

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

S.A.No.935 of 2015
and M.P.No.1 of 2015

Mahalingam (Deceased)

1.Rajeswari

2.Senthil

3.Kokila

4.Shakila

5.Minor Jagadeesan

rep by his mother/next friend and
natural guardian 1st petitioner

herein Rajeswari

...Appellants/Respondents 2 to 6/
Plaintiffs 2 to 6

Vs.

Ambikasundaram

...Respondent/Appellant/
Defendant

Second Appeal is filed under Section 100 C.P.C., against the judgment and decree of the learned District Judge, Karaikal dated 24.04.2012 in A.S.No.1 of 2012 reversing the judgment and decree of the learned Principal District Munsif, Karaikal dated 12.09.2011 in O.S.No.378 of 2006.

For Appellants : Mr.N.R.Rajagopalan

For respondent : Mr.Ilanthiraiyan

for M/s.Sai Bharath and Ilan

J U D G M E N T

The plaintiffs, in the suit for permanent injunction, are the appellants herein, seeking to set aside the judgment and decree rendered by the Lower Appellate Court, have filed the above Second Appeal by raising the following substantial questions of law:

1.Whether the Lower Appellate Court is right in allowing the appeal of the defendant on the strength of Ex.B1 which is a fabricated document and ignoring the documents filed by the plaintiffs?

2.Whether the Lower Appellate Court is right in law in holding that the plaintiff has failed to prove

possession of the property especially when the defendant admitted about the possession?

3. Whether the burden of proof shift on the defendant to prove otherwise when the plaintiff proved his possession through evidence and documents?

4. Whether or not the statement of the defendant about the possession of the plaintiff is an admission under Order 12 Rule 6 and based on that the plaintiff is entitled to judgment and decree as prayed for?

2. The suit has been laid by the plaintiffs/appellants for permanent injunction on the premise that he is a lessee under the Local Body and seeking protection of his possession, has claimed the relief.

3. It is the case of the defendant that by an unregistered Sale Deed Ex.B1 dated 09.04.2004, he has purchased the suit property from the plaintiff and thereafter, he is in possession. The trial Court decreed the suit as prayed for on the ground that Ex.B1 being unregistered, no relevancy can be placed upon it. The Lower Appellate Court reversed it by holding that it is for the plaintiff to show the factum of possession. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellants submits that even as per the statement of the defendant the plaintiff has taken on lease the property from the Local Body is proved. When that is proved, the suit will have to be decreed based on Ex.B1.

5. The learned counsel appearing for the respondent submit that the plaintiffs have not proved the factum of possession and hence, the Lower Appellate Court has rightly dismissed the suit.

6. In the opinion of this Court, the Lower Appellate Court has committed a legal error. It is an admitted case of the parties that the suit property, which belonged to the Local Body came into the hands of the plaintiffs. Therefore, to that extent, there is an admission. The plaintiff claims to protect his protection based upon the Lease Deed in his favour. When, once it is the case of the defendant himself that he has purchased the property from the plaintiff, when it is disputed based upon the oral sale, the onus shifts upon him and admittedly, Ex.B1 Sale Deed is an unregistered document, therefore, it cannot be looked into. This Court is not concerned about Ex.B1, but the admission made by the defendant.

7. It is not a case in which the title is sought to be established. On the contrary, it is the case of protecting one's

possession. The Lower Appellate Court committed an error holding that it is for the plaintiff to establish his case. It is settled position of law that a Court has to protect the interest of the party, which has got better right. When that right is not disputed, though initial right is based upon the oral sale, this Court has to protect the interest of a party whose initial title is admitted.

8. In such view of the matter, this Court is of the view that the substantial questions of law have to be answered in favour of the plaintiff. The judgment and decree of the Lower Appellate Court are set aside and consequently, the judgment and decree of the trial Court is restored.

9. In the result, the Second Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

va

To

1. The District Judge,
Karaikal.
2. The Principal District Munsif,
Karaikal.

+1cc to Mr. Rajagopalan, Advocate, S.R.No.5803
+1cc to M/s. Sai, Advocate, S.R.No.6027

GJ(CO)
RS(17/02/2017)

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