



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

04.04.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN**S.A. (MD) No.239 of 2016**

Ravichandran : Appellant/Defendant

Vs.

1.Srinivasan Engineering Division,
Partnership Firm,
24-B, Pannaiyar Street,
Rajapalayam, Through its Partner Ramakrishnan.

2.Ramakrishnan

3.Suseela

4.Marimuthu : Respondents/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.01.2004 made in A.S.No.57 of 2001, on the file of the Principal District Judge, Srivilliputhur, confirming the Judgment and Decree dated 17.10.2000 made in O.S.No.83 of 1996, on the file of the Sub-Court, Srivilliputhur.

For Appellant : Mr.PT.S.Narendravasan

JUDGMENT

The appellant herein, who is the unsuccessful defendant in the suit, which was filed by the plaintiffs/respondents for declaration that the suit property belongs to them, to demolish the superstructure constructed by the defendant and to hand over vacant possession of the same, has come up with the present Second Appeal challenging the concurrent findings rendered by the Courts below.

2. The case of the plaintiffs, as culled out from the plaint, for the purpose of disposal of the Second Appeal, is as follows:-

The suit property is situated at Survey No.1291/1981, Inam Thoppupatti, Rajapalayam, Virudhunagar District. The defendant purchased 80 cents of land situated at Survey Nos.1291/38, 1291/80 and 1291/81 from nine persons and he was in possession and enjoyment of the same. On 13.08.1984, the plaintiffs purchased the



first schedule property from and out of the above said 80 cents, registered the same and they were in possession and enjoyment of the suit property. Similarly, on 11.09.1985, the plaintiffs purchased the second schedule property and they were in possession and enjoyment of the same. As there was financial constraints, the plaintiffs could not construct construction on the suit property. As no construction was made in the suit property and the plaintiffs were also out of station, on account of their business, taking advantage of the same, the defendant entered into the property, started encroachment and constructed a building, which came to the knowledge of the plaintiffs only on 04.03.1996. In those circumstances, the plaintiffs had to file the suit for the relief, as stated supra.

3. The defendant filed a Written Statement stating that the suit filed by the plaintiffs was liable to be dismissed on the ground of non-joinder of necessary parties. The suit property was in possession and enjoyment of the defendant. He raised a building in the suit property obtained patta, obtained electric supply and was also paying tax for the suit property. Thus, according to the defendant, the plaintiffs were not entitled for the relief, as sought for.

4. Based on the above facts, the Trial Court framed appropriate issues. On the side of the plaintiffs, three witnesses were examined as PW-1 to PW-3 and as many as 11 documents were marked as EX-A1 to EX-A11. On the side of the defendant, five witnesses were examined as DW-1 to DW-5 and as many as 28 documents were marked as EX-B1 to EX-B28. Having considered all the above, the Trial Court, by Decree and Judgment dated 17.10.2000, allowed the suit, as prayed for by the plaintiffs. Questioning the validity of the Decree and Judgment passed by the Trial Court, A.S.No.57 of 2001 was filed, which was also dismissed by the Lower Appellate Court, by Decree and Judgment dated 07.01.2004. That is how, the appellant, who is the defendant in the suit, is now before this Court with this Second Appeal.

5. I have heard the learned counsel appearing for the appellant and I have also gone through the materials available on record carefully, including the Judgments rendered by the Courts below.

6. The first and foremost contention raised by the learned counsel appearing for the appellant is that no sale had taken place under EX-A2 and EX-A3, as alleged by the respondents/plaintiffs. Thus, according to the learned counsel, when no sale was effected, the respondents/plaintiffs cannot claim any right whatsoever over the suit property. Therefore, according to the learned counsel, the Judgment and Decree passed by the Trial Court, which was confirmed by the Lower Appellate Court, needs to be interfered with.

7. I have considered the above submissions.

8. The Trial Court, on considering the vital documents, viz., EX-A2 and EX-A3, sale deeds executed in favour of the respondents, came to the conclusion that the sale was effected on 13.08.1984 and 11.09.1985. The Trial Court further held that the sale effected was not specifically denied by the appellant during his cross-examination. Moreover, PW-2 in his evidence, has stated that he knew the transaction held between the appellant and the respondents and he is also the attesting witness to EX-A2. Thus, the Trial Court considered all the materials available on record in a proper manner, which was rightly confirmed by the Lower Appellate Court. The learned counsel appearing for the appellant is not in a position to point out any infirmity in the Decree and Judgment rendered by the Courts below. Thus, in view of the concurrent findings rendered by the Courts below, I do not find any substantial question of law involved in this Second Appeal.

9. In the result, the Second Appeal fails and the same is, accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

NB

To

- 1.The Principal District Judge, Srivilliputhur.
- 2.The Subordinate Judge, Srivilliputhur.

Copy To : The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.
(Records if any)

SDR/AA1/MPA/SAR-II-25.5.16-3p-4C

JUDGMENT MADE IN
S.A. (MD) No.239 of 2016
04.04.2016