

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram:

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.1013 of 2015
and M.P.No.1 of 2015

1.M.Sakthivel

2.Radha .. Appellants/Defendants

Vs.

R.Sivaraj .. Respondent/Plaintiff

Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 22.07.2015 made in A.S.No.10 of 2014 on the file of Sub Court, Bhavani, confirming the Judgment and Decree dated 03/01/2014 made in OS.No.240/2009 on the file of Principal District Munsif Court, Bhavani.

For Appellants : Mr.N.Manokaran
For Respondent : Mr.P.Valliappan

JUDGMENT

The suit has been laid for permanent injunction in pursuant to the execution of Ex.A2 sale deed from the vendor. The plaintiff is the purchaser under Ex.A2 and the remaining portion has been settled in favour of the first appellant under Ex.A5 being the first defendant. The suit property originally belonged to one Mariyanna Gounder. The said Mariyanna Gounder has two sons. The suit schedule property was settled by the father in favour of the plaintiff under Ex.A2. Now the suit has been laid for the property covered under Exs.A1 and A2 except 48 sq. ft.

2. The courts below decreed the suit as prayed for on the premise that the first defendant has acknowledged the factum of execution of Ex.A2 in favour of the plaintiff as seen from the evidence and the legal notice. The suit has been laid immediately after the sale under Ex.A2. Incidentally, Ex.A5, which is the property given by the father in favour of the first appellant also makes a reference to the suit schedule

property. Thus, on the aforesaid basis, both the Courts have decreed the suit. Aggrieved against the said order, the present second appeal has been filed.

3. This Court while admitting the appeal on 04.11.2016, framed the following substantial questions of law.

(1) Whether the Courts below were right in decreeing the suit when there is no description for 48 square of land in C-Schedule property which is stated to be in the possession and enjoyment of the defendants?

(2) Whether the Courts below were right in decreeing the suit when the suit property has not been described property?

4. Mr.N.Manokaran, learned counsel appearing for the appellants, submits that the appellants are in possession and enjoyment of the suit schedule property. Therefore, the suit has been laid for possession and not for injunction. Though an application is stated to have been filed under Order II Rule 2 of the Code of Civil Procedure, seeking leave to have the legal recourse for 48 sq.ft., for which, no relief has been sought for in the present suit. Hence, not having recourse to the same would make the suit as not maintainable. Reliance has been made on the decision of the Apex Court in VIRGO INDUSTRIES (ENG.) PRIVATE LIMITED V. VENTURETECH SOLUTIONS PRIVATE LIMITED ((2013) 1 Supreme Court Cases 625).

5. Mr.Valliappan, learned counsel for the respondent/plaintiff submits that the suit has been laid on the premise that immediately after the purchase under Ex.A1 by the plaintiff, the appellants have started interfering with the possession and enjoyment. When once Ex.A1 has not been disputed, then the consequent will flow from it. Therefore, the plaintiff has rightly acquired title and possession from the vendor under Exs.A1 and A2. The bar under Order II Rule 2 of the Code of Civil Procedure can only be raised for the subsequent suit and in any case, no such plea has been raised either in the suit or in the appeal and followed by such substantial question of law. Hence, the learned counsel submits that the appeal has to be dismissed.

6. There is no dispute on facts. There is no dispute with respect to the documents executed by the father of the first appellant and his brother. Admittedly, the suit schedule property was settled in favour of the vendor of the plaintiff. As Ex.A1 was executed as early as 03.01.2005, there is a reference to the same under Ex.A5, which is a settlement deed in favour of the first appellant. Admittedly, the settlement deed also does not cover the suit schedule property which

excludes the one covered under Ex.A5, but tacitly acknowledges the settlement in favour of the vendor of the plaintiff as seen from the boundary recitals. The suit has been laid pursuant to the legal notice issued by the first appellant. Law is quite settled that a relief of injunction follows title. Therefore, the question of law sought to be raised cannot be answered in favour of the appellants and in fact, they are only factual issues, which have been dealt with by the Courts below concurrently.

7. The issue pertaining to Order II Rule 2 of the Code of Civil Procedure also does not have any bearing. As the appellants have not raised this issue before the appellate Court or before the trial Court, no question of law has arisen in this second appeal. The object and rationale behind Order II Rule 2 of the Code of Civil Procedure is very clear. That is to prevent the party from seeking the relief on a very same cause of action. It is also meant not to vex the defendant twice on a same cause of action. Therefore, merely because the plaintiff filed a suit for some of the reliefs, the suit itself for the said reliefs would not become as not maintainable. Therefore, the contention sought to be raised under Order II Rule 2 of the Code of Civil Procedure is also rejected. The decision relied on by the learned counsel for the appellants does not help his case in any manner. Accordingly, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Bhavani.

2.The Principal District Munsif,
Bhavani.

copy to The Section Officer
VR Section Highcourt Madras

+1 cc to Mr.N.Manokaran Advocate sr 74137
+1 cc to Mr.P.Valliappan Advocate sr 74155

S.A.No.1013 of 2015

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