

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.637 of 2015

&

M.P.No.1 of 2015

1.Sarfudeen

2.Beenu

.... Appellants/defendants

vs.

Edagayh Mosque Charities,
Rep. by Honorary Secretary,
M.Mohamed Ayub,
No.9, Angappa Naicken Street,
George Town,
Chennai-600 001.

... Respondent/Plaintiff

This appeal is preferred under Section 100 CPC against the judgment and decree made in A.S.No.79 of 2012 dated 24.02.2015 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree made in the suit in O.S.No.2388 of 2010, dated 05.01.2012 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.V.Balasubramanian

For Respondent : No appearance

J U D G M E N T

The unsuccessful defendants, who suffered a decree for ejectment have filed this appeal by framing the following Substantial Questions of Law:

1. Whether the suit filed by the respondent before common law civil court which excludes their jurisdiction by Wakf Tribunal?

2. Whether the suit filed by the respondent is maintainable in the absence of production of title deeds?

3.Whether the respondent can claim right to the entire survey number when the suit property has undergone several sub divisions over the period?

4.Whether the suit is maintainable?

2.The plaintiff is a Charitable Institution. It is the absolute owner of the suit property. As the appellants had not paid the arrears of rent despite repeated requests made, the suit had been laid. Before the trial Court, the respondent/plaintiff has marked exhibits A1 to A16, in support of its contentions Ex.A1 is the copy of the permission granted in favour of the plaintiff; Ex.A2 is the notification issued by the Wakf Board, declaring the plaintiff as 'Wakf'.Ex.A4 is a notification issued by the Deputy Secretary of State Wakf Board wherein it has been mentioned that the land in R.S.No.3641/1 belonged to the respondent/plaintiff. Ex.A5 is a letter written by the second appellant wherein she admitted the fact that the title of the suit property is in favour of the plaintiff; under Ex.A6 also there was an admission by the second appellant/second defendant to the above said effect and Ex.A7, the second appellant/second defendant has sent a sum of Rs.5,000/- by way of arrears in favour of the plaintiff.

3.Though the appellants denied the title before the Court below, considering the evidence of PW1 and exhibits marked, the trial Court decreed the suit as prayed for. The lower Appellate Court after having found the judgment and decree of the trial Court is legally sustainable and confirmed it by way of a speaking order. Challenging the same, the present Second Appeal has been filed.

4.Learned counsel for the appellant would submit that merely based on the documents filed by the plaintiff, the suit has been decreed. There is no independent document to substantiate the plaintiff's title. Thus, the judgment and decree of the Courts below will have to be reversed.

5.A perusal of the judgment and decree rendered by the Courts below, this Court is of the view that there is no infirmity. Ex.A2 was taken into account by the Courts below along with Exs.A5 to A7. DW2, has admitted the title of the plaintiff. To the legal notice issued by the plaintiff, there was no reply from the appellants/defendants, though the same by itself is cannot be a ground to decree the suit. Under Ex.A15 which is a copy of the plaint in O.S.No.104 of 2007 filed by the appellants, the second appellant has stated that he has been residing in the suit property and paying rent to the plaintiff in the present suit. Similarly, in Ex.A16 which is the affidavit

filed by the second appellant, she has admitted the suit land over which the superstructure stands belong to the respondent/plaintiff. The documents filed by the appellants herein under Ex.B4 to B12, during the pendency of the appeal, boundaries to the property are shown as the land belonging to the plaintiff. The lower Appellate Court has rightly found that the property mentioned under Ex.B7, is different. The photograph-Ex.B8 and xerox copy of extract showing the persons who are in possession of the plots-Ex.B10, were also rightly rejected being inadmissible evidence.

6.Thus, this Court does not find any Substantial Question of Law in this appeal and accordingly, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is dismissed.

7. However, taking into consideration the fact that the appellants are said to have been in possession of the suit property for a number of years, this Court is inclined to grant further time of one year from today to be in possession subject to the payment of rent which is payable from now onwards. This order is also subject to the condition that the appellants shall file an affidavit to that effect, within a period of four weeks from the date of receipt of a copy of this order and they would have to pay the rent from the month of January, 2017 onwards and handover the possession on or before 07.01.2018. If the said condition is not complied with, the respondent/plaintiff is liberty to proceed with in the manner known to law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The V Additional Judge,
City Civil Court,
Chennai.
2. The XVI Assistant Judge,
City Civil Court, Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.V.Balasubramanian, Advocate SR.593

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