

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.286 of 2014

A.Mani

... Appellant/Appellant/
Defendant

Vs.

M.Sivalingam

... Respondent/Respondent/
Plaintiff

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 06.12.2013 made in A.S.No.24 of 2013 on the file of the Subordinate Judge, The Nilgiris at Uthagamandalam, confirming the judgment and decree dated 30.01.2013 made in O.S.No.115 of 2011 on the file of District Munsif of Uthagamandalam.

For Appellant : Mr.S.M.Muralidharan

For Respondent : Mrs.A.Nilaphar
for M/s.R.Subramanian

J U D G M E N T

The appellant is the defendant in a suit for permanent injunction filed by the respondent/ plaintiff. The Courts below concurrently held against the defendant and granted the decree for permanent injunction in favour of the plaintiff.

2. The nature of injunction sought for by the plaintiff is to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property measuring an extent of 17 cents is situated at R.S.No.586/4, New No.H/5-37 at Uthagamandalam Village, Nilgiris District. The suit property has been described with specific boundaries. The plaintiff sought the relief of injunction based on the sale deed dated 24.09.2007 registered as Document No.1650/2007 wherein and whereby the plaintiff was conveyed 17 cents of land which is described as the suit property.

3. Learned counsel for the defendant contended before this Court that though the plaintiff has purchased only 17 cents,

he is trying to enforce the relief in respect of 18 1/2 cents which would ultimately affect the interest of the defendant as he is having 3 cents of property adjacent to the suit property. Both the courts have concurrently found on considering the facts and circumstances of the case and the evidence let in by the parties that the plaintiff having purchased 17 cents of land under the said sale deed and being the owner of the same is entitled to the relief of injunction. While coming to the contention of the learned counsel for the defendant that the plaintiff is trying to enforce injunction in respect of more than the extent of land than the one sought for in the suit, it is seen that there is absolutely no plea in the written statement to that effect and it is made as the first time before this Court.

4. On the other hand, learned counsel for the respondent / plaintiff submitted that the plaintiff has specifically claimed the relief of injunction only in respect of 17 cents as shown in the schedule to the plaint and therefore, the apprehension of the appellant is totally misconceived, that too, raised as the first time before this Court.

5. Considering all these facts and circumstances and considering the fact that both the Courts below have concurrently found in favour of the plaintiff and granted the decree, I do not find any reason to interfere with the same as I also find no substantial question of law arises for consideration in this Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi
To

1. The Subordinate Judge,
The Nilgiris at Uthagamangalam
2. The District Munsif,
Uthagamandalam.

+1cc to Mr.S.M.Muralidharan, Advocate, S.R.No.53314
+1cc to Mr.R.Subramanian, Advocate, S.R.No.53052

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GJ II(CO)
CA(25/10/2016)