



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Second Appeal (MD)No.202 of 2016

and

C.M.P (MD)No.3046 of 2016

1.Rasammal

2.Neel Rajarethinam

3.Sumathi @ Suria

... Appellants/Appellants/Defendants

Vs.

Pooldurai

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 30.10.2014 passed in A.S.No.35 of 2014 on the file of the Sub Court, Sankarankovil, in confirming the judgment and decree dated 13.02.2014 passed in O.S.No.353 of 2011, on the file of the Principal District Munsif, Sankarankovil.

For Appellants

: Mr.F.X.Eugene

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree dated 30.10.2014 passed in A.S.No.35 of 2014 by the learned Sub Judge, Sankarankovil, in confirming the judgment and decree dated 13.02.2014 passed in O.S.No.353 of 2011, by the learned Principal District Munsif, Sankarankovil.

2. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court.

3. The brief facts leading to the filing of this Second Appeal are as follows:

3.1. The plaint schedule property and other properties originally belonged to one Pangaruammal, from whom, the plaintiff purchased the suit property and some other properties by a registered sale deed dated 18.11.2010. Thereafter, the suit property was under the peaceful possession and enjoyment of the plaintiff and she also got patta. The third defendant is the daughter of the first defendant. The second defendant is the husband of the third defendant. The defendants attempted to disturb the peaceful possession and enjoyment of the plaintiff from 25.11.2011. Hence, the suit for permanent injunction.

3.2. Per contra, the first defendant filed the written statement, which was adopted by the defendants 2 and 3, contending that the suit itself is not maintainable as the plaintiff wrongly mentioned the name of the third defendant and also the addresses of the plaintiff and the defendants. Despite a Memo filed by the third defendant to amend the plaint and to correct the names and addresses of the plaintiff and the defendants, no such amendments have been taken by the plaintiff. Since the dwelling house of the defendants is situated adjacent to the suit property, the husband of the first defendant - Samidurai and the plaintiff herein



entered into an oral agreement for sale with the said Pangaruammal in respect of the suit property for a valuable consideration of Rs.1,70,000/-. The husband of the first defendant has given a sum of Rs.50,000/- and the plaintiff has given Rs.50,000/- towards the sale consideration. Since the husband of the first defendant died, the plaintiff fraudulently got executed the sale deed in his favour, suppressing the amount paid by the husband of the first defendant. The plaintiff filed the suit only to defraud the defendants, as the suit property was under the possession and enjoyment of the defendants.

3.3. On the above pleadings, the trial Court framed two issues.

3.4. During trial, the plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.3. On the side of the defendants, the second defendant examined himself as D.W.1 and marked Ex.B.1.

3.5. On consideration of the materials available on record, the trial Court decreed the suit as prayed for. Aggrieved over the same, the defendants filed the appeal in A.S.No.35 of 2014 on the file of the Sub Court, Sankarankovil. The first appellate Court dismissed appeal filed by the defendants and confirmed the judgment and decree passed by the trial Court.

3.6. Challenging the same, the defendants have filed the present Second Appeal, raising the following substantial questions of law:

"(a) Whether both the Lower Courts are correct in giving a finding that the injunction relief is necessary when there is no cause of action for the same?

(b) Whether both the Lower Courts are correct in giving a finding that the defendants are not in joint possession with the plaintiff in the schedule property are correct?

(c) Whether both the Lower Courts are correct, in ignoring the veracity of Ex.B.1, the receipt given by the police, even as early as on 11.09.2010, immediately, after Ex.A.1, dated 08.09.2010?

(d) Whether both the Lower Courts are correct, in deciding the possession of the schedule property without examining any individual other than the plaintiff and Ex.A.1?

(e) Is there any necessity to grant injunction in the absence of cause of action, but on mere apprehension?"

4. Heard the learned Counsel for the appellants/defendants.

5. It is the case of the plaintiff that originally, the plaintiff schedule property and other properties were the ancestral properties of one Pangaruammal and he purchased the suit property from her by a registered sale deed dated 18.11.2010. Thereafter, the suit property was under the peaceful possession and enjoyment of the plaintiff. She also obtained patta. Since the defendants attempted to disturb the peaceful possession and enjoyment of the plaintiff from 25.11.2011, the plaintiff filed the suit.



6. Admittedly, Ex.A.1 is the original sale deed executed by the said Pangarummal in favour of the plaintiff and thereafter, mutation of records were also made and patta was also obtained in his name. Though the defendants contended that the husband of the first defendant paid a sale consideration of Rs.50,000/- towards the purchase value, based on an oral sale agreement, the same has not been established by the defendants in the manner known to law.

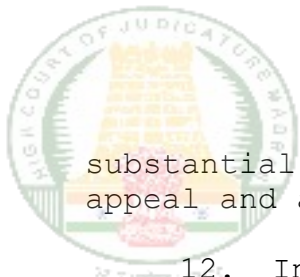
7. Ultimately, the trial Court has considered the materials available on record and found that the plaintiff has proved his case and accordingly, decreed the suit as prayed for. Moreover, the defendants failed to prove their possession and enjoyment over the suit property and in the absence of the same, the trial Court has rightly rejected their claim. The first appellate Court also confirmed the findings of the trial Court and dismissed the appeal.

8. Further, on a perusal of the judgment of the trial Court, this Court finds that the trial Court has dealt with the matter in an elaborate manner and decreed the suit. The entire judgment of the trial Court is based upon facts. No doubt, the trial Court is a fact finding authority and the trial Court has rightly held that the plaintiff is entitled to the relief as claimed by him, and the first appellate Court also confirmed the findings of the trial Court and dismissed the appeal. The reasons given by the Courts below are clear, cogent, convincing and acceptable.

9. In the considered opinion of this Court, the trial Court as well as the first appellate Court considered the case projected by the parties, taking into account the respective pleadings, oral evidence adduced as well as the documentary evidence exhibited on either side and after analysing the whole issue, came to a categorical conclusion that the plaintiff has proved his case and accordingly, decreed the suit. The entire case rests on facts and this Court cannot re-appraise the facts.

10. The trial Court as well as the first appellate Court considered the material evidence placed before it in their proper perspective and granted the relief sought for by the plaintiff. In a case where from a given set of circumstances, two inferences on fact are possible, one drawn on by the first appellate Court will be preferred and the High Court, in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, is not justified in interfering with those findings. It is only when the conclusion drawn by the first appellate Court is found to be contrary to the mandatory provisions of law applicable to a particular matter or is against the settled position on the basis of decisions of the Honourable Apex Court or is based upon inadmissible evidence or arrived at by ignoring material evidence that the High Court is expected to interfere in the findings of the Courts below.

11. The judgment of the trial Court as well as the first appellate Court are found to be perfectly correct and the findings cannot be termed to be erroneous either in law or on facts requiring interference in the second appeal. As such, this Court finds no merit in the contention of the appellants and no question of law much less a



substantial question of law arises for consideration in the present appeal and as such, this second appeal is liable to be dismissed.

12. In the result, the Second Appeal fails and the same is, accordingly, dismissed. No costs. Consequently, the connected civil miscellaneous petition is dismissed.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Sankarankovil.
- 2.The Principal District Munsif, Sankarankovil.

Second Appeal (MD)No.202 of 2016
and
C.M.P (MD) No.3046 of 2016
29.03.2016

rsb
PA/AAL-MPA/SAR II/02.06.2016/4P/3C