

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1071 of 2015 and
M.P.No.1 of 2015

1.M.Settu
2.Gajana

.. Appellants/Defendants

vs.

Kalavathi

.. Respondent/Plaintiff

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 21.08.2014 in A.S.No.27 of 2012 on the file of the learned Subordinate Judge, Ranipet, Vellore District confirming the decree and judgment dated 31.10.2011 in O.S.No.160 of 2005 on the file of the learned District Munsif cum Judicial Magistrate No.1, Walajapet, Vellore District.

For Appellant : Mr.G.Rajan

For Respondent : Mr.R.Mohana Murali

JUDGMENT

The defendants in O.S.No.160 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Walajapet are the appellants herein. The plaintiff in the suit is the respondent herein. The respondent filed the said suit for permanent injunction to restrain the defendants from in any manner interfering with her peaceful possession and enjoyment of the suit property. By decree and judgment dated 31.10.2011, the trial Court decreed the suit as prayed for. As against the same, the appellants herein filed an appeal in A.S.No.55 of 2012 on the file of the learned Subordinate Judge, Ranipet. By decree and judgment dated 21.08.2014, the First Appellate Court dismissed the suit thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellants/defendants are before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel on either side and I have also perused the records carefully.

3.The case of the plaintiff is that there are two Items of suit properties and the same belong to her and she is in possession and enjoyment of the same. According to her, the defendants attempted to trespass into the suit properties, so as to disturb her possession in the year 2005. Based on the said cause of action, the present suit was filed.

4.Before the trial Court, the defendants filed a written statement wherein, they have tacitly admitted that the plaintiff is the absolute owner of the suit properties and she is in possession and enjoyment of the same. The defendants are the adjacent land owners of the lands situated on the Eastern "A" schedule properties and Western "B" schedule properties. It was further contended that the defendants never intended to disturb the possession of the plaintiff and thus, there is no cause of action for the plaintiff to file the present suit at all.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff two witnesses were examined and as many as eight documents were exhibited. On the side of the defendant, one witness was examined and as many as three documents were exhibited.

6.Having considered all the above, the trial Court decreed the suit and the First Appellate Court also confirmed the same. That is how the appellants/ defendants are before this Court with this second appeal.

7.In this second appeal, the learned counsel for the appellants/defendants would submit that when there is no threat of dis-possession or disturbance to the plaintiff from the defendants, the Courts below ought to have held that there is no cause of action for the plaintiff to file the present suit and instead decreed the suit as prayed for by the plaintiff.

8.In my considered view, the said contention cannot be accepted. The apprehension in the mind of the plaintiff that the defendants would disturb her possession itself is a cause of action for her to file the present suit. At any rate, in the written statement, filed before the trial Court, the defendants have tacitly admitted that the plaintiff is the absolute owner of both the Items of suit properties and she is in possession and enjoyment of the same. When that be so, the Courts below were right in granting the decree as prayed for by the plaintiff. When the defendants do not claim any right over the suit properties, they cannot feel aggrieved by the decree passed

by the Courts below. In such view of the matter, I do not find any merit at all in this second appeal. Further, I do not find any substantial question of law at all warranting admission of this second appeal.

9. In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment passed by the First Appellate Court is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Ranipet Vellore District

2. The District Munsif cum Judicial Magistrate No.1,
Wallajahpet
Vellore District

+1 cc to Mr.G.Rajan Advocate sr.2890/16

+1cc to M/s.K.Mohanamurali, Advocate, S.R.No.2870 (19.05.2016)

S.A.No.1071 of 2015

aa12/02/2016

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