of law warranting admission of this second appeal. Further, all the questions raised and argued by the learned counsel for the appellant are only questions on facts which have been duly considered by the First Appellate Court and answered accordingly. As rightly contended by the learned counsel for the respondent, a cursory perusal of Exs.A.1 and A.2 and comparison of the same with the Court exhibits namely, Exs.X.1 to X.8 would go to show that both the documents have been typed out from out of the same Typewriter Machine. This itself would sufficient to hold that these two documents have been created by the plaintiff for the purpose of the case.

12.Apart from that, P.W.2, Mr.Varadhan has stated that, he only issued Ex.A.1 dated 04.01.1990 in favour of plaintiff and he did not issue Ex.B.4 receipt to the defendant. This evidence has been disbelieved by the First Appellate Court, because, in all the documents, he has signed only as K.Varadhan whereas, in Ex.A.1 alone, he has signed as Ka.Varadhan. This has been obviously to support the case of the defendant instead of plaintiff. He has not given any explanation as to why after having allegedly issued Ex.A.1 receipt dated 04.01.1990, he issued subsequently another receipt in favour of the defendant on 09.11.1992 under Ex.B.4. In the absence of the said explanation, I find every force in the argument of the learned counsel for the respondent that P.W.2 has joined hands with the plaintiff to disturb the possession of the defendant.

13.Apart from that, Ex.A.2 is the certificate issued by the then Panchayat Board President. In the absence of the house tax demand register, I do not understand as to how the trial Court has given any weightage to Ex.A.2 which is after all a certificate issued by the then Panchayat Board President. His evidence has been disbelieved by the First Appellate Court in which, I do not find any infirmity. Thus, on appreciating the entire evidences both oral as well as documentary, the First Appellate Court has held that the plaintiff is not in possession of the property and therefore, he is not at all entitled for a decree of permanent injunction.

14.As I have already narrated, the entire argument of the learned counsel for the appellant around the factual aspects of the matter. He is not in a position to raise any question of law much less a substantial question of law warranting admission of this second appeal. Thus, I find that there is no merit in the second appeal.



15. In the result the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Subordinate Judge,
Kancheepuram.

2. The District Munsif cum
Judicial Magistrate, Uthiramerur.

+1 cc to M/s. Y. Jyothishchander, advocate, SR.13144

+1 cc to M/s. G. Arulmurugan, Advocate, SR.133150.

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Second Appeal No.40 of 2011