

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.960 of 2016

P.Kuppan (died)
Easu

... Appellant/1st Defendant/
2nd Appellant/2nd Defendant

Vs

G.Suresh Babu

... Respondent/1st Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 06.11.2015 passed in A.S.No.32 of 2011 on the file of the Subordinate Judge, Thiruvallur, dismissing the appeal and confirming that of the decree and judgment passed in O.S.No.39 of 2009 on 29.03.2011 by the District Munsif cum Judicial Magistrate Court, Uthukottai.

For Appellant ... Mr.R.Rajesh

JUDGMENT

The second defendant, being aggrieved over the concurrent finding rendered by the Courts below in decreeing the suit as prayed for, has come forward to file this appeal by raising the following substantial questions of law:

(i) Whether the judgment and decree of the Courts below are legally sustainable in as much as the terms of compromise decree in O.S.No.377 of 1977, the plaintiffs' vendor should sell the suit property to the defendants and not to the third parties like the respondent herein and erred in coming to a conclusion that there is no clause in the compromise decree when especially there is Clause 5 of joint endorsement made by the defendants and the plaintiffs' vendor?

(ii) Whether the judgment and decree of the Courts below are legally sustainable inas much as the defendants were in the possession of the suit property

when especially the advocate commissioner reveal the same?

(iii) Whether the judgment and decree of the Courts below are legally sustainable in as much as they found that the defendants have not challenged Ex.A3 settlement deed, especially when they have pleaded that the plaintiffs' vendor had not acted upon the compromise decree passed in O.S.No.357 of 1977 on the file of District Munsif Court, Thiruvallur?

2.The respondent and two others laid the suit, placing reliance upon the sale deed executed by the vendor -Gnanamani under Ex.A1 in favour of the wife of the third plaintiff. Thereafter, patta has been granted in favour of the third plaintiff after the death of his wife. The third plaintiff executed a settlement deed in favour of the first plaintiff, who is non other than his grandson. Pursuant to the same, the patta was changed in the name of the first plaintiff. The kist receipts are also standing in the name of the first plaintiff. Alleging interference at the hands of the defendants, the suit has been laid for declaration and for permanent injunction.

3.The Trial Court decreed the suit as prayed for on the ground that there is no dispute over the title of the vendor of the wife of the third plaintiff. It was further held that there was no dispute that the said vendor Gnanamani acquired title by virtue of the compromise decree passed in O.S.No.357 of 1977 in Ex.B3 in which the appellant was also a party. Incidentally, placing reliance upon Exs.A4 to A9, which are the patta standing in the name of the plaintiffs followed by kist receipts, a decree for injunction was also granted in lieu of the decree granted for declaration.

4.The lower appellate Court has also confirmed the judgment and decree of the Trial Court also by placing reliance upon the evidence of D.W.1. D.W.1 has admitted the title of the vendor of the third plaintiff's wife viz., Gnanamani. Further, he has admitted that the plaintiffs have been cultivating 80 cents of the suit property and the remaining 20 cents was harvested through the learned Advocate Commissioner. Accordingly, the lower appellate Court dismissed the appeal.

5.Challenging the concurrent finding of the Courts below resulting in the decree granted in favour of the respondents/plaintiffs, the appellant, who is the second defendant has come forward to file the present appeal.

6.Learned counsel appearing for the appellant submits that the possession was taken by the respondents/plaintiffs pursuant to the exparte order of injunction granted. Therefore, the suit

must have been laid for declaration and for possession and thus not for injunction. He further submits that the compromise decree has not been given effect to. Thus the substantial questions of law will have to be answered in favour of the appellant.

7.This Court does not find any merit in this appeal. There is no dispute with respect to Exs.A1 to A3. D.W.1 has admitted the existence of Ex.B3, which has been marked on the side of the defendants. The question as to whether the compromise decree has been given effect to or not and the factum of possession are the matters to be proved by the appellant since there is no dispute on the said compromise decree. The Courts below went into the evidence both oral and documentary including the tacit admission made by D.W.1 coupled with Exs.A4 to A7 which are patta and kist receipts evidencing possession pursuant to the title in favour of the plaintiffs.

8.In view of the above, this Court does not find any substantial question of law warranting interference in the concurrent finding rendered by the Courts below on facts. Accordingly, the second appeal is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Thiruvallur.

2.The District Munsif cum Judicial
Magistrate, Uthukottai.

+1 cc to Mr.R.Rajesh Advocate sr 74117

S.A.No.960 of 2016

ks(co)
aa24/01/2017