

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

Coram

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

Second Appeal No.218 of 2015
and
M.P.No.1 of 2015

P.D.Sivaji .. Appellant/Defendant

Vs

P.D.Balaji .. Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 17.12.2014 made in A.S.No.49 of 2013 on the file of the III Additional Judge, City Civil Court, Chennai, reversing the judgment and decree made in O.S.No.5253 of 2010 dated 02.08.2012 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Appellant .. Mr.R.Vijayakumar

For Respondent .. Mr.S.Natanarajan

JUDGMENT

The appellant is the defendant in the suit. The suit has been laid for three reliefs viz., mandatory injunction, permanent injunction with a respect to the possession of the plaintiff and for permanent injunction to reach the first floor through ground floor.

2.The suit property is situated at Old No.1/31 (Door No.50) corresponding to present Door No.127/1, Perumal Mudali Street, Royapettah, Chennai - 14. The appellant/defendant and the respondent/plaintiff are brothers. Under Exs.A1 and A2 - deeds of settlement have been executed by the grandmother in favour of the appellant, respondent and their sister. It appears that the respondent/plaintiff has purchased the property given to his sister under Door No.51, which we are not concerned with. The execution of the settlement deeds and the allotment of separate portion to the parties is also not in dispute. As per the settlement deeds, the appellant would get the ground floor and

the respondent would get the first floor. From the pleadings, it is seen that the appellant continued to be in possession of the first floor either in part or full pursuant to the permission granted by the grandmother. The respondent/plaintiff issued a notice to the appellant stating that he is terminating the permission granted and therefore, the possession will have to be handed over. Thereafter, the suit has been laid.

3.The trial Court dismissed the suit insofar as the prayers (a) and (b) are concerned holding that the plaintiff has not proved the factum of termination of the permission granted. The prayer (c) has been granted, over which, there was no appeal. The lower appellate Court reversed the judgment and decree of the trial Court by holding that the legal notice issued on behalf of the plaintiff itself would be sufficient wherein it has been stated that oral request has been made earlier for handing over the possession. Challenging the judgment and decree granted by the trial Court in favour of the plaintiff, placing reliance upon the legal notice issued under Ex.A6, the present second appeal has been filed.

4.At the time of admission, the following substantial questions of law have been framed:

(1)Whether the suit against the permissive occupant without duly revoking the permission is maintainable?

(2)Whether the suit as prayed for mandatory injunction without seeking for recovery of possession is maintainable?

(3)Whether the Court can pass a decree for possession of the entire A Schedule property against the defendant, which cannot be performed by him in view of the fact that the Schedule A property is admittedly in possession of both the plaintiff and defendant?

5.Learned counsel appearing for the appellant submits that there is no material to hold that the permission granted earlier was revoked. Thus the judgment and decree of the lower appellate Court requires interference. The appellant is in possession of a portion of A Schedule property in the first floor whereas the relief has been sought for, for the entire portion.

6.Learned counsel appearing for the respondent/plaintiff submits that inasmuch as the appellant was informed sufficiently

followed by the legal notice to hand over vacant possession, no interference is required.

7. There is no dispute on facts. Both the parties admitted the settlement deeds. Therefore, first floor goes to the respondent/plaintiff absolutely and so is the case of the ground floor in favour of the appellant/defendant. The appellant was given permissive possession by the grandmother is also not in dispute. Therefore, the question as to whether the appellant is in partial possession or complete possession of the first floor is totally irrelevant. Admittedly, the first floor belongs to the respondent/plaintiff. The issuance of legal notice - Ex.A6 is not in dispute. When once the statement of the appellant is very clear, being a permissive occupant, there is absolutely no legal right in his favour. In the legal notice, the respondent/plaintiff has stated in clear terms about the earlier request made and the refusal to vacate the first floor.

8. In such view of the matter, this Court is of the view that there is absolutely no material to reverse the judgment and decree of the lower appellate Court as there is no substantial question of law involved, warranting interference. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

To

1. The III Additional Judge,
City Civil Court, Chennai.

2. The XV Assistant Judge,
City Civil Court, Chennai.

3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Vijayakumar, Advocate SR.No.7967

+1cc to Mr.Natana Rajan, Advocate SR.No.8025

S.A.No.218 of 2015

VSN(CO)
GN(27/02/2017)