

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.351 of 2016

and

C.M.P.No.7492 of 2016

M.Y.Hameed Maricar

... Appellant/Plaintiff
Respondent

Vs.

1.Abdul Rawoof (deceased)

2.Rashina Parvin

3.Noordeen Maricar

4.Aisha

Respondents 2 to 4 brought on record

as LRs of deceased sole respondent

vide order of Court dt. 23.3.2016

by TMJ made in M.P.Nos.1 & 2 /2011

... Respondents/Defendants
Appellants

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.01.2007 made in A.S.No.22/2005 on the file of the Court of Additional District Judge, Pondicherry at Karaikal, reversing the judgment and decree dt. 04.02.2005 made in O.S.No.65/2001 on the file of the court of Principal District Munsif at Karaikal.

For Appellant : Mr.T.P.Manoharan
Senior Counsel
for Mr.K.P.Jotheeswaran

For Respondents : Mr.S.Sounthar for R3

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J U D G M E N T

The appellant is the plaintiff in a suit for bare injunction. The trial Court, decreed the suit and the Appellate Court, on appeal by the defendant, reversed the finding and dismissed the suit. Challenging such reversing finding, the present Second Appeal is filed before this Court. The same is listed before me today under the caption 'adjourned admission'. Therefore, this Court is to see whether any substantial question

of law arises for consideration for entertaining the appeal for further hearing on such question of law.

2. It is seen that the plaintiff who filed the suit for bare injunction in respect of the suit property has relied on the sale deed marked as Ex.A1 dated 19.07.1978. According to the plaintiff, the present suit for bare injunction is filed only in respect of the property conveyed under the said sale deed to the father of the plaintiff. On the other hand, it is contended by the defendant that though the property was conveyed to the plaintiff's father under the sale deed dated 19.07.1978, the present suit filed is not in respect of the property conveyed under the said sale deed and on the other hand, it is a different property, for which, the plaintiff cannot seek the relief. It is the specific contention of the defendants that there is a confusion in the mind of the plaintiff in identifying the property conveyed under sale deed dated 19.07.1978.

3. The trial Court, based on Ex.A1 and the Commissioner's report, granted a decree for injunction in favour of the plaintiff. However, the appellate Court pointed out that the property comprised in S.No.F/1/289 is a promboke land and that the father of the defendant sold the said promboke land to the plaintiff and the present suit is filed by the plaintiff in respect of the property wherein the defendant has put up some construction in a portion of the same. Therefore, the lower appellate Court observed that it is for the plaintiff to file an appropriate suit for declaration and recovery of possession instead of agitating the matter by way of injunction suit.

4. Mr.T.P.Manoharan, learned senior counsel appearing for the appellant submitted that there is no confusion with regard to the identification of the property as the Advocate Commissioner, with the help of Taluk Surveyor, identified the property and filed his report. He has also relied on the patta granted in favour of the plaintiff in respect of the suit property.

5. On the other hand, Mr.S.Sounthar, learned counsel appearing for the respondent submitted that the schedule of the property shown in the sale deed does not refer any survey number and therefore, based on the description of the boundaries therein alone, the identification of the property cannot be done, that too, in a suit for injunction.

6. Heard Mr.T.P.Manoharan, learned counsel appearing for the appellant and Mr.S.Sounthar, learned counsel appearing for the 3rd respondent and perused the materials placed before this Court.

7. There is no dispute to the fact that the present suit is one for bare injunction in respect of a property referred to in the plaint schedule. It is also not in dispute that the plaintiff claims the relief based on the sale deed under Ex.A1. The plaint schedule referred to the Survey number of the suit property as 149. On the other hand, a perusal of the said sale deed Ex.A1, more particularly, the schedule contained therein, would show that there was no reference of any survey number of the property conveyed therein, even though specific boundaries are given. Therefore, when the defendants contend that the property for which the present suit is filed, more particularly, by way of introducing the survey number first time before Court in the plaint schedule, that too in respect of a promboke property, it is for the plaintiff to establish his title to the suit property by filing appropriate suit for declaration and for other consequential relief. Needless to state that such dispute cannot be considered and decided in a suit for bare injunction, more particularly, when the identification of the property itself is in dispute. No doubt, the learned senior counsel appearing for the appellant sought to contend that the Advocate Commissioner has identified the property based on the assistance obtained from the revenue officials. I do not think that such exercise is proper and can be done in a suit for bare injunction, as the same has to be relegated only to the appropriate proceedings. Accordingly, I find that the lower appellate Court has rightly found that proper course of action for the plaintiff is to file a suit for declaration and for other consequential relief. Such finding rendered by the lower appellate Court, based on the appreciation of the entire facts and circumstances and the evidence let in by the parties does not warrant any interference, more particularly, when I do not find any substantial question of law arises for considering this Second Appeal. Therefore, the Second Appeal fails and the same is dismissed. However, liberty is given to the plaintiff to file appropriate suit for declaration and other consequential relief in a manner known to law before the appropriate Forum. If any such suit is filed, the same shall be entertained without reference to the question of limitation. Till such suit is filed and the same is decided on merits and in accordance with law, both the parties are directed to maintain status quo as on today. The plaintiff shall file such suit within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Additional District Judge,
Pondicherry at Karaikal.
2. The Principal District Munsif
at Karaikal.

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.53833
+1cc to Mr.S.Sounthar, Advocate, S.R.No.53783

Second Appeal No.351 of 2016

UG(CO)
CA(11/11/2016)



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