

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.3618 of 2014
and MP No.1 of 2014

Subramani

..Appellant (1st Defendant)

Vs.

1. Sakunthala
2. Saravanan
3. Baskar
4. Madirammal
5. Meenambal

... Respondents 1 to 4 (Plaintiff)
... 5th Respondent (2nd Defendant)

This appeal is filed under Order XLIII Rule 1(u) of Code of Civil Procedure, 1908, against the judgment and decree in AS. No.1 of 2013 on the file of Sub-Court, Gudiyatham dated 25.09.2014 in remand back to the judgment and decree in O.S.No.125 of 2003, on the file of District Munsif Court, Gudiyatham, dated 20.09.2012.

For Appellant : Mrs.R.Poornima

For Respondents 1 to 4 : Mr.T.Dhanyakumar

J U D G E M E N T

This appeal has been filed challenging the order of remand, passed by the Sub-Court, Gudiyatham, passed in AS No.1 of 2013. The said appeal arose out of the suit in OS.No.125 of 2003 filed by the respondents for a bare injunction claiming that the property belonged to one Vedavalli, and she sold it to one Munusamy Pillai on 14.08.1944. It is also claimed that said Munusamy Pillai died issue less. After the death of the wife of Munusamy Pillai, the property devolved on one T.N.Velu and the said T.N.Velu, namely the father of the plaintiff had settled the same in the name of the plaintiff herein by the registered sale deed dated 28.01.2003. The sole plaintiff died pending suit and the plaintiffs 2 to 5 were impleaded as his legal representatives.

2. The defendants resisted the suit contending that the said

T.N.Velu had nothing to do with Munusamy Pillai and it is also contended that on the death of the wife of Munusamy Pillai, namely Karumbammal, the property devolved on her two brothers, namely Govindasami and Duraisami Gounder. On the death of the said Duraisami Gounder, the property devolved on his brother Govindasamy, who is the father of the 1st defendant. Therefore, the 1st defendant is the absolute owner of the said property.

3. The Trial Court upon consideration of the evidence on record hold that the plaintiff has not proved the relationship between the said Munusami Pillai and T.N.Velu. Therefore, the learned trial Judge found that the claim of the plaintiff's that they are in possession of the property by virtue of the settlement deed executed in the year 2003 cannot be countenanced. On the said findings, the learned trial Judge dismissed the suit.

4. Aggrieved, the plaintiff preferred an appeal before the Lower Appellate Court, namely the Sub Court, Gudiyatham. The learned Subordinate Judge, allowed the appeal and remanded the matter for fresh consideration. The learned Appellate Judge has found that the plaintiff had not establish the link between Munusami Pillai and T.N.Velu. However, the learned Appellate Judge, found that the defendants have also not produce the patta and other documents, therefore, the learned Appellate Judge chose to set aside the judgment of the Trial Court and remanded the matter for fresh disposal. The said order of remand is under Challenge.

5. I heard Mrs.R.Poornima, learned counsel appearing for the appellant and MR.T. Dhanyakumar, learned counsel appearing for the respondent.

6. An order of remand is contemplated under Order 41 and Rule 23 or Rule 23(A). A perusal of the judgment of the Lower Appellate Court shows that it is not in consonance with any one of the above two provisions.

7. The learned Trial Judge had considered the entire evidence on record and found that both the plaintiff or defendant did not prove their respective case. In fact the Lower Appellate Court has concluded that the defendants have not let in evidence by producing patta and other documents to show their possession. As already stated, the suit was for permanent injunction. Therefore, there is no question of the defendants letting in evidence to prove their possession. The plaintiff has to stand or fall on his own plea. Therefore, the Lower Appellate Court was not justified in remanding the case on the ground that the defendants have not let in evidence to prove their possession.

8. The order of remand is not sustainable and the same is accordingly set aside. The appeal is allowed. The lower appellate Court is directed to dispose the appeal on the evidence available before it. However, in the circumstances, no order as to costs in this case. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Sub-Judge,
Gudiyatham.
2. The District Munsif,
Gudiyatham
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Poornima, Advocate, S.R.No.67430

+1cc to Mr.T.Dhanya Kumar, Advocate, S.R.No.67621

CMA.No.3618 of 2014
and MP No.1 of 2014

SV(CO)
GN(26/10/2017)

सत्यमेव जयते

WEB COPY