

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.299 of 2014

K.Narasiman Chettiar ... Appellant/Appellant/Defendant

vs.

K.Venkatesan Chettiar ...Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 22.10.2013 made in A.S.No.60 of 2012 on the file of the II Additional Sub-Judge, Cuddalore in confirming the judgment and decree made in O.S.No.368 of 2009 dated 28.10.2011 on the file of the Court of II Additional District Munsiff, Cuddalore, in decreeing the suit with costs.

For Appellant : Mr.A.Thamizharasan

For Respondent : Ms.R.Aparna

J U D G M E N T

The appellant is the defendant who lost before both the Courts in a suit for bare injunction. The respondent herein as the plaintiff filed O.S.No.368 of 2009 on the file of the II Additional District Munsif Court, Cuddalore, against the appellant herein and the Joint Sub-Registrar, Cuddalore, for permanent injunction restraining the first defendant from entering the suit property and disturbing the peaceful possession and enjoyment or causing alienation in any manner.

2. The case of the plaintiff is that the suit property was the ancestral property and the same was allotted to him in pursuant to a partition took taken place on 15.08.1985 between the plaintiff and the first defendant, who are brothers. Thus, it is contended by the plaintiff that in pursuant to such partition, he was put in possession and enjoyment of the suit

property exclusively. However, as the first defendant tried to interfere with the possession of the plaintiff in respect of the property already allotted under the partition, the above said suit was filed.

3. The case of the first defendant is that though there was a partition between himself and his brother namely the plaintiff on 15.08.1996, thereby allotting the suit property to the plaintiff, the plaintiff agreed to sell the suit property to the first defendant and executed a sale deed on 20.12.2002. Therefore, it is contended that the defendant is in possession and enjoyment of the suit property.

4. Before the trial Court, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A6. The first defendant examined himself as D.W.1 and no document was marked on his side. The trial Court, after considering the rival pleadings of the parties and the evidence let in by them, came to the conclusion that the plaintiff is in possession and enjoyment of the suit property in pursuant to the partition and therefore, he is entitled to the relief of injunction. Accordingly, the trial Court decreed the suit. Challenging the same, the first defendant filed an appeal in A.S.No.60 of 2012 on the file of II Additional Sub-Court, Cuddalore. The Appellate Court concurred with the finding rendered by the trial Court and dismissed the appeal. Thus, the Second Appeal is filed before this Court.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent. This appeal is listed before this Court even before admission after ordering notice to the respondent before admission. Therefore, this Court has to see as to whether any substantial question of law arises for consideration to entertain this appeal, based on the above stated facts and circumstances.

6. The suit is one for bare injunction. The plaintiff claims exclusive title over the suit property and also possession and enjoyment of the same in pursuant to a partition that took place on 15.08.1996, between himself and the first defendant, who are brothers. The first defendant did not deny the partition. On the other hand, he admits that there was a partition between the brothers on 15.08.1996. However, his contention was that in pursuant to such partition, the plaintiff agreed to sell the property allotted to his share under the partition to the first defendant and accordingly, he executed a sale deed on 20.02.2002. Admittedly, the sale deed was not registered. Further, even for collateral purpose, the same has not been marked before the Court by the defendant. What was filed by the

defendant is Ex.B1, a settlement deed of the year 1955 which is not supporting the case of the defendant in any manner as even according to him, the alleged sale had taken place on 20.02.2002. Therefore, when the partition is admitted by the defendant, the onus lies on him to disprove the contention of the plaintiff and to establish his case of sale in his favour. In the absence of any evidence let in by the defendant in support of his case, the Courts below have rightly come to the conclusion that possession and enjoyment of the suit property are with the plaintiff and therefore, he is entitled to the relief of injunction. Accordingly, both the courts below have rightly granted the relief of injunction, with which, I find no ground to interfere as no substantial question of law arises for this Court's consideration. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The II Additional Sub-Judge, Cuddalore
 2. The II Additional District Munsiff, Cuddalore
 3. The Section Officer,
VR Section, High Court,
Madras 104.
- + 1 CC to Mrs.R.Aparna, Advocate SR NO 42662[25/10/16]

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rsk co
kra 30.09.2016

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