

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.8 of 2016 and CMP.No.303 of 2016

Arulmighu Thiruveedhi Amman Koil
rep. by its Trustee-cum-Secretary
Pon.Etti,
East Coast Road,
Thiruvannamiyur,
Chennai-41.

.. Appellant/8th Defendant.

-Vs-

1. S.Babu
2. Lakshmi
3. Ayothiraman
4. Vinayagam
5. Raghu
6. Sigamani
7. Selvam
8. Raja

.. Respondents/Plaintiff and
Defendants 1 to 7.

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned XIX Additional District and Sessions Judge, Chennai, dated 27.07.2015 made in A.S.No.413 of 2014 by reversing the judgment and decree of the learned III Assistant Judge, City Civil Court, Chennai made in O.S.No.769 of 2012 dated 04.08.2014.

For Appellant : Mr.M.V.Venkataseshan

J U D G M E N T

The 8th defendant in O.S.No.769 of 2012 on the file of the learned III Assistant Judge, City Civil Court, Chennai is the appellant. The 1st respondent is the plaintiff in the suit and the others are the defendants 1 to 7. The 1st respondent filed the said suit for permanent injunction to restrain the defendants 1 to 7, namely, the respondents 2 to 6 herein, from alienating or encumbering the suit property. The trial court, by decree and judgment dated 04.08.2014 decreed the suit as prayed for. As against the same, the respondents 2 to 8 herein filed an appeal in A.S.No.413 of 2014 on the file of the learned XIX Additional Judge, City Civil Court, Chennai. By decree and judgment dated 27.07.2015, the lower appellate court allowed the appeal, set aside the decree and judgment of the trial court and dismissed the suit. As against the same, the appellant/8th defendant in the suit is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The suit property was originally a vacant site. Admittedly, it belongs to the 8th defendant, namely, Arulmighu Thiruveedhi Amman Koil rep. by its Trustee, Thiruvanniyur, Chennai, the appellant herein. The appellant/8th defendant leased out the vacant site to the plaintiff's father by means of a lease deed dated 14.05.1985. After the said lease, spending his own money, the plaintiff's father constructed a house. Now the suit property is the vacant site as well as the house. The defendants 1 to 7 are closely related to the plaintiff and they were, therefore, allowed to occupy the suit house as permissive occupiers. But the defendants 1 to 7 have got no right whatsoever over the suit property. Still, they are making attempts to create some encumbrance over the suit property. Therefore, according to the plaintiff, the suit was filed.

4. The defendants 1 to 7 disputed the above claim made by the plaintiff. According to them, the vacant land actually belonged to the 8th defendant. But the 8th defendant under Ex.B.1 lease agreement dated 28.06.1989 leased out the suit property in favour of the defendants 1 to 7. Thus, the defendants 1 to 7 have been in possession and enjoyment of the suit property and have constructed a house on the same. According to these defendants, the plaintiff has got no right whatsoever over the suit property.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 2 documents have been exhibited. Ex.A.1 is the Lease Deed dated 14.05.1985 said to have been executed by the 8th defendant in the name of the father of the plaintiff. Ex.A.2 is the Receipt for payment of money on 31.01.2012 towards rent. On the side of the defendants, the 1st defendant was examined as D.W.1 and as many as 9 documents have been exhibited. Ex.B.1 is the lease agreement said to have been executed by the 8th defendant in favour of the 1st defendant on 28.06.1989. The others are the documents of the years 1996 to 2011 to show the possession of the defendants 1 to 7.

6. Having considered all the above, the trial court decreed the suit which was reversed by the lower appellate court. The plaintiff has not come forward with any Second Appeal. This appellant herein, who is the 8th defendant in the suit, has come up with this Second Appeal.

7. The learned Counsel for the appellant would submit that when the land belongs to the temple, namely, the appellant herein, neither the plaintiff nor the defendants 1 to 7 could create any encumbrance over the same. But the decree and judgment of the lower appellate court gives an indication that the defendants 1 to 7 have got such right. It is, for this reason, this Second Appeal has been filed.

8. I have considered the above submissions.

9. A close reading of the pleadings of the parties before the courts below would go to show that the defendants 1 to 7 have not claimed any title or any other right for the land. Their case is that the house was constructed by them after the execution of the lease agreement under Ex.B.1. Though the learned Counsel for the appellant would now contend that the suit property was leased out in the year 1985 only to the father of the plaintiff under Ex.A.1, there is no explanation or even denial of Ex.B.1. Neither any oral or documentary evidence was let in by this 8th defendant either admitting Ex.B.1 or denying the same. In the absence of the same, it is not open for the appellant now to contend for first time disputing Ex.B.1. Above all, as I have already narrated, there is no explanation offered or no evidence was let in by this defendant in respect of Ex.B.1. Apart from that, by the decree and judgment dated 27.07.2015 of the lower appellate court dismissing the suit, this defendant cannot have any grievance at all. I do not find any question of law much less a substantial question of law involved in this Second Appeal. Thus, I do not find any merit at all in the Second Appeal.

10. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs. Consequently, connected CMP is also closed.

tsi

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1.The XIX Additional Judge, City Civil Court, Chennai.

2.The III Assistant Judge, City Civil Court, Chennai.

+ 1 cc to Mr.M.V.Venkateswaran, Advocate SR 2804

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S.A.No.8 OF 2016