

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.161 of 2015

The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai.

..Appellant/Defendant

-Vs-

Saleem Durani

...Respondent/Plaintiff

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 16.09.2014 made in A.S.No.29 of 2013 on the file of Principal Sub Court, Mayiladuthurai, confirming the decree and judgment dated 27.08.2012 made in O.S.No.119 of 2011 on the file of Principal District Munsif Court, Mayiladuthurai.

For Appellant : Mr.P.Srinivas

For Respondent : Mr.K.Goviganesan

J U D G M E N T

The appellant Municipality is the defendant in a suit for bare injunction filed by the respondent herein.

2. The case of the plaintiff is that he purchased the suit property from his vendors one Subramanian, S.Vasantha, S.Vetriselvan, S.Muthazhagan and the defendant Municipality, without having any right over the same is trying to interfere with the possession and enjoyment of the plaintiff.

3. The defendant Municipality contested the suit by stating that the suit property which was left out by the original vendors for the public purpose cannot be sold to the plaintiff, who in turn, cannot claim the relief of injunction. It is also the contention of the defendant that the vendors of the plaintiff had earlier filed O.S.No.119 of 2007 on the file of the District Munsif Court, Mayiladuthurai, challenging the eviction notice issued by the Municipality and for permanent injunction and the said suit came to be dismissed after contest. It is further stated that the appeal preferred by those vendors against such decree also came to be dismissed. Therefore, it is contended by the defendant that the plaintiff who is only the purchaser of the suit property from the plaintiffs in the other suit, cannot have the relief of injunction.

4. The trial Court, after considering the rival pleadings of the parties and the evidence let in by them found that the plaintiff is in possession and enjoyment of the suit property. It is also found by the trial Court that the plaintiff who is in possession and enjoyment of the suit property has to be evicted only by due process of law. Therefore, the trial Court granted the injunction only by preventing the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property except by due process of law. The said findings were confirmed by the appellate Court. Challenging such concurrent finding, the present Second appeal is filed before this Court. While admitting the Second Appeal, the following substantial question of law were framed.

"1. Is not the Lower Appellate Court wrong in dismissing the Appeal filed by the Appellant on the ground that the documents relating to the previous suits have not been filed when in fact, the said documents have been filed and I.A.No.89 of 2013 has been filed for marking the said documents and has been allowed only by the same Judge on 27.08.2014?

2. Is not the judgment of the Trial Court and the Lower Appellate Court in a case where the land allotted for the Children's Play Space which is public use area are dealt with illegally by the plaintiff liable to be set aside as no person has any exclusive right over the same as per the judgment of the Honourable Division bench in the case of Sridevi Nagar Residents welfare Association vs. Subbathal and others?"

5. Today, the matter is taken up for final disposal. Heard Mr.P.Srinivas, learned counsel for the appellant and Mr.Govi Ganesan, learned counsel for the respondent and perused the materials placed before this Court.

6. The plaintiff sought for permanent injunction restraining the defendant municipality from interfering with his peaceful possession and enjoyment of the suit property based on the sale deed executed by one Subramanian and three others on 23.12.2002 in respect of the suit property. On the other hand, it is contended by the defendant Municipality that the suit property cannot be sold by those persons to the plaintiff since the same was left out for public purpose while forming the lay out. It is seen that the vendors of the plaintiff have already filed a suit challenging the eviction notice issued by the Municipality and sought for declaration to declare such notice as invalid and for

permanent injunction and the said suit came to be dismissed after contest. It is also seen that the said judgment and decree passed by the trial Court has become final and conclusive as the appeal preferred before the lower appellate Court also came to be dismissed later. Therefore, the plaintiff who purchased the property from those persons who were the plaintiffs in the other suit and lost before the Court seeking for the declaration, cannot have any better title than his vendors. Consequently, the right claimed over the suit property by the plaintiff, cannot be considered once again, as such issue has already attained finality and became conclusive between the defendant and the plaintiff's vendors. But the fact remains that even in the earlier suit, what was under challenge was the eviction notice. Therefore, it is an admitted fact that the plaintiff's vendors were in possession and enjoyment of the suit property and the Municipality wanted to evict them.

7. Admittedly, as against the plaintiff, no eviction notice is issued so far and he was also not a party to the earlier proceedings in O.S.No.119 of 2007. Therefore, I am of the view that the appellant Municipality is at liberty to proceed against the respondent by taking proceedings in accordance with law seeking for eviction and take possession of the suit property. That is what the trial Court in the present suit has also done by restricting the decree for injunction only to the extent that the plaintiff shall not be evicted from the suit property except by due process of law. When such being the findings which was confirmed by the appellate Court, I do not think that any interference is called for in this Second Appeal except by reiterating that the appellant Municipality is at liberty to proceed against the respondent in the manner known to law to get the suit property back. Accordingly, the Second Appeal is disposed of by answering the questions of law raised in the above terms. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Principal Subordinate Judge, Mayiladuthurai.
2. The Principal District Munsif Court, Mayiladuthurai.

+1 cc to M/s.P.Srinivas,advocate,sr.66468

+1 cc to M/s.K.Goviganesan,advocate,sr.65929.

md(co)

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