

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

S.A.No.519 of 2015

and

M.P.No.1 of 2015

S.Venkatesan

... Appellant

Vs

E.Venkatesan

...Respondent

Prayer: This Second appeal filed under Section 100 of C.P.C. against the judgment and decree of the (learned District Munsif, Chengalpattu in O.S.No.291 of 1998 dated 27.04.2007) confirming the Judgment and decree of the Principal Sub Judge, Chengalpattu in A.S.No.17 of 2008 by the judgment and decree dated 27.04.2009.

For Appellant :: Mr.R.Vijayaraghavan

For Respondent :: M/s.V.Srimathi

J U D G M E N T

The suit has been filed by the appellant being the plaintiff placing reliance upon Ex.A1, which is a sale deed said to have been obtained by him dated 15.07.1998 from the legal representatives of one Naranayasamy Nattar. The courts below dismissed the suit on the ground that the plaintiff has not proved his possession and that Ex.A1, though being questioned has not been proved with the specific prayer for declaration, particularly, when a challenge is made on the right of the vendors of the plaintiff to act in such a capacity. Challenging the same, present second appeal is filed.

2.The second appeal was admitted on the following substantial questions of law:

"a.Whether the oral sale in favour of the defendant will exclude the registered sale deed in favour of the plaintiff?

b.Is the Courts below right in saying that the possession will not follow the title?

c.Is the Courts below right in mis-reading the evidence and mis-appreciation in respect of factum of possession?"

3.Learned counsel appearing for the appellant submits that the appellant is entitled for injunction and that he is the absolute owner of the suit property and that the plea of the defendant is based upon oral sale from Narayanasamy Nattar. Thus, the second appeal has to be allowed.

4.Per contra, the learned counsel for the respondent submits that both the courts below have concurrently found that the appellant has not proved his possession on the date of filing of the suit and hence, the appeal is liable to be dismissed.

5.Admittedly, the respondent has questioned the title. The appellant has not examined his vendors. The respondent has questioned the entitlement of the vendors of the appellant to act on behalf of the original owner viz. Narayanasamy Nattar. The courts below therefore have not gone substantially into the question of possession either with the appellant or with the respondent. On the contrary, the appellant has not made out a case for injunction based upon possession, since a serious cloud has been raised on Ex.A1. In such a view of the matter, this court does not find any substantial question of law warranting interference. Accordingly, the second appeal is dismissed. However, the question of title not having been answered in one way or other, the dismissal of the present suit will not stand in the way of the appellant for filing comprehensive suit and for consequential injunction. No costs. The connected miscellaneous petitions are also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

To

1.The District Munsif,
Chengalpattu.

2.The Principal Sub Judge,
Chengalpattu.

+1 cc to M/s.R.Viayaraghavan Advocate sr 72619

+1 cc to M/s.V.Raghavachari Advocate sr 72587

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