



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2016

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.222 of 2015
and
M.P.(MD)No.1 of 2015

M.Sangiah

... Appellant/Appellant/Defendant

-Vs-

R.Mahalingam

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to allow the second appeal and set aside the judgment and decree dated 01.12.2014 made in A.S.No.24 of 2014 on the file of Principal Subordinate Court, Madurai, confirming the judgment and decree dated 26.04.2013 made in O.S.No.597 of 2004 on the file of District Munsif Court, Madurai Taluk.

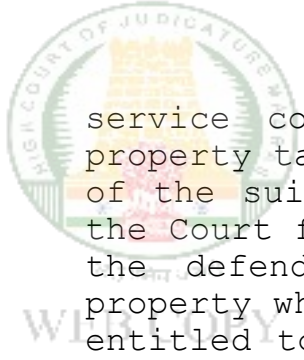
For Appellants : Mr.PT.S.Narendravasan
For Respondent : Mr.P.Pethu Rajesh

JUDGMENT

The defendant in the suit in O.S.No.597 of 2004 on the file of the District Munsif Court, Madurai Taluk, is the appellant in the above second appeal.

2.The respondent in this appeal, as plaintiff, filed a suit in O.S.No.579 of 2004, for permanent injunction restraining the appellant from in any way interfering with his peaceful possession and enjoyment of the suit property. The suit property is an extent of about 1045 square feet comprised in Survey No.143/4A2E corresponding to old Re-Survey No.129/4A2L.

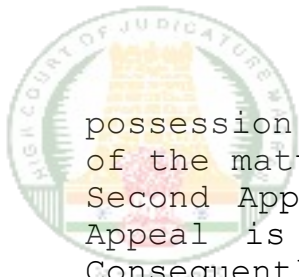
3.The case of the plaintiff / respondent is that he is in physical possession and enjoyment of the suit property by virtue of a sale deed alleged to have been executed by the legal heirs of one Ramasamy who was the original owner of the suit property. Though it is submitted by the plaintiff / respondent in the second appeal that the sale deed was not registered and that his vendors are dodging to execute the sale deed, his specific case is that he was put in possession and actually in exclusive enjoyment of the suit property pursuant to the sale deed. He has also pleaded that he has obtained



service connection to the suit property and that he is paying property tax. Apart from pleading that he is in physical possession of the suit property, he has also pleaded as to why he approached the Court for the suit for permanent injunction. The stand taken by the defendant / appellant is that his wife has purchased the property which is adjacent to the suit property and that his wife is entitled to have access to her land through the suit property. It was also pleaded by the defendant / appellant that the property purchased by the appellant and his wife were agricultural lands situate on the south of Madurai-Dindigul main road and that in between the suit land and the main road, there was an irrigation channel. The defendant / appellant therefore suggested that the suit property is the channel that was in existence in between the property of the defendant / appellant's wife and the main road. It was in that context, the defendant / appellant also claimed right of easement over the suit property to use this as a pathway to have access to the main road from the property of his wife.

4. Having regard to the pleadings of both sides, it is obvious that the defendant / appellant does not claim any title to the suit property. It is also clear that the defendant / appellant did not claim any possessory or enjoyment right over the suit property. However, the defendant / appellant claims that his wife has got some right of easement over the suit property and that the suit property serves as a servient tenement, for his wife to enjoy her properties which according to the defendant / appellant is in a different survey number namely Survey No.146/3A. The learned counsel for the defendant / appellant also submitted that his wife has also filed a suit in O.S.No.933 of 2013 on the file of the Third Additional Sub Court, Madurai.

5. The trial Court as well as the appellate Court have concurrently held that the plaintiff / respondent is in possession and enjoyment of the property pursuant to the unregistered sale deed executed by the original owners of the suit property. The Courts below have also rendered a finding that the defendant / appellant is not in possession of any portion of the suit property. Since the defendant / appellant does not claim title or right in any portion of the suit property and the suit filed by his wife is in respect of a different survey number namely Survey No.146/3A, the Courts below have held that the plaintiff / respondent is entitled to a decree for injunction. I do not find any error or legal infirmity in the findings of the Courts below. The contention of the defendant / appellant that the sale deed relied upon by the plaintiff / respondent is not registered and therefore inadmissible in evidence do not appeal to this Court as it is settled that an unregistered sale deed is also admissible in evidence for collateral purpose. In the present case, the plaintiff's / respondent's claim is only that he was put into possession pursuant to the sale deed. Hence, there is no merit in this appeal and no other question of law canvassed before this Court. It is also settled that a plaintiff in possession is entitled to ask for injunction to protect his



possession as against any one who is not a real owner. In that view of the matter, I do not find any merit in this Second Appeal and the Second Appeal is liable to be dismissed. Accordingly, the Second Appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

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6.It is made clear that the suit in O.S.No.933 of 2013 on the file of the Third Additional Sub Court, Madurai, filed by the wife of the appellant can be disposed of by the Court concerned uninfluenced by any of the observations or findings in the present suit or the appeal.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Madurai.
2. The District Munsif, Madurai Taluk.

+ 1 CC TO Mr.PT.S.NARENDRAVASAN, ADVOCATE IN SR No. 62055
+ 1 CC TO Mr.P.PETHU RAJESH, ADVOCATE IN SR No. 62391

SRM

TE/SKS-RR : 19/12/2016 : 3P/5C

Judgment made in
Second Appeal (MD) No.222 of 2015
and
M.P. (MD) No.1 of 2015
20.10.2016