

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2016
PRONOUNCED ON : 21.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.511 of 2011

&

M.P.No.1 of 2011

IndiraAppellant

Vs.

Rajendiran ... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 12.07.2010 made in A.S.No.22 of 2009 on the file of the Additional Subordinate Court, Mayiladuthurai, confirming the Judgment and Decree dated 06.11.2008 made in O.S.No.17 of 2008 on the file of the Principal District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.R.Shivakumar for
M/s.K.M.Vijayan & Associates

JUDGMENT

The plaintiff in this Second Appeal has impugned the judgment and decree dated 12.07.2010 made in A.S.No.22 of 2009 on the file of the Additional Subordinate Court, Mayiladuthurai, confirming the Judgment and Decree dated 06.11.2008 made in O.S.No.17 of 2008 on the file of the District Munsif Court, Mayiladuthurai.

2.The Second Appeal is admitted and the following substantial question of law is formulated for consideration in this Second Appeal:

(a)Whether the judgments of the Courts below are liable to be set aside as the same is vitiated in not considering the material evidence of PWs and admissions of DW?

3.The suit has been laid by the plaintiff for permanent

injunction.

4. According to the plaintiff, she has purchased the suit property from one Chinna Ponnu under the Sale Deed dated 12.01.2004 and pursuant to the same, she has been in possession and enjoyment of the suit property by paying kist and obtaining patta and in as much as the defendant without any authority, attempted to interfere with her lawful possession and enjoyment of the suit property, she has been necessitated to lay the suit for permanent injunction.

5. Per contra, according to the defendant, the plaintiff is not in possession and enjoyment of the suit property as claimed and further it is contended that the plaintiff's alleged vendor Chinna Ponnu, laid a suit in O.S.No.191 of 2004 against the defendant and one Srinivasan, seeking possession of the suit property based upon the Will dated 09.11.1998 said to have been executed in her favour by her husband Narayanasami and after contest, the said suit came to be dismissed on 06.01.2005 and therefore, the plaintiff cannot be allowed to contend that she has taken possession of the suit property from Chinna Ponnu under the Sale Deed dated 12.01.2004 and therefore, according to the defendant, he is in possession and enjoyment of the suit property and therefore, there is no question of alleged trespass into the suit property by the defendant as put forth by the plaintiff and hence the suit is liable to be dismissed.

6. It seen from the records placed before the Courts below that the plaintiff's vendor Chinna Ponnu has laid a suit in OS.No.191 of 2004 in respect of the suit property against the present defendant and one Srinivasan seeking the relief of recovery of possession. In that suit, it has been specifically admitted by Chinna Ponnu that the defendant is in possession and enjoyment of the suit property. However, without any basis in that suit Chinna Ponnu laid the claim to the suit property based upon the alleged Will dated 09.11.1998, said to have been executed by her husband Narayanasamy in her favour bequeathing the suit property to her. The said Will has been challenged by the defendant.

7. The Court in O.S.No.191 of 2004 after consideration of the evidence adduced by the respective parties found that the Will dated 09.11.1998 is not binding upon the defendant and accordingly, also finding that the defendant is entitled to be in possession of the suit property as a co-owner negatived the suit laid by Chinna Ponnu. It could therefore be seen that even in O.S.No.191 of 2004, the plaintiff's vendor Chinna Ponnu had admitted the possession and enjoyment of the suit property by the present defendant.

8. Pending the above said suit, it appears that the plaintiff has purchased the suit property from Chinna Ponnu under the Sale Deed dated 12.01.2004 and contending that she has taken possession of the suit property from Chinna Ponnu. It is also not out of place to mention that the plaintiff is none other than the daughter-in-law of Chinna Ponnu. Therefore, it could be inferred that the plaintiff is also aware of the suit laid by Chinna Ponnu against the defendant and another in O.S.No.191 of 2004 and the result thereof.

9. The plaintiff has laid the present suit simplicitor for permanent injunction. The plaintiff in support of her case has marked Ex.A2 to 4. Apart from Ex.A1, Sale Deed dated 12.01.2004, Ex.A2 is a kist receipt dated 02.01.2008 in the name of Chinna Ponnu, Ex.A3 dated 19.09.2008, which is a patta in the name of Chinna Ponnu, Ex.A4, the order of transfer of patta, which is dated 15.10.2008, it could therefore be seen that the documents produced by the plaintiff for establishing her possession over the suit property, have come into existence, after the disposal of the suit dated 06.01.2005. In O.S.No.191 of 2004 when Chinna Ponnu herself has admitted to be not in possession of the suit property and her claim for recovery of possession of the suit property from the defendant has been negatived in O.S.No.191 of 2004, the present case of the plaintiff that pending the above suit, she had taken possession of the suit property from Chinna Ponnu under Ex.A1, Sale Deed cannot at all be accepted in any manner. Therefore, the Courts below have rightly rejected the documents marked as Ex.A2 to 4 on noting that they have come into existence after the disposal of the suit in O.S.No.191 of 2004 and so holding, found that the plaintiff has failed to establish that she is in legal possession and enjoyment of the suit property as pleaded.

10. As found earlier, the plaintiff cannot feign ignorance about the proceedings of the suit laid by Chinna Ponnu in O.S.No.191 of 2004. Therefore, when Chinna Ponnu's title in respect of the entire suit property has not been accepted by the Civil Court in O.S.No.191 of 2004, the present case of the plaintiff that she has title over the entire suit property under Ex.A1, as such cannot be accepted. If really the plaintiff has any title in respect of the suit property either as a purchaser from Chinna Ponnu or as a heir of Narayanasamy or otherwise, the plaintiff has to lay a suit claiming the appropriate remedy against the defendant and others. Therefore, the present suit laid by the plaintiff purely for permanent injunction on the basis of claiming to be in possession of the suit property is unacceptable. When that plea of the plaintiff has not been established and the documents produced by the plaintiff also do not advance the case of the plaintiff with reference to the same, it could be seen that the Courts below have, on the proper appreciation of the evidence

adduced by the respective parties in the matter, rightly come to the conclusion that the plaintiff is not entitled to seek the relief of permanent injunction as prayed for.

11. In such view of the matter no interference is called for in the findings of the Courts below for rejecting the case of the plaintiff.

12. In conclusion, the substantial question of law formulated in this Second Appeal is answered against the plaintiff and in favour of the defendant. Resultantly, the Second Appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to M/s. K.M. Vijayan Associates , Advocate, S.R.No.
+1cc to Mr.S. Sounthar, Advocate, S.R.No.74620

RK(CO)

Eu 1.2.17

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