

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.298 of 2016

B.Kalyanakrishnan

... Appellant/Plaintiff

Vs.

1.Satish

2.Ramani Rajan

... Respondents/Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Additional Subordinate Judge, Mayiladuthurai dated 03.11.2015 made in A.S.No.20 of 2014 thereby confirming the judgment and decree of the learned Additional District Munsif, Mayiladuthurai in O.S.No.154 of 2011 dated 29.01.2014.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.S.Sounthar

J U D G M E N T

The plaintiff is the appellant. His suit for permanent injunction and for mandatory injunction was dismissed by the trial court on the reason that the plaintiff has not identified the suit property with specific boundaries. The appeal filed against the judgment and decree of the trial court came to be dismissed thereby confirming the finding of the trial court with regard to the identity of the suit property. The unsuccessful plaintiff before both the courts filed the second appeal before this court. The matter is listed before me even before admission at notice of motion stage, after notice to the respondents.

2.The case of the plaintiff is that the suit property measuring 9 cents forms part of total extent of 4 acres 20 cents at R.S.No.362 and that the said 1.72 acres of land owned by his father was settled in his favour in the year 2009 by way of a settlement deed marked as Ex.A1. It is the further case of the plaintiff that the suit property viz., 9 cents is lying in the eastern corner of the total extent of 1.72 acres and the first defendant encroached upon the said piece of land and put up a hut therein. Therefore, the plaintiff has come forward with the present suit for permanent injunction restraining the defendants from interfering with his peaceful

possession and enjoyment and for mandatory injunction directing the defendants to remove the thatched shed and fence.

3.The case of the first defendant is that he purchased the suit property viz., 9 cents from the second defendant and put up a hut therein and therefore, the plaintiff is not entitled to the relief. It is the further case of the defendants that the suit property was not properly identified and therefore, no relief could be granted to the plaintiff.

4.The trial court as well as the Appellate Court concurrently decided against the plaintiff by holding that the plaintiff has failed to identify the suit property with specific boundaries. The courts below also found that the plaintiff as PW1 has admitted in his cross-examination that there was no partition between 15 pattadars with regard to the property in respect of the total extent of 4 acres 20 cents.

5.Mr.A.Muthukumar, learned counsel for the appellant contended that when the description of the suit property is properly shown with specific boundaries in the plaint schedule, both the courts below are not justified in dismissing the suit as if the plaintiff has not identified the suit property. He also submitted that the second defendant as DW1 has admitted the identification of the property through Ex.D4 which is a photograph marked by him. Therefore, he contended that there is no necessity for the plaintiff to separately establish the identity when the second defendant has admitted such identification in his examination.

6.Per contra, learned counsel appearing for the respondents submitted that the very laying of the suit for injunction and mandatory injunction is not maintainable without seeking the relief for declaration and for recovery of possession as admittedly the first defendant has put up a hut in the suit property. He further contended that without there being the identification of the suit property, the question of granting injunction or mandatory injunction does not arise.

7.Heard Mr.A.Muthukumar, learned counsel appearing for the appellant and Mr.S.Soundar, learned counsel appearing for the respondents and perused the materials placed before this court.

8.It is not in dispute that the suit property measuring 9 cents is forming part of R.S.No.362 which is having a total extent of 4.20 acres. The case of the plaintiff is that this 9 cents in turn is lying on the eastern corner of 1.72 acres out of 4.20 acres at R.S.No.362. It is his further case that the said 1.72 acres was owned by his father who in turn settled the same under Ex.A1 with specific boundaries. Therefore, it is contended that when Ex.A1 contains specific boundaries, the courts below erred in rejecting the relief sought for by the plaintiff. I am unable to appreciate the

said contention for the simple reason that it is an admitted case of the plaintiff as PW1 in his cross-examination that there was no partition done between 15 pattadars with regard to the property measuring extent of 4.20 acres at Survey No.362. When there is no partition between the co-pattadars of the total extent, certainly the courts below are right in holding that the suit property viz., 9 cents is not properly identified. In any event, the identification of the property being the factual aspect of the matter by appreciation of evidence, unless there is perversity in such findings, this court cannot interfere with such factual findings of the matter more particularly about the identification of the property. In this case, I already pointed out the very admission of PW1 to the effect that there was no partition between co-pattadars out of 4 acres 20 cents. Therefore, the courts below are justified in holding that the suit property measuring 9 cents is not identifiable one. Hence, I find no question of law more particularly a substantial one arises for consideration in this second appeal.

10.Learned counsel appearing for the appellant submitted that dismissal of the present suit will not be a bar for him to file a fresh suit for declaration and recovery of possession and for other reliefs as available under law with specific identification of the property. Needless to say that the plaintiff is entitled to seek for appropriate relief by filing the appropriate suit in a manner known to law as the present suit came to be dismissed by the courts below only on the reason that the plaintiff failed to identify the property. Accordingly, the second appeal is dismissed as I find no substantial question of law arises for consideration. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Additional Subordinate Judge,
Mayiladuthurai.

2.The Additional District Munsif,
Mayiladuthurai.

+1 cc to Mr.S.Sounthar, Advocate,SR.35477

+1 cc to Mr.A.Muthukumar, Advocate,SR.35592

pvr (co)
krd 20/7

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