

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.1047 of 2015

Arokiasamy

... Appellant/Defendant

Vs.

Pappammal

... Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 31.01.2014 and made in A.S.No.47 of 2005 on the file of Sub Court, Madurantakam, confirming the judgment and decree dated 29.04.2005 and made in O.S.No.442 of 1997 on the file of District Munsif Court, Madurantakam.

For Appellant : Mr.M.Marudachalam

For Respondent : Mr.S.Senthilnathan

J U D G M E N T

The defendant who lost before both the Courts below is the appellant before this Court. This Appeal is listed before me at the adjourned admission stage, after notice to the other side and therefore, it is to be seen as to whether any substantial question of law arises for consideration in entertaining this Appeal for further hearing of the matter on merits.

2. Heard learned counsel appearing for the appellant.

3. The respondent is the plaintiff who filed the suit for permanent injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the suit property. It is her case that the suit property is a promboke land and she is in possession and enjoyment of the same for a long time and the defendant who has no manner of right or title to the suit property was trying to interfere with her possession. In support of her claim, the plaintiff marked Exs.A1 to A13 and examined herself as P.W.1. The defendant, though examined himself as

D.W.1, has not marked any exhibits in support of his claim. It is the contention of the defendant that the plaintiff is not in possession and enjoyment of the entire suit extent and on the other hand, even as per Ex.A12, she is in possession only in respect of 50 cents whereas the suit property is shown to be measuring 1 acre. The trial Court, after hearing both the parties and the evidence let in by both of them, decreed the suit by specifically holding that the defendant has not proved any evidence to show that he is in possession and enjoyment of any piece of promboke land and that Exs.A12 also does not contain his name, even though his sister name, namely Arokiamary finds place therein.

4. Challenging the judgment and decree of the trial Court, the defendant filed the appeal before the Lower Appellate Court and also taken out an application under Order 41 Rule 27 CPC in I.A.No.14/14 seeking permission to mark two documents on his side. The lower Appellate Court allowed the said interim application and consequently, Exs.B1 and B2 were marked before the Lower Appellate Court which are in respect of judgment and decree passed in O.S.No.128/1999. Though it is sought to be contended by the defendant before the lower Appellate Court that Exs.B1 and B2 are supporting his case, it is the specific finding of the lower Appellate Court that the subject matter property in the said suit namely O.S.No.128/1999 marked as Exs.B1 and B2 is totally a different property and not related to the suit property. Thus, based on the evidence available before the trial Court and upon considering the merits of the matter, the lower Appellate Court rejected the appeal filed by the defendant and thereby confirmed the judgment and decree of the trial Court.

5. Learned counsel for the appellant contended that even in the absence of any document filed by the defendant in support of his claim for possession, the very document filed by the plaintiff under Ex.A12 will reveal that apart from the plaintiff's name in respect of 50 cents, another 50 cents of property is shown in the name of one Yakulamary who is none else than his sister and therefore, the plaintiff ought not to have been granted permanent injunction as sought for in the suit.

6. Upon hearing the submission made by the learned counsel for the appellant and on considering the concurrent finding rendered by the courts below, I find no substantial question of law arises for consideration before this Court even to entertain the appeal for further hearing for the reasons stated hereunder.

7. Admittedly, the suit is one for permanent injunction filed against the defendant and not against his sister namely

Yakulamary. Therefore, there is no point in contending that under Ex.A12, the name of the said Yakulamary is available and therefore, the plaintiff is not entitled for the relief. When the plaintiff has filed the suit and proved her possession as found by both the Courts below by marking Exs.A1 to A13, to counter such claim, the defendant ought to have let in evidence not merely through his oral interested testimony but also through some independent third party evidence or through some documentary evidence to prove his possession over the suit property. Admittedly, in this case, no such document is filed. Even the documents filed at the appellate stage i.e., Ex.B1 and B2 are found to be not related to the suit property. Such factual finding rendered by the lower Appellate Court is not seriously disputed by the learned counsel for the appellant. His only contention is that under Ex.A12 his sister's name is also finding place. When the plaintiff's grievance is only against the defendant and the suit was also not filed against his sister, such contention of the defendant was rightly rejected by the Courts below. Therefore, the concurrent findings rendered by the Courts below does not warrant any interference as 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(CS IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Sub Court,
Madurantakam.
2. The District Munsif Court,
Madurantakam.

+1cc to M/s.K.Govi Ganesan, Advocate, S.R.No.33988
+1cc to Mr.S.Senthilnathan, Advocate, S.R.No.33953

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MP (CO)
CA(09/08/2016)