

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.508 of 2016
and
CMP No.8962 of 2016

K.R.Dorairaj ... Appellant/Appellant/Defendant

Vs.

K.S.Lakshmanaswamy ... Respondent/Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned XIX Additional Judge, City Civil Court, Chennai dated 26.02.2016 made in A.S.No.350 of 2015 dismissing the appeal and confirming the judgment and decree of the learned V Assistant Judge, City Civil Court, Chennai in O.S.No.686 of 2012 dated 24.08.2015.

For Appellant : Mr.K.S.Sundar
For Respondent : Mr.A.Srinivasu Subbiah

J U D G M E N T

The unsuccessful defendants are appellants before this court. The respondent herein as the plaintiff filed the suit for direction to the defendant to vacate and deliver vacant possession of the subject matter property and for paying damages at the rate of Rs.5000/- for use and occupation of the portion from November 2011 onwards and also for future damages.

2.The case of the plaintiff is that the entire property shown as Schedule 'A' in the plaint belonged to his father who in turn settled a portion of such property viz., 'B' schedule in his favour under Ex.A3 Settlement Deed and the defendant was permitted to occupy the subject matter property as a permissive occupant. Therefore, the plaintiff came forward with the present suit when the defendant failed to deliver the vacant

possession inspite of demand by the plaintiff to do so.

3.This suit is contested by the defendant. It is his contention that even though the 'A' schedule property was released by other brothers in favour of the plaintiff's father by executing release deed under Ex.A2, the plaintiff is not entitled to file the present suit only in respect of portion of the property so released under Ex.A2 by virtue of Ex.A3 Settlement Deed without seeking for a declaration in respect of the title to the property. The further contention of the defendant is that he is not in occupation of the subject matter property as a permissive occupant and on the other hand, even after such release deed executed under Ex.A2, he was not dispossessed and therefore, his occupation in the subject matter property is continued without there being any disturbance from the plaintiff.

4.Both the courts below concurrently accepted the contention of the plaintiff and decreed the suit as prayed for. Challenging the said concurrent findings of the courts below, the present appeal is filed and the same is posted before this court after notice before admission. Therefore, this court has to see whether any substantial question of law arises for consideration for entertaining this appeal further.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials placed before this court.

6.Learned counsel appearing for the appellant submitted that though it is true that a settlement deed was executed by him and others in favour of the plaintiff's father under Ex.A2, the plaintiff without seeking for the relief of declaration, is not entitled to file the present suit based on Ex.A3 Settlement Deed executed by his father dealing with smaller extent forming part of the larger extent viz., 'A' schedule property. He further contended that even after the release deed, when the defendant continued to be there in the possession of the suit property, filing of the suit for recovery of possession in the nature of mandatory injunction is not maintainable.

7.A careful perusal of the judgment and decree rendered by the courts below and also the grounds raised in this second appeal would show that there is no substantial question of law arises for consideration in this appeal for entertaining the same for further hearing on such question of law. In this case, it is admitted by the defendant viz., the appellant herein that he along with others executed Ex.A2 release deed in favour of the father of the plaintiff releasing his share in respect of 'A' schedule property shown in the plaint schedule. It is also an admitted fact that 'B' schedule which is the subject matter

of dispute is forming part of 'A' schedule property. It is also not in dispute that in so far as 'B' schedule property is concerned, the plaintiff's father executed a settlement deed in favour of the plaintiff. Therefore, when the defendant has already executed a release deed admittedly in favour of the plaintiff's father under Ex.A2 in respect of the larger portion, there is no necessary for the plaintiff to seek for any declaration in respect of smaller portion forming part of such larger portion when admittedly, the plaintiff's father who got such larger extent of property released in his favour under Ex.A2 has executed a settlement deed in favour of the plaintiff under Ex.A3 in respect of that smaller portion. Therefore, the contention of the defendant is not legally sustainable.

8.Having executed a release deed, the defendant cannot claim his possession as a matter of right and therefore, his possession in the suit property has to be construed only as a permissive occupation as contended by the plaintiff. Both the courts below concurrently considered all these factual aspects of the matter and decreed the suit as prayed for, with which I find no infirmity or illegality, as no substantial question of law arises for consideration to entertain this appeal. Accordingly, this appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The XIX Additional City Civil Court,
Chennai.
- 2.The V Assistant City Civil Court,
Chennai.
- 3.The Section officer VR Section High Court,
Madras

+1 cc to M/s.K.S.Sundar, Advocate sr 37397

+2 ccs to M/s.A.Srinivasu Subbiah Advocte sr 37759

S.A.No.508 of 2016

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