

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 04.10.2016
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
Second Appeal No.455 of 2015

1. Nirmala
w/o late Kuppusamy
 2. Ashok Kumar,
S/o Late Kuppusamy
 3. Anand Kumar,
S/o Late Kuppusamy
 4. Arun Kumar,
S/o Late Kuppusamy
 5. Anith Kumar,
S/o Late. Kuppusamy
- ... Appellants/Appellants/
Plaintiffs

Vs.

1. Jayaraman,
S/o Ponnai
 2. Kannadasan,
S/o Jayaraman
 3. Ramadoss,
S/o Jayaraman
- ... Respondents/Respondents/
Defendants

Second Appeal has been filed against the Judgment and Decree dated 15.09.2014 made in A.S.No.83 of 2012 on the file of Subordinate Judge, Poonamallee confirming the Judgment and decree dated 21.08.2012 made in O.S.No.542 of 1998 on the file of the Additional District Munsiff Court, Poonamallee.

For Appellants : Mr.G.Dilip Kumar
For Respondents : Ms.K.Aparna Devi

J U D G M E N T

The unsuccessful plaintiffs in a suit for bare injunction are the appellants before this Court.

2. The case of the plaintiffs is that their mother owned the suit property for long number of years and died instate in

the year 1976, leaving the plaintiffs as the sole legal heirs. Therefore, it is contended by them that their possession and enjoyment of the suit property cannot be interfered with by the defendants, who are the neighbours on the western side.

3. The defendants contested the suit. Their case is that the suit property is the absolute property of the first defendant who had purchased the same under an unregistered sale deed dated 07.10.1977 from the deceased first plaintiff namely, the father of the plaintiffs. Therefore, it is contended by the defendants that in pursuant to such sale, they were put in possession and enjoyment of the suit property and as such, they are in continuous enjoyment of the same. The plaintiffs, in support of their claim marked certain revenue documents under Exs.A2 to A16. On the other hand, the defendants also marked the property tax receipt and the sale deed in support of their contention. It is seen that before the trial Court, the unregistered sale deed was marked as an exhibit after paying the stamp duty/penalty. Upon considering the rival submissions of the parties and the documents filed in support of their claim, the trial Court rejected the claim of the plaintiffs and dismissed the suit. The first appellate Court also confirmed the findings rendered by the trial Court and dismissed the Appeal.

4. While admitting the present Second Appeal, the following substantial questions of law were framed by this Court.

a. Whether the findings of the courts below in respect of Ex.B2 are right and tenable?

b. Whether mere payment of penalty in respect of an unregistered instrument could confer right and title in respect of an immovable property?

c. Whether the findings of the Courts below is right in respect of conferring right or title in respect of immovable property by virtue of unregistered instrument?

5. Heard the learned counsel for the appellants and the learned counsel for the respondents.

6. It is seen that the present suit is one for bare injunction and both parties seem to have filed some documents in support of their claim for possession. At the same time, it is also seen that the defendants disputed the title of the plaintiffs over the suit property and claimed such title by themselves in pursuant to an unregistered sale deed dated 07.10.1977. Whether the defendants are entitled to such title based on such unregistered sale deed is the question that has to be considered and decided, not in the present suit and the same has to be relegated only to an appropriate proceedings. However,

insofar as the present suit for injunction is concerned, the Courts below have concurrently found that the plaintiffs are not in possession and on the other hand, only the defendants are in possession of the suit property. Such factual finding rendered by the Courts below, based on appreciation of evidence do not require any interference by this Court. In so far as the questions of law framed by this court in this appeal are concerned, I find that those questions are related to the issue with regard to the title over the suit property. As I have already pointed out that such issue cannot be gone into and decided finally in the present proceedings arising out of a suit for injunction and it is for the parties to agitate the matter separately in respect of title to the suit property, I leave the substantial questions of law raised herein open to be raised and decided in an appropriate proceedings to be initiated between the parties touching upon the title to the suit property. Hence, it is open to the plaintiffs to file appropriate suit seeking for declaration of title to the suit property. if any such suit is filed, the same shall be considered and decided on its own merits and in accordance with law. Till such time, both the parties are directed to maintain statusquo as on today. With these observations, the Second Appeal is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi

To

1. The Subordinate Judge, Poonamallee
2. The Additional District Munsiff Court, Poonamallee.

3. The Section officer
VR Section
High Court Chennai-104

+1 cc to Mr.G.Dilip Kumar Advocate sr 57019
+1 cc to Mr.K.Aparna Devi Advocate sr 57040

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